EXPENSE OF THE BUREAU OF LABOR STATISTICS

(For the Biennial Period, July 1, 1920, to July 1, 1922)

Salaries, for biennial period		$34,578.37
Traveling and hotel expenses		7,248.75
Supplies and postage:		
Paper	$ 55.78	
Envelopes	1.06	
Pencils, pens, etc.	14.31	
Baskets, brushes, brooms	4.57	
Books	4.30	
Rubber bands	2.46	
Paste, ink, etc.	16.38	
Sundries	82.89	
Postage and stamped envelopes	1,030.94	
Total for supplies and postage	$ 1,212.69	1,212.69
Printing, binding, engraving and paper stock		3,018.34
Telephone and telegraph		370.67
Express, freight and cartage		3.20
Furniture and stores		273.89
Miscellaneous expenses, supplies, repairs, etc.		27.60
Grand total for biennial period ending June 30, 1922		$46,733.51

STATE OF IOWA
1922

REPORT OF THE

Workmen's Compensation Service

For the Biennial Period Ending June 30, 1922

AND

REPORT OF DECISIONS

By the Department and State Courts

A. B. FUNK
Industrial Commissioner

Published by
THE STATE OF IOWA
Des Moines

LETTER OF TRANSMITTAL.

STATE OF IOWA

WORKMEN'S COMPENSATION SERVICE

Des Moines, September 30, 1922.

Hon. N. E. Kendall, Governor of Iowa.

Sir:—In compliance with Section 2477-m 24, supplement to the Code, 1913, I have the honor to transmit to you the fifth biennial report of his department with my recommendations for changes in the law as required by said section.

A. B. FUNK,
Iowa Industrial Commissioner.

WORKMEN'S COMPENSATION SERVICE

ADMINISTRATION

A. B. Funk	Industrial Commissioner
Ralph Young	Deputy Commissioner
Ray M. Spangler	Secretary
Helen A. Reed	Chief Clerk
Grace Doege	Stenographer and Settlement Clerk
Katherine Miller	Stenographer
Katherine Melcher	Report Clerk
Marie Grinstead	Record Clerk

O. J. Fay, M. D.	Medical Counsel

ADMINISTRATION

IN GENERAL

Workmen's Compensation has grown in favor with the lapse of time and the accumulation of experience. With smaller cost to the employer and lighter burdens upon society, a much larger sum of contribution is made to the victims of industrial misfortune. Under compensation eight workmen receive relief to one under the law of damage, and distribution is much more equitable. The law's delay is substantially minimized. The vital human element is exercised in applying the principles of equity to industrial misfortune.

Within the past century society has worked wonders in the development of provisions for ameliorating the condition of its unfortunate wards. Once left to darkness and despair, the blind now live to serve and in some measure to enjoy existence. The deaf and dumb become useful members of society. The insane, if curable, have every advantage of skill and care, while the hopeless are given all possible comfort, whereas aforetime they were restrained in chains or cells, even as wild beasts.

With the progress of Christian civilization there came a time when the public conscience was aroused and public intelligence further enlightened by better understanding of public duty and of the general welfare. It meant the dawning of a better day when by the State it was made the business of somebody definitely to care for those unable adequately to care for themselves.

In this evolutionary process Workmen's Compensation came not as a charity but to insure the broader, better consideration of the misfortunes of industrial activity and for more equitable adjustment of the burdens imposed. The State came to understand that the wolfish damage policy was brutal to workmen, demoralizing to employment, inimical to industrial relationship and against the general welfare.

With the introduction of Workmen's Compensation the State assumed important obligations in cases of industrial misfortune. It banished from the Code the word "negligence" and other technical terms. It made the legal rule plain and inexorable that in cases where personal injury arises out of and in course of employment the employer shall share with the workman or his dependents the

loss of earnings involved. It made it the interest as well as the duty of employment to afford all available means for reducing the measure of disability and consequent loss to the workman.

In such cases the State made it its business to sit in at settlement time to insure a deal fair to all concerned in conformity with law. It became the duty of state agency to care, when care means so much to the unfortunate victims of industry. The very atmosphere of this humane and equitable service everywhere develops sympathy and concern, as well as equity and due regard for the general welfare. While it keeps open house to employment, it especially invites the injured workman or his dependents in case of need to avail themselves of the assistance of this comprehensive departmental service. When their rights are ignored, or when they are in doubt as to their rights, they have a place to go for counsel. Grievous burdens are frequently lightened in such experience. Aside from technical requirements of legal direction, administration may often do much to relieve distressing situations, and it seems to be the tendency of this service everywhere to exercise all such opportunity.

Litigation serves as a last resort when all endeavor to promote settlement has failed. When this becomes necessary it is the purpose of the department to proceed with as little delay and expense as practicable. This process cannot be exercised to the neglect of equity. The burden of proof is on the claimant. Employment must not be denied its rights under the law. The fact is well understood, however, and seldom criticised, that when in good faith proceeding equipoise exists, the decision goes to the workman or dependent.

IMPORTANCE OF SAFETY SERVICE

A large share of the accidental injuries in the State of Iowa are clearly avoidable. Inquiry into causes and results will definitely establish this fact. High power machinery and high pressure production have vastly increased the peril of industrial employment. Most employers buy insurance coverage, and many are not sufficiently interested in the safety of their workmen. They do not seem to realize their obligation to their employes or the fact that they may reduce the cost of insurance by affording all possible safety provisions. In perilous employment most workmen become indifferent to danger. They are not careful as they might be and they frequently decline to avail themselves of means afforded to minimize risk. Ofttimes they are moved to neglect the exercise

of caution and the adoption of safety devices until misfortune shall emphasize their importance, when it may be too late to profit by their sad experience.

The State should rigorously insist upon working conditions as safe as they consistently can be made. It should jolt the indifferent employer to a sense of his obligation to his workmen and to society. It should insist upon the instruction of employes as to perils to which they are subject and the importance of caution, and these employes should be subject to rigid discipline when they are disposed to ignore provisions for their protection with which they must cooperate to reduce industrial peril.

The Commissioner of Labor Statistics is in charge of these important details. He is disposed to be vigilant and thorough, but is so handicapped by lack of authority and limited funds as to give him little opportunity for successful supervision. Parsimony in this connection is mighty poor economy. What is more important to the State than the saving of human life and the conservation of human energy?

COMPROMISE SETTLEMENT IN DOUBTFUL CASES

In some jurisdictions compensation authority declines to consider settlement on a compromise basis. All or nothing is the rule of adjustment. The Iowa department, while recognizing the need of close scrutiny and discreet precaution, is willing to consider compromise offers in doubtful cases. The circumstances in many cases are inexplicably involved. To ascertain exactly what happened, or why, in case of accident, or the precise measure of disability involved, is sometimes beyond human comprehension. Decision either way is necessarily a matter of conjecture to a greater or less extent. The hard and fixed rule of all or nothing may be particularly unfortunate to the workman who has the burden of proof. Equity pleads for him but evidence is meager. The all or nothing rule may in border cases work hardship on either side, and it certainly promotes further litigation, as the defeated party almost always appeals. When the case is called under the rules of litigation, then the all or nothing principle must be applied. Employers and insurers are usually disposed to avoid litigation in all possible cases. Where good faith is manifest they humanely prefer to afford relief to the workman with the amount required in litigation.

FORMS OF INSURANCE

Insurance cuts a big figure in workmen's compensation and controversy persists as to advantages and disadvantages of several existing systems. In seven states, Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia and Wyoming, all compensation hazard is carried by the state, which excludes all other forms of insurance coverage. In eight states, California, Colorado, Idaho, Maryland, Michigan, Montana, New York and Pennsylvania, the state affords coverage in competition with private insurance. In all other states private insurance is wholly relied upon. In all jurisdictions except where the state assumes monopoly, provision is made for self-insurance on the part of the employer.

It is alleged, and seems easily demonstrable, that state insurance is afforded on terms favorable to the employer. On the part of private insurance it is admitted that nearly forty per cent of the premium contribution is absorbed in cost of administration. A margin of profit must necessarily exist. In view of these apparently conspicuous advantages in favor of lower cost where the state offers coverage without profit, strange as it may seem, employers to a very limited extent avail themselves of the apparent benefits where private competition exists. The volume carried by the state in such cases ranges from four per cent in Michigan to forty-nine per cent in Montana. In Iowa employers may, and many do avail themselves of self-insurance, cutting out all expense of insurance administration and profit. Curiously enough, however, from year to year some of these employers swing back and forth between self-insurance and private coverage in seeming doubt as to which choice is most expedient.

UNPROTECTED WORKMEN

The department is continually reminded of the grievous inadequacy of Iowa compensation coverage because of the elective character of our statute. Employers are not required to afford protection to their workmen in cases of personal injury. If they do not provide insurance or technically qualify to carry their own risk they are not within compensation jurisdiction. Our law is not made compulsory because of the fear of constitutional inhibition which might serve to invalidate the entire statute. When it was enacted it was believed that imposing upon the employers presumption of negligence would impel them to seek shelter in compensation, but it has been demonstrated that this belief is not justified. In actual

experience it rarely occurs that in the service of an employer without this system injured workmen are able to secure relief. Either the employer is judgment proof or he is able to rebut the presumption of negligence, or for some other reason to escape from liability as a rule. If there is no other remedy for this deplorable situation it should come through amendment to the constitution.

AMENDMENTS RECOMMENDED

Our compensation statute has not been amended in any respect for a period of four years. In the discharge of his statutory duties the Industrial Commissioner recommended to the Thity-ninth Geneal Assembly a number of important changes in the law, but no action was taken, as it was deemed expedient to refer all such matters to a future session, assuming a general revision of the code. No such revision has been made.

The Workmen's Compensation service is in process of development. The original act, passed when experience was wanting and information meager, left much to be done in the building of a complete and adequate system as time should suggest expedient amendment. Because of a lapse of four years without change it is now exceedingly important that needs developed by experience shall be given statutory relief. Herewith is submitted recommendations held to be important in just and comprehensive administration:

PAYMENTS SHOULD BE EXEMPT

This department is legally advised that payments due on compensation claims are subject to garnishment. The wage earner is never more in need of protection as to his source of support than when under the necessity of depending upon the limited payment of compensation in lieu of wages. All such funds should be exempt from legal attack from any source.

ADVISABLE LIMITATION

Our compensation law fixes no limit to the period in which arbitration proceeding may be brought. This is manifestly due to legislative oversight. Long delay in the exercise of this statutory right is apt to be very prejudicial to employer or insurer and suggets bad faith on the part of the workman. After a lapse of years it is exceedingly difficult to make a clear record and there is no good reason why a good case should be withheld so long from arbitration where payment is denied.

BURIAL EXPENSE

The one hundred dollars provided as burial expenses was small enough, when much less expenditure was required, and it is now exceedingly inadequate. This allowance should be increased to one hundred and fifty dollars without regard to last sickness provision.

REDUCED WAITING PERIOD

The statutory waiting period should be reduced to one week. Few states now withhold payments of compensation from injured workmen for a period as long as two weeks. In some jurisdictions it is wiped out altogether.

MEDICAL, SURGICAL AND HOSPITAL

It is urgently recommended that medical, surgical and hospital services to the extent of $200.00, within the discretion of the Industrial Commissioner, be made available in case of personal injury, without limitation as to time or requirement as to previous application for any portion of same. The statute now affords relief to the amount of $200.00, but limitations as to time and notice frequently works serious hardship in cases most appealing. Ample treatment for the removal or reduction of disability is well within the obligation due injured workmen. Moreover, informed employers and insurers are more and more aware that money spent in such treatment is well invested in that it reduces the extent of compensation payment and tends to more harmonious relationship between labor and employment.

TIME LOSS WITH MEMBERSHIP IMPAIRMENT

Where there is loss of, or permanent loss of use of, important members of the body, the statute should provide that in addition to membership loss covered by the legal schedule the workman shall receive compensation for time lost during the healing period. Usually the healing period is not extended, but occasionally grievous experience arises. The department had a recent call from a workman who nearly a year preceding sustained such a foot injury as to incapacitate him for earning ever since his accident and indicating much further loss of time and earnings. In wages eliminated he is apt to lose all the law will give him as permanent injury to his foot, besides being more or less handicapped by permanent loss of function the rest of his life. Such cases are not so frequent that the change proposed would serve to materially increase em-

ployment burdens, but we have them occasionally and when they arise they impose serious hardship upon individual workmen. The State owes them this reasonable relief.

DEPENDENCY ACTUAL OR BY CONCLUSIVE PRESUMPTION

Dependency due to the death of a workman is a matter of imminent concern involving perplexing problems. In the various states the laws widely differ as to coverage and in detail of application, and particularly as to the element of conclusive presumption, that is to say, where dependency is absolutely presumed to exist with or without any loss of support. In Iowa this rule applies to the spouse, to all children under sixteen and to the parents of a minor. From this list I would exclude the husband and the parents basing their claim to compensation wholly upon actual contribution of the deceased to their support.

Levy of tribute upon industry in cases where no financial loss is sustained is contrary to the spirit and purpose of compensation. It is a relic of the damage system which is assumed to be wholly banished from compensation, inconsistent with public policy. It is a burden upon consumption, inconsistent with public policy and private rights. In case of dependency as from a minor, parents may be grievously prejudiced in the denial of just contribution. There would seem to be sound basis for assuming our law will permit the appplication of the rule of conclusive presumption to the date when a deceased son would have reached the age of twenty-one years. The Commissioner holds that for the remainder of the three hundred weeks contribution shall be on the basis of actual contribution, but this holding may be overruled in the courts, working great injustice and positive hardship. There should be no doubt as to three hundred weeks of payment in all cases of actual loss of support, no more and no less, except in case of a wife or of young children who should not be required to prove such loss because of the natural presumption.

OCCUPATIONAL DISEASE SHOULD BE COVERED

The Iowa Compensation statute provides that "the words 'injury' and 'personal injury' * * * * shall not include a disease except as it shall result from the injury." Under this statement there would seem to be no escape from the conclusion that all so-called occupational diseases are barred from compensation relief. Department holdings go to the limit in interpreting this provision.

We insist that where disability arises from noxious gases, or from contact with poisonous elements, and where such exposure or contact may be focalized into definite, brief periods, legal obligation is created. It seems necessary to hold, however, that disability due to lead poisoning or exposure of any kind when development is gradual and indefinite as to time, coverage is not afforded. It seems also necessary to exclude from benefits disability developed through strain of employment—disability not chargeable to any specific incident or occasion. This attitude of the state is simply indefensible. The loss of earning power is a deadly blow to the workman and his family. If such loss is due to the kind of work he is doing, or the way he is required to do it, or to accident likely or unlikely to occur, it should call for definite, specific restitution. To say that disability from one cause shall be compensable, while disability from another cause shall not—though in each case it is directly due to employment, is to juggle with justice and to deny a plain obligation. In states where occupational disease is covered the additional cost of coverage is by no means burdensome.

SAVING WITHOUT SACRIFICE

Commutation of compensation claims now occurs with the sanction of a judge of the district court upon approval of the Industrial Commissioner. It is held to be the duty of this department carefully to investigate all cases upon application for a lump sum settlement and except in very rare instances approval here is accepted without question by the district judge. It is apt to cost the workman or his dependents from fifteen to twenty-five dollars, as a reasonable charge for legal services required for court appearance. Sometimes the claimant is at a point remote from "a judge in the county in which the accident occurred." In order to save the expenditure of funds always inadequate and sorely needed, the recommendation is made that the approval of the Industrial Commissioner shall complete the commutation process, except that appeal may be taken to the district court by employer or insurer if either so elect.

REDUCED PAYMENT TO NON-RESIDENT ALIEN DEPENDENTS

On the part of the General Assembly it is well worth while carefully to consider the matter of reducing the schedule of compensation payment to non-resident alien dependents. In cases before the department wives have continued to reside abroad for years while the head of the family is receiving substantial earnings in this country. In one case of award this separation covered a period of fourteen years and promised indefinite continuance at the time the husband was killed in employment. In such cases it is necessary to hold for award on evidence more or less doubtful because of the difficulty of making a convincing record, hence, in the exercise of the rule of greater probability employer or insurer is more apt to be prejudiced than in case of resident dependency. More substantial argument, however, is based upon the relative purchasing power of our money at home and in the European states where dependency is usually claimed. The forty-five hundred dollars usually awarded a widow amounts to a King's ransom in many non-resident alien cases. It will purchase many times the measure of family support abroad than it will in the United States. The commendable tendency of compensation legislation is all the time for more liberal dealing with workmen. If we give the non-resident alien dependent no more in buying capacity than we give our own widows and orphans, we can easily find ways of appropriating the savings to employers and insurers to the appealing needs of those who are of us and with us in national sympathy and welfare. Many states have made this proposed readjustment. In a few states no payment whatever is made to non-resident aliens. In others, a maximum payment is fixed much below the home standard. In many others the ratio of payment is from thirty-three and one-third per cent to fifty per cent of the actual schedule. Canada is frequently excepted from this rule of reduction, as it should be, because of neighborly relationship and of the more substantial fact that our money values are at par.

PROMPT ACTION IN CONTROVERSY

The Compensation Statute says:

"Process and procedure under this act shall be summary as reasonably may be."

Our dictionaries say "summary" means "quickly executed," "done without delay or formality." This department is inclined to take this legislative mandate seriously and endeavors to meet its requirement. Appeals from review decisions, however, are from six months to two years getting through the courts. This seems unnecessarily dilatory. The Commissioner appeals to lawyers and all others involved in this proceeding to give compensation cases prompt and pressing attention. If there is anything coming to workmen or dependents they seriously need it. In any event speedy disposal is in the interest of all concerned.

In this connection amendment to the statute is earnestly recommended. The law provides that all final appeals "shall be placed

on the calendar of the Supreme Court and brought to a hearing in the same manner as criminal cases on such calendar." The General Assembly is asked to make this provision apply to all compensation cases docketed in the district court.

Our statute imposes hardship upon the seven-day worker. The available rule in finding the basis of compensation payment is in subsection (c) of Section 2477-m15, which says:

> (c) The annual earnings, if not otherwise determinable, shall be regarded as three hundred times the average daily earnings in such computation.

Accordingly, we multiply the daily wage by three hundred and divide this result by fifty-two in order to find the weekly wage. When we apply this rule to the seven-day worker he is given as compensation a sum less than that due the six-day worker—a manifest injustice which should not exist. It is recommended that the statute be so amended that in cases of seven-day work the multiple employed shall be three hundred and thirty-five instead of three hundred.

ACKNOWLEDGMENT

It is held to be entirely consistent to make especial mention of the substantial contribution to the best work of this department on the part of our medical counsel, Dr. Oliver J. Fay. Ever since the Workmen's Compensation service was installed in Iowa, Dr. Fay has manifested absorbing interest in its development and operation. His careful, conscientious and skillful scrutiny of cases submitted by the department and his painstaking reports as to his finding has made it possible to avoid the delay and expense of litigation to a substantial extent. His sympathetic interest in obscure situations has tended to secure ample justice to injured workmen while imposing upon employment no more of burden than conditions justify. The amount of service rendered by our medical counsel for modest financial reward is evidence of the gratifying fact that his interest in this work is much more than material.

VOCATIONAL REHABILITATION

Accepting the offer of co-operation on the part of the Federal Government, the Thirty-ninth General Assembly committed Iowa to the policy of Vocational Rehabilitation of persons disabled in industry with a view to returning them to useful employment. This department is under the supervision of a board consisting of the State Superintendent of Public Instruction, the President of the State Board of Education and the Commissioner of Labor Statistics, who have placed in charge a director of the service.

In the brief period of its existence this service has been developed as far as practicable. Cases to the number of two hundred and thirty-two have been listed. A considerable number of these cases have been investigated and registered. Some thirty disabled workmen are in training and service has been rendered in various ways to many more.

Since this department is closely allied in sympathy and co-operation with the Rehabilitation service, suggestions as follows are submitted:

It frequently happens that the employer, having discharged his full legal responsibility by providing the proper insurance protection, is moved to go farther than the legal requirements in the care of the family of a disabled employe. This is noticeable especially where the accident is spectacular or the family conditions distressing. It would be well if employers generally could be informed that the State has provided an agency which would be glad to work with them in the after care of the workman who finds himself permanently disabled. Sooner or later the weekly payments will come to an end and the man must take up his responsibilities unaided. This compensation period is, or should be, the time for him to make the necessary adjustment with industry which he will have to make when he again takes up employment.

Where it is not possible for the man to return to his old job, he can frequently be fitted to another job in the same establishment. Such men become more valuable because of their loyalty and longer acquaintance with the policies of the management. The fear sometimes expressed that the man looks on his new job as a pension right is groundless, once the injured man is made to understand that the compensation award is in full discharge of the company's responsibility.

It is the function of the State Rehabilitation Service to help the disabled men to re-enter industry to the best possible advantage. To this end after a careful consideration of the man's natural ability, his former experience and training and the many other elements which must be considered, suitable training may be provided. This training may be of the most practical kind or it may be upgrading, fitting him for some position requiring less physical effort than his

former job. But it must always be in accord with his desire and ambition.

The entire activity of Rehabilitation Service cannot be enumerated, for its responsibilities are so varied, but it may be summed up as comprising almost everything that is required to lift the man from his natural despondent state as he faces a life of dependency to that of a useful employed citizen. One of the phases of this work is to secure for the man assistance and opportunities in his community which he cannot get for himself. Busy, broad minded men are glad to aid to independence a man who has a carefully worked out program who could not take the time to consider his poorly expressed ambitions.

The injured employe should understand that he need not hesitate to begin his preparations for future employment while receiving compensation or even pending settlement of his claim. Compensation, in cases of permanent disability, is not determined by earning capacity but by the extent of physical impairment. It would not prejudice his claim for compensation should he be able as a result of training to command a higher wage than he formerly received.

The Industrial Commissioner is in every practicable way co-operating with the State Board for Vocational Education, which has the administrative responsibility of the Rehabilitation Service, to help reduce the horror and expense of industrial accidents, the one to provide quickly and accurately medical care and a weekly substitute for the lost wages, the other to help him take up the burden of self-support with the least possible reduction of earning ability.

All inquiry in this connection should be submitted to J. J. McConnell, Director of Vocational Rehabilitation, at the State House.

SERVICE SUGGESTIONS

It should be remembered that in cases where employers do not cover their employes with insurance, such employes have no claim for relief under workmen's compensation.

The limit of medical, surgical and hospital relief is one hundred dollars within four weeks of time, except that when application is made to this department before service in excess of this sum is rendered, an additional one hundred dollars or so much thereof as may be necessary is made available without limit as to time. No part of this additional one hundred dollars can apply on service previously rendered.

Workmen need not hesitate to sign settlement papers submitted in the fear that they may thereby cut off compensation benefits to which they might otherwise be entitled. No such signature affords any bar to reopening of proceedings where the employer or insurer has failed through any cause to meet the full measure of legal requirement.

Under common court holding it becomes necessary to exclude from compensation coverage such railway employment as train service, track work and bridge building on established lines, as under Federal control. This holding includes any sort of employment directly relating to interstate traffic. Mechanical service on rolling stock definitely associated with interstate traffic at the time of injury is also excluded. Shop work on rolling stock detached and of indeterminable schedule is intra-state and hence not without our jurisdiction. Some forms of station and yard work are also covered.

Under department holding the payment of one hundred dollars as burial expense is required, exclusive of any medical, surgical or hospital charge.

It should be understood as fundamental that agricultural, clerical, domestic and casual employment are definitely excluded from compensation jurisdiction.

Many claims based upon hernial development are rejected because proof is wanting as to its relation with employment. Employers and insurers are advised, however, that in all cases where such claims are evidently grounded in good faith, and where it might reasonably be assumed that injury arose out of employment, it is the part of discretion to offer operation and consequent loss of earnings rather than to go to arbitration in the hope of escape from liability.

Upon every available occasion the department asserts the determination to exercise great care in the approval of lump sum settlement. Unless it may be definitely shown that in specific use funds so made available will be conserved, such approval must be denied. Since the law provides that in case of remarriage without children compensation shall cease, widows so situated cannot successfully apply for commutation.

Under the Iowa law disfigurement in industrial accident affords basis for recovery only to the extent that it may affect earnings. In case marred features tend to bar a worker, and particularly a female worker, from employment she might reasonably expect to perform, it is possible to establish a considerable claim.

AMENDMENT SUMMARY

I. Reducing waiting period to one week.

II. Limiting period for bringing action to two years.

III. Exempting compensation payment from garnishment.

IV. Fixing medical, surgical and hospital limit at $200.

V. Increasing burial allowance to $150.

VI. Providing for temporary disability payment, concurrent with schedule injury.

VII. Reducing schedule of payment to non-resident alien dependents.

VIII. Providing compensation payment in cases of occupational disease.

IX. Authorizing Commissioner to complete commutation with consent of employer and insurer.

X. Limiting dependency on basis of conclusive presumption to widow and children under 16 years of age.

XI. Docketing compensation cases in district court under statutory rule provided for supreme court.

XII. Adequately covering seven-day employment.

FINANCIAL

When the act creating the Workmen's Compensation system was passed by the Thirty-fifth General Assembly, it included a permanent annual appropriation of $20,000 as support of the department. This sum has never been increased. In the intervening period nearly $60,000 has been turned back into the treasury as unexpended balances. The statement herewith shows we are getting toward the limit of our annual appropriation, but no additional asking will be submitted to the Fortieth General Assembly, as the department expenditure can be kept within the original appropriation for at least two years more. The item of printing and binding is provided for in addition to our twenty thousand dollars.

This statement is submitted with department pride in the belief that in no other state is there so much of administration within our limit of expenditure. A good deal of this saving is due to the simple system installed, which is adequate to all reasonable requirements.

ADMINISTRATIVE EXPENDITURES
July 1, 1920—June 30, 1922

	First Year	Second Year
Salaries	$14,560.00	$15,487.10
Traveling expense	618.49	686.62
Medical expense	467.00	691.00
Postage	668.24	647.12
Printing and binding	722.54*	1,217.21*
Office supplies	165.85	239.66
Office furniture	8.00	190.36
Library	39.25	50.75
Telegraph, telephone and express	39.99	32.46
Miscellaneous	67.00	56.50
Total	$17,356.36	$19,298.78

ADMINISTRATIVE ESTIMATES
July 1, 1922—June 30, 1924

	First Year	Second Year
Salaries	$15,500.00	$15,500.00
Traveling expenses	700.00	700.00
Medical expense	750.00	750.00
Postage	750.00	750.00
Printing and binding	800.00*	1,000.00*
Office supplies	200.00	200.00
Office furniture	100.00	100.00
Library	50.00	50.00
Telegraph, telephone and express	75.00	75.00
Miscellaneous	100.00	100.00
Total	$19,025.00	$19,225.00

Annual appropriation, $20,000.00.

* This item of expense is not by law chargeable to the appropriation.

STATISTICAL
REPORT OF ACCIDENTS AND SETTLEMENTS APPROVED
July 1, 1920—June 30, 1921

Accidents reported	14,952
Fatal cases	113
Settlements reported	5,347
Compensation paid in reported settlements	$606,294.69
Reported paid for medical, surgical and hospital	78,386.49

July 1, 1921—June 30, 1922

Accidents reported	11,487
Fatal cases	77
Settlements reported	4,095
Compensation paid in reported settlements	$339,486.33
Reported paid for medical, surgical and hospital	95,557.62

HEARINGS

	July 1, 1920 to June 30, 1921	July 1, 1921 to June 30, 1922
Total number of applications filed	117	152
Total number of cases arbitrated	50	63
Total number of cases settled without hearing	52	53
Total number of cases dismissed	7	6
Total number of cases reopened	8	6
Total number of cases decided on review by Commissioner	12	20
Total number of cases appealed to courts	6	12

CASES ARBITRATED DURING BIENNIUM

FIRST YEAR

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
Pollard vs. Colfax Consol. Coal Co.	P. P.	Out of emp.	$673.50	No appeal		
Hughes vs. Springhill Coal Co.	P. P.	Ext. of injury	1,812.80 (Re-opening)	No appeal		
Goater vs. Central Iowa Fuel Co.	P. P.	Ext. of injury	1,246.00 (Re-opening)	No appeal		
Roberts vs. Consolidated Coal Co.	P. P.	Ext. of injury	1,536.00 (Re-opening)	No appeal		
Smith vs. Turner Improvement Co.	P. P.	Out of emp.	937.50	No appeal		
Rad vs. Hawkeye Portland Cement Co.	P. P.	Out of emp.	1,435.00	No appeal		
Marnoles vs. Douglas Co.	Fatal	Dependency	3,000.00	Affirmed	No appeal	
Currier vs. Ogden Coal Co.	T. Per.	Out of emp.	4,888.00	No appeal		
Cooper vs. Davidson Bros. Co.	Fatal	Dependency	1,152.00	Affirmed	No appeal	
Watson vs. Douglas Co.	Fatal	Dependency	3,000.00	No appeal		
Forney vs. Douglas Co.	T. T.	Out of emp.	Disallowed	No appeal		
Lisk vs. National Refining Co.	Fatal	Out of emp.	3,528.00	Affirmed	No appeal	
Sinksen vs. Kelley & Bros.	T. T.	Ext. of injury	191.10	No appeal		
Hall vs. Iowa Railway & Light Co.	P. P.	Procedure	Disallowed (Re-opening)	No appeal		
Milton vs. Woodward Co.	P. P.	Ext. of injury	1,200.00	No appeal		
Garcia vs. National Roofing Co.	P. P.	Ext. of injury	798.00	No appeal		
Adair vs. Sheridon Coal Co.	P. P.	Ext. of injury	1,173.00	No appeal		
Pitts vs. Miley Bros.	T. T.	Out of emp.	310.00	Reversed	No appeal	
Springsteel vs. Handford Produce Co.	T. T.	Hernia	13.50 Wkly.	Reversed	Pending	
Rossler vs. Chain Grocery Co.	Fatal	Dependency	Disallowed	Affirmed	Affirmed	Pending
Massey vs. Morningside Ice Co.	P. P.	Out of emp.	900.00	No appeal		
Hannoon vs. Cudahy Packing Co.	Fatal	Dependency	3,000.00	Affirmed	Affirmed	Affirmed
Serrano vs. Cudahy Packing Co.	Fatal	Dependency	1,237.50	Reversed	Affirmed	Affirmed
Campbell vs. McDonald Mfg. Co.	Fatal	Dependency	750.00	No appeal		
Donato vs. Hawkeye Port. Cement Co.	Fatal	Dependency	4,500.00	No appeal		
Inman vs. Hubinger Bros. Co.	T. T.	Ext. of injury	908.75	No appeal		
Earhart vs. Gas Tank Recharging Co.	T. T.	Occupational Dis.	Disallowed	Affirmed	Affirmed	Pending
Wood vs. United Lead Co.	P. P.	Ext. of injury	500.00	No appeal		
Carr vs. Dupont Powder Co.	P. P.	Wilful injury	Disallowed	No appeal		

Gantt vs. Hunt & Schutz	P. P.	Ext. of injury	1,987.20 (Re-opening)	No appeal		
Dingman vs. Clinton Lock Co.	P. P.	Out of emp.	Disallowed	No appeal		
Nester vs. Korn Baking Co.	Fatal	Out of emp.	2,307.00	Affirmed	Affirmed	Pending
Hudson vs. La Plant et al	Fatal	Employer	4,500.00	No appeal		
Foster vs. Iowa Ry. & Light Co.	Fatal	Dependency	3,750.00	No appeal		
Verchaw vs. Hart-Parr Co.	P. P.	Ext. of injury	960.00	No appeal		
Anderson vs. C. G. W. Ry.	T. T.	Out of emp.	Disallowed	No appeal		
Shalley vs. Blackman Bros.	T. T.	Ext. of injury	443.20	No appeal		
Jacobson vs. Hawkeye Clay Works	T. T.	Ext. of injury	70.00	No appeal		
Pittman vs. Pittsburgh Plate Gl. Co.	T. T.	Out of emp.	Medical & dental service	No appeal		
Manbeck vs. Iowa Packing Co.	P. P.	Out of emp.	337.50	No appeal		
Komeriski vs. D. M. Fuel & Ice Co.	T. T.	Out of emp.	Disallowed	No appeal		
Thompson vs. Des Moines Sawmill Co.	T. T.	Out of emp.	70.00	No appeal		
Billings vs. Ajax Rubber Co.	Fatal	Dependency	834.00	No appeal		
Bunich vs. Sheffield Tile Co.	T. T.	Hernia	Disallowed	Affirmed	No appeal	
Koenig vs. Peoples Gas & Elec. Co.	T. T.	Hernia	370.00	No appeal		
Giermon vs. Peoples Gas & Elec. Co.	P. P.	Ext. of injury	300.00 (Re-opening)	No appeal		
Hayes vs. N. W. States Port. Cem. Co.	P. P.	Out of emp.	750.00	No appeal		
Tonda vs. English Creek Coal Co.	T. T.	Out of emp.	Disallowed	No appeal		
Meliniski vs. Iowa Packing Co.	T. T.	Ext. of injury	14.40	No appeal		
Greene vs. Rowat Cut Stone Co.	P. P.	Out of emp.	1,298.00	Affirmed		
McFarland vs. Squire	Fatal	Cause of death	4,500.00	Affirmed	No appeal	
McDermont vs. Midland Chemical Co.	T. T.	Hernia	238.40	No appeal		
Cowan vs. Estherville Steam Laundry	T. T.	Ext. of injury	210.00	No appeal		
Carter vs. Crescent Coal Co.	Fatal	Dependency	2,694.00 (Re-opening)	No appeal		
Albright vs. Morrell & Co.	P. P.	Ext. of injury	1,140.00 (Re-opening)	No appeal		
Goodwin vs. Flanley Grain Co.	T. T.	Ext. of injury	15.00—7.50 wkly.	No appeal		
Raskett vs. Skellinger	Fatal	Dependency	500.00	No appeal		
Mattson vs. Johnson Cem. Sidewalk Co	P. P.	Ext. of injury	2,400.00	Affirmed 2250	No appeal	

SECOND YEAR

Dilworth vs. Robbins	T. T.	Out of Emp.	Disallowed	No appeal		
Sutter vs. Carter Lake Club	T. T.	Ext. of injury	1,075.00 (Re-opening)	No appeal		
Hudson vs. Smoky Hollow Coal Co.	T. T.	Ext. of injury	575.00 (Re-opening)	No appeal		
Smith vs. Waterloo Gasoline Eng. Co.	P. P.	Out of emp.	Disallowed	No appeal		

CASES ARRITRATED DURING BIENNIUM—Continued

SECOND YEAR

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
Fuller vs. Waterloo Gasoline Eng. Co.	P. P.	Ext. of injury	3,000.00	No appeal		
Kridelbough vs. Bidwell Coal Co.	P. P.	Ext. of injury	750.00 (Re-opening	No appeal		
Malone vs. Barnes Cafeteria	T. T.	Out of emp.	Disallowed	Affirmed		
Sparks vs. Consol. Indiana Coal Co.	Fatal	Cause of death	3,135.00	Affirmed	Affirmed	Reversed
Root vs. Shadbolt & Middleton	Fatal	Employer	4,500.00	Affirmed	Affirmed	Pending
O'Callahan vs. Grand Hotel	P. P.	Out of emp.	1,384.00	Affirmed	Pending	
Raymie vs. Rex Fuel Co.	T. T.	Ext. of injury	437.14 (Re-opening)	No appeal		
Benton vs. Rex Fuel Co.	Fatal	Coverage	4,500.00	Affirmed	No appeal	
Woodyard vs. Colfax Consol. Coal Co.	T. T.	Ext. of injury	100.00	No appeal		
Robinson vs. Reams	Hernia	Out of emp.	268.75	No appeal		
Goodwin vs. City of Ottumwa	P. P.	Out of emp.	808.00	No appeal		
Van Tassell vs. Kranz	T. T.	Out of emp.	5.19 wkly	No appeal		
McMasters vs. Morrell & Co.	T. T.	Hernia	Disallowed	Pending		
Kalor vs. Hawkeye Port. Cement Co.	Fatal	Dependency	3,000.00	Affirmed		
Morris vs. Rex Fuel Co.	T. T.	Out of emp.	Disallowed	No appeal		
Butcher vs. Consolidation Coal Co.	Fatal	Cause of death	Disallowed	No appeal		
Mitchell vs. Consolidation Coal Co.	Fatal	Out of emp.	4,500.00	Affirmed	Pending	
Braida vs. Central Iowa Fuel Co.	Fatal	Out of emp.	4,500.00	No appeal		
Nolepka vs. McCarthy Improv. Co.	T. T.	Ext. of injury	50.00	No appeal		
Ostert vs. Kohrs Packing Co.	T. T.	Out of emp.	135.00	No appeal		
Schwerin vs. Walsh Const. Co.	T. T.	Ext. of injury	195.00	No appeal		
Faulkes vs. Maple Coal Co.	Fatal	Cause of death	Disallowed	No appeal		
Wells vs. Washington Dairy Lunch	T. T.	Ext. of injury	431.25	No appeal		
Wilke vs. Kohrs Packing Co.	P. P.	Out of emp.	Disallowed	Affirmed	Pending	
Conley vs. C. G. W. Ry. Co.	T. T.	Out of emp.	Disallowed	No appeal		
Vincent vs. Sugarman Const. Co.	T. T.	Out of emp.	Disallowed	No appeal		
Haynes vs. Stanley Skid Chain Co.	Fatal	Cause of death	3,447.00	No appeal		
Joiner vs. Cudahy Packing Co.	P. P.	Out of emp.	Disallowed	Pending		
Martin vs. Fullerton Lumber Co.	T. T.	Out of emp.	240.00	No appeal		

Lytle vs. City of Sioux City	Fatal	Cause of death	4,500.00	Pending		
Clark vs. Creston Mutual Elec. Light, Heat & Power Co.	T. T.	Ext. of injury	44.43	No appeal		
Park vs. Quaker Oats Co.	T. T.	Out of emp.	Disallowed	Pending		
Perley vs. Shakleton Const. Co.	Fatal	Out of emp.	Disallowed	No appeal		
Helis vs. Quaker Oats Co.	Fatal	Cause of death	4,500.00	Affirmed	Pending	
Davey vs. Norwood White Coal Co.	Fatal	Paying period	3,375.00 (Re-opening)	No appeal		
Joslin vs. Percival & Co.	Fatal	Cause of death	4,500.00	Affirmed	Pending	
Sweiger vs. Dallas Coal Co.	P. P.	Ext. of injury	1,554.00	No appeal		
Parkinson vs. Brown-Camp Hdwr. Co.	T. T.	Out of emp.	13.29 wkly	Reversed	Reversed	Pending
Golden vs. Union Pacific System	P. P.	Coverage	2,625.00	No appeal		
Beckman vs. Droge Elevator Co.	Fatal	Dependency	Disallowed	No appeal		
Terbl vs. Penick & Ford, Ltd., Inc.	Fatal	Cause of death	Disallowed	No appeal		
Byrnes vs. Quaker Oats Co.	T. T.	Out of emp.	Disallowed	No appeal		
Spurgeon vs. Iowa & Mo. Grain Co.	P. P.	Ext. of injury	843.75			
Farrow vs. What Cheer Clay Prod. Co.	Fatal	Cause of death	4,500.00	Pending		
Osdoll vs. U. S. Gypsum Co.	T. T.	Ext. of injury	112.50	No appeal		
Rhoades vs. Consolidation Coal Co.	T. T.	Out of emp.	15.00 wkly	Affirmed	No appeal	
Ritter vs. Pooley-Clark Lumber Co.	Hernia	Out of emp.	Disallowed	Pending		
Longwell vs. Linwood Stone & Cem. Co.	Fatal	Out of emp.	3,660.00	Affirmed	No appeal	
Smith vs. American Hominy Co.	T. T.	Ext. of injury	58.32	No appeal		
Kirkeby vs. Sanitary Pl. & Heat. Co.	Fatal	Coverage	Disallowed	Affiirmed	Pending	
Quenrud vs. Ingvolstad Lumber Co.	P. P.	Ext. of injury	1,875.00	Pending		
England vs. Y. M. C. A.	P. P.	Ext. of injury	634.50 (Re-opening)	No appeal		
Newman vs. Decker Packing Co.	T. T.	Ext. of injury	228.36	Pending		
Keating vs. Iowa Minnesota Power Co.	Fatal	Dependency	3,500.00	No appeal		
Lewis vs. D. M. Coal & Coke Co.	P. P.	Out of emp.	Disallowed	No appeal		
Richard vs. Morrell & Co.	Hernia	Out of emp.	Disallowed	No appeal		
Upton vs. Marcy Telephone Co. et al.	T. T.	Employer	360.00	Affirmed	Pending	
Pierce vs. Benjamin	T. T.	Out of emp.	15.00 wkly	Affirmed	No appeal	
Dragovich vs. Lehigh Port. Cem. Co.	T. T.	Ext. of injury	12.11 wkly	No appeal		

CASES REVIEWED AND APPEALED DURING BIENNIUM

FIRST YEAR

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
Hughes vs. Cudahy Packing Co.	T. T.	Hernia	Disallowed	Affirmed	Reversed	Reversed
Franks vs. Carpenter	Fatal	Indpt. Emp.	3,000.00	Affirmed	Affirmed	Affirmed
Mavity vs. Chase Bros	Fatal	Out of emp.	Disallowed	Affirmed	No appeal	
Cooper vs. Davidson Bros. Co	Fatal	Dependency	1,152.00	Affirmed	No appeal	
Lisk vs. National Refining Co.	Fatal	Out of emp.	3,528.00	Affirmed	No appeal	
Marnoles vs Douglas Co.	Fatal	Dependency	3,000.00	Affirmed	No appeal	
Pitts vs. Miley Bros	T. T.	Out of emp.	310.00	Reversed	No appeal	
Blackburn vs. City of Dubuque	P. P.	Coverage	500.00	Affirmed	No appeal	
Earhart vs. Gas Tank Recharg. Co.	T. T.	Occupational Dis.	Disallowed	Affirmed	Affirmed	Affirmed
Springsteel vs. Hanford Prod. Co.	T. T.	Hernia	13.50 wkly.	Reversed	Pending	
Walker vs. Clarke Constr. Co.	P. P.	Computation	1,500.00	Affirmed	No appeal	
Mattson vs. Johnson Cem. Sidewalk Co	P. P.	Ext. of injury	2,400.00	Affirmed	No appeal	

SECOND YEAR

Serrano vs. Cudahy Packing Co.	Fatal	Dependency	1,237.50	Reversed	Affirmed	Affirmed
Hannon vs. Cudahy Packing Co.	Fatal	Dependency	3,000.00	Affirmed	Affirmed	Affirmed
Benton vs. Rex Fuel Co.	Fatal	Coverage	4,500.00	Affirmed	No appeal	
Rossler vs. Chain Grocery Co.	Fatal	Everything	Disallowed	Affirmed	Affirmed	Pending
Nester vs. Korn Baking Co.	Fatal	Out of emp.	2,307.00	Affirmed	Affirmed	Pending
Barton vs. Ottumwa Ry. & Light Co.	Fatal	Dependency	1,050.00	Affirmed	No appeal	
Bunich vs. Sheffield Brick & Tile Co.	Hernia	Out of emp.	Disallowed	Affirmed	No appeal	
Sparks vs. Consol. Indiana Coal Co.	Fatal	Cause of death	3,135.00	Affirmed	Affirmed	Reversed
Mitchell vs. Consolidation Coal Co.	Fatal	Out of emp.	4,500.00	Affirmed	Pending	
Green vs. Rowat Cut Stone Co.	P. P.	Out of emp.	1,208.00	Affirmed	No appeal	
Henshaw vs. Town of Batavia	Fatal	Coverage	Disallowed	Affirmed	Pending	
Root vs. Shadbolt & Middleton	Fatal	Employer	4,500.00	Affirmed	Affirmed	Pending
Hayes vs. N. W. States Port. Cem. Co.	P. P.	Out of emp.	750.00	Reversed	No appeal	
McFarland vs. Squire	Fatal	Cause of death	4,500.00	Affirmed	No appeal	

Parkinson vs. Brown-Camp Hdwr. Co.	T. T.	Out of emp.	13.29 wkly	Reversed	Reversed	Pending
Kaor vs. Hawkeye Port. Cement Co.	Fatal	Dependency	3,000.00	Affirmed	Pending	
McGourity vs. Standard Tele. Co.	P. P.	Ext. of injury	180.00	Affirmed	No appeal	
Josain vs. Percival Co.	Fatal	Cause of death	4,500.00	Affirmed	Pending	
O'Callahan vs. Grand Hotel	P. P.	Assault injury	1,384.00	Affirmed	Pending	
Pierce vs. Benjamin	T. T.	Out of emp.	15.00 wkly	Affirmed	No appeal	

FATAL CASES REPORTED DURING BIENNIUM

FIRST YEAR

Employer	Employe	Cause	Amount	Dependent	Adjusted
Armour & Co.	S. Selkirk	Falling sheet metal	$4,500.00	Widow	By agreement
American Brick & Tile Co.	C. Furness	Flying rock	4,335.00	Widow	By agreement
American Ry. Express Co.	Floyd Ware	Thrown from wagon	1,064.24	Widow	By agreement
Bloomfield Coal Mining Co.	A. Bluses	Fall of slate	4,500.00	Mother	By agreement
Bettendorf Co.	E. Seely	Fall	400.00	Daughter	By agreement
Bettendorf Co.	A. Moradian	Fall of crane block	350.00	Brother	By agreement
Bouten Implement Co.	R. Spencer	Struck by train	4,500.00	Widow	By agreement
Carey & Sons, Thos.	Geo. Murray	Cave-in	4,107.86	Widow	By agreement
Clinton Bridge Works	W. B. Heatherby	Fall	4,500.00	Widow	By agreement
C. & N. W. R. R. Co.	Ole Walker	Cars derailed	2,872.04	Widow	Commutation
C. B. & Q. R. R. Co.	G. C. Clark	Struck by timber	1,373.60	Widow	Commutation
C. G. W. Ry. Co.	Pat Lochray	Struck by train	2,000.00	Son	By agreement
C. R. I. & P. Ry. Co.	R. Rose	Freight car	4,060.00	Parents	Commutation
Central Ia. Fuel Co.	M. Olson	Crushed	3,780.00	Widow	Commutation
Central Ia. Fuel Co.	C. Huxford	Fall	3,000.00	Parents	By agreement
Central Ia. Fuel Co.	T. Morgan	Not known	1,667.95	Father	By agreement
Central Ia. Fuel Co.	D. Batton	Fall fo slate	4,500.00	Widow	By agreement
Central Ia. Fuel Co.	M. Thomas	Not known	1,667.95	Father	By agreement
Citizens Gas & Electric Co.	Chas Morgan	Fall	4,500.00	Widow	By agreement
Capitol Clay Co.	M. Jennings	Fall of rock	1,800.00	Widow	Commutation
Cardiff Gypsum Co.	R. Rodger	Suffocation	700.00	Mother	By agreement
Consolidation Coal Co.	B. Wright	Not known	1,089.00	Father	By agreement

FATAL CASES REPORTED DURING BIENNIUM—Continued

FIRST YEAR

Employer	Employe	Cause	Amount	Dependent	Adjusted
Commercial Sand Co.	Frank Abrams	Electrocuted	2,803.93	Widow	Commutation
Cedar Valley Electric Co.	H. Duncan	Electrocuted	4,036.50	Widow	By agreement
Davidson Brothers	Wm. Cooper	Scalded	1,087.51	Sister (partial)	Arbitration
Douglas Co.	D. Alnutt	Explosion	1,104.95	Father	Arbitration
Douglas Co.	M. Tsibrojos	Explosion	500.00	Parents	By agreement
Dallas Coal Co.	L. Krisich	Fall of slate	4,500.00	Widow	By agreement
Disbrow & Co.	J. Jensen	Fall	3,900.00	Widow	By agreement
Des Moines City Ry. Co.	Frank Grivaro	Struck by auto	4,500.00	Widow	By agreement
Des Moines City Ry Co.	Wm. Sherrow	Struck by trolley pole	2,652.00	Mother (partial)	By agreement
Decker & Sons	A. Telliha	Scalded	2,555.00	Widow	By agreement
Eberhard, E. P.	N. Meir	Fall	1,875.00	Widow	By agreement
Farmers Elev. & Supply Co.	R. Trotter	Fall	3,960.00	Widow	By agreement
Farmers Elev. & Supply Co.	H. Wilson	Caught in shaft	4,194.00	Widow	By agreement
Fluid Compressed Steel Co.	Frank Sheets	Not known	227.58	No dependents	No claim filed
Fowler & Wilson Co.	J. Miholovich	Fall of rock	3,983.20	Children	Commutation
Federal Baking Co.	Ed. West	Gas fumes	730.00	Mother	By agreement
Friedman Yudleson Co.	R. Vogt	Crushed	2,595.00	Widow	By agreement
Farley & Loetscher Mfg. Co.	Wm. Krakow	Crushed	2,469.00	Widow	By agreement
Farley & Loetscher Mfg. Co.	E. Muecke	Fall	2,238.00	Widow	By agreement
Ft. D. D. M. & S. Ry. Co.	J. J. Noyer	Scalded	4,500.00	Widow	By agreement
Gilcrest Co.	F. H. Sternberg	Fall	3,783.00	Widow	By agreement
Grimes Canning Co.	P. A. Wier	Caught in flight conveyor	110.64	No dependents	No claim filed
Hawkeye Port. Cement Co.	T. Donato	Struck by car	4,500.00	Widow	Arbitration
Hawkeye Port. Cement Co.	B. Cirablas	Cement conveyor	995.60	Relative	By agreement
Honey Creek Coal Co.	J. Koopmen	Fall of slate	4,500.00	Widow	By agreement
Houx & Son	C. P. Ramsey	Fall of brick	4,500.00	Widow	By agreement
Hawkeye Quarries Co.	L. Sampica	Transmission pulley	3,433.56	Widow	By agreement
Haugsted, Chris.	D. A. Geissinger	Cave-in	4,500.00	Widow	By agreement
Ia. Valley Sugar Co.	H. Groen	Electrocuted	4,152.00	Widow	By agreement

Ia. Valley Sugar Co.	P. Ziegler	Struck by car	4,500.00	Children	By agreement
Ia. Valley Sugar Co.	H. Lieuwen	Fall	2,323.44	Parents	By agreement
Independent School Dist.	C. Schoenfeldt	Fall	2,493.00	Widow	By agreement
Ia. Light, Heat & Power Co.	M. Ireland	Electrocuted	1,410.00	Mother (partial)	By agreement
Ia. City Light, Heat & Pwr Co.	Geo. Taylor	Burned	380.64	No dependents	No claim filed
Iowa State Penitentiary	J. Trevitt	Caught in mangle		No dependents	No claim filed
Iowa Ry. & Light Co.	A. Foster	Electrocuted	3,900.00	Son	Arbitration
Ia. Falls Electric Co.	G. E. Schuls	Fell into switch	3,569.09	Widow	Commutation
Johnston Brothers Clay Wks.	R. Brown	Electrocuted	4,500.00	Widow	By agreement
Keystone Coal Co.	B. Long	Crushed	2,881.09	Widow	Commutation
Knox Clay Products Co.	F. Campbell	Cave-in	189.36	Parents	By agreement
Kruidenier Cadillac Co.	H. Ross	Burned	4,500.00	Widow	By agreement
Kruidenier Cadillac Co.	H. Cox	Burned	3,891.00	Not given	By agreement
Kruidenier Cadillac Co.	C. M. Hollowell	Burned	4,500.00	Widow	By agreement
Layton Sawmill Co.	J. Welch	Rupture	3,718.73	Widow	Commutation
La Crosse Dredging Co.	L. Giard	Fall		No dependents	No claim filed
Lana Constr. Co.	C. Peterson	Fall	4,500.00	Mother	By agreement
Litchfield Mfg. Co.	C. A. Sherburne	Electrocuted	1,641.50	Mother (partial)	By agreement
Mississippi River Power Co.	F. E. Flack	Electrocuted	625.00	Father (partial)	By agreement
Mississippi River Power Co.	H. J. Donovan	Electrocuted	4,500.00	Widow	By agreement
Maquokets Light & Pwr. Co.	Chas. Sandey	Fall of pole	2,250.00	Widow	By agreement
Morrell & Co.	R. R. Cramer	Hot water heater	4,500.00	Widow	By agreement
Mechanicsville, Town of,	C. E. Bagley	Suffocation	4,500.00	Widow	By agreement
Mercer Tfr. Co.	W. Guilfoil	Fall		No dependents	No claim filed
M. & St. L. Ry. Co.	R. Bullard	Burned	4,500.00	Widow	By agreement
M. & St. L. Ry. Co.	S. Peterson	Thrown off car	4,500.00	Widow	By agreement
N. W. Sts. Portland Cem. Co.	C. Madison	Machinery	4,500.00	Widow	By agreement
N. W. Sts. Portland Cem. Co.	L. Carlos	Machinery	4,500.00	Widow	By agreement
N. W. Sts. Portland Cem. Co.	E. King	Fall	4,345.85	Widow	Commutation
Nebergall & Son	P. J. Kindleon	Crushed	4,500.00	Widow	By agreement
Norwood-White Coal Co.	J. Downing	Fall of slate	4,500.00	Widow	By agreement
O'Rourke Engineering Co.	A. B. Luzadder	Fall	2,000.00	Widow	Compromise
Perfection Tire & Rub. Co.	A. F. Hellige	Electrocuted	800.00	Parents (partial)	By agreement
Pershing Coal Co.	E. Pike	Fall of slate	3,000.00	Parents (partial)	By agreement
Pomeroy Co op. Grain Co.	C. Moyer	Burned	500.00	Parents	By agreement
Red Rock Coal Co.	W. Burgett	Fall of coal	4,500.00	Widow	By agreement

FATAL CASES REPORTED DURING BIENNIUM—Continued

FIRST YEAR

Employer	Employe	Cause	Amount	Dependent	Adjusted
Ruff, Oscar	L. R. Schuller	Crushed	4,500.00	Widow	By agrmeeent
Smith, J. C.	C. Butler	Fall	1,800.00	Widow	By agreement
Struchen, H. C.	L. E. Yuppie	Fall	4,500.00	Widow	By agreement
Sioux City Gas & Elec. Co.	G. O. Gross	Electrocuted	4,500.00	Widow	By agreement
Sioux City Gas & Elec. Co.	J. H. Phillpott	Fall	4,500.00	Widow	By agreement
Smoky Hollow Coal Co.	E. Laurent	Fall of slate	4,500.00	Widow	By agreement
Smoky Hollow Coal Co.	S. Rowley	Fall of slate	4,500.00	Widow	By agreement
Shenandoah Art. Ice & Pr. Co.	F. Comigore	Electrocuted	4,500.00	Widow	By agreement
Scandia Coal Co.	H. Jackson	Not given	300.00	Not known (partial)	By agreement
Scandia Coal Co.	J. Wharton	Fall of slate	4,500.00	Widow	By agreement
Saylor Coal Co.	B. Morris	Crushed	4,500.00	Widow	By agreement
Smith & Paine	C. O. Wiegen	Struck by train	4,600.00	Widow	By agreement
Sherriff Coal Co.	E. Maddison	Fall of slate	3,000.00	Widow	By agreement
Spencer Washed Sd. & Grav. Co.	E. Scrube	Machinery	536.28	Father	By agreement
Smith, C.	O. J. Jones	Burned	2,967.00	Widow	By agreement
Sioux City Service Co.	N. Ring	Struck by auto	100.00	No dependents	No claim filed
South D. M. Coal Co.	E. Zenni	Fall of slate	3,483.00	Widow	Arbitration
Thraves, E. F.	Wm. Deyo	Struck by lever	4,500.00	Widow	By agreement
Western Ia. Co.	J. F. Awe	Building collapsed	3,000.00	Widow	By agreement
Western Elec. Tele. System	J. L. Arthur	Electrocuted	4,500.00	Widow	By agreement
Wilson Motor Co.	E. L. Holmes	Struck by tractor	4,329.00	Widow	By agreement
Wood Bros. Thresher Co.	C. S. Oliver	Crushed	4,500.00	Widow	By agreement
Woodbury County	J. W. Wilkinson	Fall	3,953.37	Widow	By agreement
Waterloo, C. F. & N. Ry. Co.	M. Wickersheiner	Not given	1,575.00	Widow	Commutation
Wisely Brothers	Asa Woolery	Fall of gravel	4,360.95	Widow	Commutation
Zimmerman Steel Co.	L. Stowell	Struck in stomach	4,500.00	Widow	By agreement

SECOND YEAR

Albia Packing Co.	S. G. Moser	Fall	$2,028.00	Widow	By agreement
Albia Packing Co.	Max Moser	Struck by train	1,161.93	Mother	Commutation
O. M. Aneson	A. A. Hereim	Caught in line shaft	2,991.00	Widow	By agreement
Automotive Repair Shop	Geo. Van Cleve	Fall	196.16	Mother	By agreement
D. W. Boyce	E. B. Getty	Crushed	4,500.00	Widow	By agreement
Brighton Canning Co.	E. Stout	Fall	1,800.00	Widow	By agreement
Carr Ryder & Adams	Ed. King	Kicked by horse	4,500.00	Widow	By agreement
Consolidation Coal Co.	C. Carter	Fall	4,500.00	Widow	By agreement
Consolidation Coal Co.	F. F. Meeker	Fall of slate	3,000.00	Mother	By agreement
Colfax Electric Light Co.	Geo. Husman	Electrocuted	4,500.00	Widow	By agreement
Citizens Gas & Electric Co.	Geo. L. DeVoe	Cave-in	3,000.00	Children	By agreement
Council Bluffs Cy. Water Wks.	O. Pfieffer	Overcome by gas	3,000.00	Widow	By agreement
Clear Lake Sand & Grav. Co.	Chas. Jorgenson	Not given	4,500.00	Widow	By agreement
Thos. Carey & Sons	Fred Stoner	Struck by auto	1,350.00	Widow	By agreement
C. R. I. & P. Ry. Co.	Wm. Carnahan	Struck by car	1,125.00	Widow	Compromise
Corn Belt Packing Co.	C. Fox	Not given	400.00	No dependents	No claim filed
Curtiss Brothers & Co.	E. Nyquist	Fall	2,574.00	Widow	By agreement
C. & N. W. Ry. Co.	R. G. Murr y	Shot	1,000.00	Parents	By agreement
Carroll, City of	J. F. Conway	Shot	1,067.00	Parents	By agreement
Central Ia. Fuel Co.	Don Braida	Fall of slate	4,500.00	Widow	Arbitration
Central Ia. Fuel Co.	Frank Wilson	Fall of slate	750.00	Mother	Arbitration
Davenport Mchy. & Fdry Co.	H. Diedrich	Struck by beam	1,009.60	Widow	By agreement
Douglas Company	John Harzakis	Explosion	750.00	Parents	By agreement
Douglas Company	Mike Tsibrojas	Explosion	500.00	Parents	By agreement
Douglas Company	J Klemish	Explosion	250.00	Mother	By agreement
Douglas Company	J. Cribeles	Explosion	400.00	Parents	By agreement
Des Moines Ice & Fuel Co.	James Paris	Struck by car	700.00	Parents	By agreement
Des Moines Electric Co.	O. E. Cassidy	Electrocuted	3,163.86	Mother	Commutation
Emmett Co. Light & Pwr. Co.	G. A. Jenkins	Electrocuted	4,500.00	Widow	By agreement
Eagle Coal Co.	T. Feeley	Blood poisoning	4,500.00	Widow	By agreement
Even-Ihlrich-Staner Co.	Chas. Billings	Struck by auto	4,500.00	Widow	By agreement
Farmers Supply & Elev. Co.	R. V. Trotter	Fall	3,960.00	Widow	By agreement
General Cigar Co.	M. DeGuibert	Overturned auto	4,500.00	Widow	By agreement
J. M. Gobble Co.	Wm. Halzhauer	Fall	1,500.00	Widow	Compromise

FATAL CASES REPORTED DURING BIENNIUM—Continued

SECOND YEAR

Employer	Employe	Cause	Amount	Dependent	Adjusted
C. W. Gindele	R. H. Wilmarth	Crushed	3,000.00	Widow	By agreement
Harley-Haas Co.	James Pederson	Crushed	1,000.00	Widow	Compromise
Humboldt Grav. & Tile Wks.	H. M. Rodlend	Electrocuted	4,500.00	Widow	By agreement
Hoover Fuel Co.	B. Jones	Fall of slate	4,500.00	Widow	By agreement
Ill. Cent. Ry. Co.	D. H. Trout	Struck by train	2,394.40	Widow	Commutation
Iowa Bridge Co.	J. A. Welshons	Fall of derrick	1,129.68	Father	By agreement
Iowa County	W. F. Berstler	Blood poisoning	2,073.00	Widow	By agreement
Iowa Falls Electric Co.	A. Houghtalling	Electrocuted	4,500.00	Widow	By agreement
Ia. Nebr. Coal Co.	R. Anderson	Fall of slate	4,500.00	Widow	By agreement
Ia. St. Fish & Game Warden	W. Roggensack	Drowned	2,769.00	Widow	By agreement
Kerns Brothers	Al Steckel	Fall	4,500.00	Widow	By agreement
Lehigh Portland Cement Co.	L. H. Hulse	Fall		No dependents	No claim filed
Maple Coal Co.	Andy Dinyis	Crushed	1,911.60	Sister	Arbitration
Mahaska County	Chas Shroyer	Machinery	4,500.00	Widow	By agreement
John Morrell & Co.	H. Baker	Electrocuted	3,367.54	Widow	Commutation
Northern Dredge & Dock Co.	H. Holmquist	Not given	4,500.00	Widow	By agreement
Norwood-White Coal Co.	J. Heckman	Kicked by mule	4,500.00	Widow	By agreement
N. W. Sts. Portland Cem. Co.	M. Clawson	Crushed	4,500.00	Widow	By agreement
New Oriental Coal & Min. Co.	Jessie Boar	Electrocuted	4,500.00	Widow	By agreement
Oskaloosa Home Tele. Co.	A. McFarlan	Electrocuted	2,094.00	Widow	By agreement
Pittsburgh-D. M. Steel Co.	H. D. Coatney	Fall	4,102.95	Widow	Commutation
Poweshiek County	C. Beeler	Machinery	2,500.00	Widow	Commutation
M. D. Parker Co.	A. W. Carter	Fall	4,500.00	Widow	By agreement
Roach & Musser Co.	Wm. Cramer	Fall	4,500.00	Widow	By agreement
Red Rock Coal Co.	P. Pellegrim	Fall of coal	4,500.00	Widow	By agreement
Restermendt & Kuhl	Ida Greleck	Burned	1,200.00	Mother	By agreement
Rex Fuel Co.	R. Bell	Fall of slate	4,500.00	Widow	By agreement
Standard Oil Co.	H. R. Hill	Struck by train	4,500.00	Widow	By agreement
J. B. Schermerhorn	E. J. Elfstrom	Not given	4,500.00	Widow	By agreement

Swift & Co.	H. Simmons	Fall	210.50	No dependents	No claim filed
Smoky Hollow Coal Co.	H. Dixon	Fall of slate	4,500.00	Widow	By agreement
Smoky Hollow Coal Co.	A. Nicolletto	Fall of slate	4,500.00	Widow	By agreement
Sherriff Coal Co.	Frank Militich	Fall of slate	3,500.00	Widow	Commutation
E. P. Smith Elec. Contr. Co.	Roy Mueller	Electrocuted	1,192.00	Father	By agreement
State Center, Town of	Geo. Adams	Electrocuted	1,145.84	Mother	By agreement
Otto Thompson	P. Yuhis	Machinery	3,269.20	Widow	Commutation
Vinton Engr. & Constr. Co.	F. Douglas	Struck by car	375.00	Widow	By agreement
Waterloo Cdr. Fls. & N. Ry. Co.	Chas. Ludtke	Struck by car	1,500.00	Widow	Compromise
Wm. Warnock Co.	Wm. M. Burke	Tank bursted	4,500.00	Widow	By agreement
Wapsipinicon Mill & Pwr Co.	D. Bradstreet	Electrocuted	2,700.00	Widow	By agreement
What Cheer Clay Prod. Co.	R. Moffat	Crushed	2,448.00	Widow	By agreement
Wright Coal Co.	Chas. Joanitshnig	Kicked by mule	2,217.48	Sister and brother	By agreement

COMPANIES LICENSED TO WRITE COMPENSATION INSURANCE IN IOWA.

Employers Mutual Casualty Association	Des Moines, Iowa.
Iowa Bonding & Casualty Company	Des Moines, Iowa.
Iowa Mutual Liability Insurance Company	Cedar Rapids, Iowa.
Aetna Casualty & Surety Company	Hartford, Conn.
Aetna Life Insurance Company (Acedt. Dept.)	Hartford, Conn.
American Mutual Liability Company	Boston, Mass.
Buiders & Manufacturers Mutual Casualty Company	Chicago, Ill.
Continental Casualty Company	Hammond Ind.
Employers Indemnity Corporation	Kansas City, Mo.
Employers Liability Assurance Corp'n. (U. S. Branch)	Boston, Mass.
European General Reinsurance Company Ltd. (U. S. B.)	New York, N. Y.
Fidelity & Casualty Co. of New York	New York, N. Y.
General Accident Fire & Life Assurance Corp'n (U. S. B.)	Philadelphia, Pa.
Georgia Casualty Company	Macon, Georgia.
Globe Indemnity Company (A New York Corp'n)	Newark, N. J.
Hartford Accident & Indemnity Company	Hartford, Conn.
Integrity Mutual Casualty Company	Chicago, Ill.
London Guarantee & Accident Company (U. S. Branch)	Chicago, Ill.
London & Lancashire Indemnity Company of America	New York, N. Y.
Maryland Casualty Company	Baltimore, Md.
Massachusetts Bonding & Insurance Company	Boston, Mass.
New Amsterdam Casualty Company	New York, N. Y.
Ocean Accident & Guarantee Corporation (U. S. Branch)	New York, N. Y.
Reliance Life Insurance Company (Acedt. Dept.)	Pittsburgh, Pa.
Royal Indemnity Company	New York, N. Y.
Standard Accident Insurance Company	Detroit, Mich.
Travelers Indemnity Company	Hartford, Conn.
Travelers Insurance Company (Acedt. Dept.)	Hartford, Conn.
United States Casualty Company	New York, N. Y.
United States Fidelity & Guaranty Company	Baltimore, Md.
Zurich General Acedt. & Liability Ins. Co. Ltd. (U. S. B.)	Chicago, Ill.

PRIVATE EMPLOYERS AUTHORIZED TO CARRY OWN RISK

Amana Society
American Bridge Company
American Telephone & Telegraph Company
American Railway Express Company
Adel Clay Products Company
Atlantic Northern Railway Company
Beiceniaui Company
Burlington Gas Light Company
Brunswick-Balke Collender Company
Boone County Telephone Company
Cedar Rapids Gas Company
Case, J. I. Threshing Machine Company
Carr, Ryder, Adams Company
Cedar Rapids & Marion City Ry. Company
Chandler Pump Company
Chicago, Burlington & Quincy Ry. Company
Chicago, Great Western Railway Company
Chicago, Northwestern Railway Company
Chicago, Rock Island, Pacific Ry. Company
Citizens Gas & Electric Company
Clear Lake Independent Telephone Company
Clinton, Davenport & Muscatine Railway Company
Colfax Electric Light Company
Consolidation Coal Company
Chicago Bridge & Iron Company (Corp.)
Cedar Valley Electric Company
Consolidated Indiana Coal Co. (A corporation)
Colfax Consolidated Coal Company
Chicago, St. Paul, Minneapolis & Omaha Railway Company
Dain Manufacturing ompany
Davenport Water Company
Des Moines City Railway Company
Des Moines Electric Company
Des Moines Gas Company

Des Moines Photo Material Company
Des Moines Terminal Company
Dolese Brothers Company
Dupont De Nemours Company
Des Moines Union Railway Company
Fort Dodge, Des Moines & Southern Railway Company
Fort Dodge Gas & Electric Company
Ford Paving Company
Fort Madison Electric Company
French & Hecht
Ford Motor Company
Fuller, Geo. A. Company
Firestone Tire & Rubber Company
Garden City Feeder Company
General Electric Company
Goodrich, B. F. Rubber Company
Guardian Life Insurance Company of America
Griffin Wheel Company
Home Lumber Company
Hecker, A. S. Company
Independent Telephone Company
International Harvester Company of America
Iowa Gate Company
Iowa Malleable Iron Works
Iowa National Fire Insurance Company
Iowa City Light & Power Company
Iowa Transfer Railway Company
Keokuk Electric Company
Kraft, Geo. and K. H.
Lampert Lumber Company
Louden Machinery Company
Lane-Moore Lumber Company
Lehigh Portland Cement Company
Marne & Elkhorn Telephone Company
Minneapolis & St. Louis Railroad Company
Mississippi River Power Company
Montezuma Electric Light, Heat & Power Company
Murray Iron Works
Muscatine Lighting Company
Mason City & Clear Lake Railroad Company
New Valley Junction Water & Light Company
Noelker-Lyon Manufacturing Company
National Biscuit Company
Northwestern Bell Telephone Company
Omaha & Council Bluffs Street Railway Company
Oskaloosa Light & Fuel Company
Oskaloosa Traction & Light Company
Ottumwa Gas Company
Peoples Gas & Electric Company
Peoples Light Company
Prudential Insurance Company of America
Pittsburgh-Des Moines Steel Company
Pacific Fruit Express Company
Sinclair, T. M. & Company
Sioux City Gas & Electric Company
Sioux City Service Company
Standard Oil Company
Stoner-McCray System
Sweet, Wallach & Company
Stoner's Incorporated
Sinclair Refining Company
Simmons Company
Tri-City Railway Company
Transcontinental Oil Company
Travelers Insurance Company
United States Rubber Company
United States Tire Company
Union Pacific Railroad Comppany
Vacuum Oil Company
Western Electric Company
Western Electric Telephone System
Western Union Telegraph Company
Wood Brothers Thresher Company
Waterloo Gas Engine Company
Wisconsin Bridge & Iron Company
Wickham, E. A. & Company
Zimmerman Brothers

COURT RECORD

Case	Comm'r held	In Dist. Court	In Sup. Court
Fischer vs. Priebe Co.	For claimant	Comm'r affirmed	Comm'r affirmed
Griffith vs. Cole, et al	For defendant	Comm'r reversed	Comm'r affirmed
Pace vs. Appanoose County	For defendant	Comm'r affirmed	Comm'r affirmed
Herbig vs. Walton Auto Co. (Notice)	For defendant	Comm'r reversed	Comm'r affirmed
Keys et al vs. American Brick & Tile Co	For claimant	Comm'r affirmed	Comm'r affirmed
Rish vs. Iowa Portland Cement Co.	For defendant	Comm'r affirmed	Comm'r reversed
Storm vs. Thompson	For defendant	Comm'r affirmed	Comm'r affirmed
Smith vs. Inter Urban Py Co.	For claimant	Comm'r reversed	Comm'r affirmed
Amer. Bridge Co. vs. Funk	For claimant	Comm'r affirmed	Comm'r affirmed
Black Dry Goods Co. vs. Iowa Industrial Comm'r.	For claimant	Comm'r affirmed	Comm'r affirmed
Pierce vs. Bekins Van & Storage Co.	For claimant	Comm'r affirmed	Comm'r affirmed
Bidwell Coal Co. vs. Davidson	For defendant	Comm'r reversed	Comm'r reversed
Grant et al vs. Fleming Bros.	For claimant	Comm'r affirmed	Comm'r affirmed
Hanson vs. Dickerson	For claimant	Comm'r affirmed	Comm'r affirmed
Hoover vs. Central Iowa Fuel Co.	For claimant	Comm'r affirmed	Comm'r affirmed
Jennings vs. Mason City Sewer Pipe Co.	For claimant	Comm'r affirmed	Comm'r affirmed
Reid vs. Automatic Elec. Washer Co. et al	For defendant	Comm'r affirmed	Comm'r reversed
Jackson vs. Iowa Tele. Co.	For defendant	Comm'r reversed	Comm'r affirmed
Miller vs. Gardner & Lindberg et al	For defendant	Comm'r reversed	Comm'r affirmed
Norton vs. Day Coal Co.	For defendant	Comm'r reversed	Comm'r affirmed
Young vs. Mississippi River Power Co.	For claimant	Comm'r affirmed	Comm'r affirmed
Herbig vs. Walton Auto Co. (Casual emp.)	For defendant	Comm'r affirmed	Comm'r affirmed
Zenni vs. South Des Moines Coal Co.	For defendant	Comm'r reversed	Comm'r reversed
Flint vs. City of Eldon	For defendant	Comm'r reversed	Comm'r affirmed
Knudson et al vs. Jackson	For defendant	Comm'r reversed	Comm'r affirmed
Oliphant vs. Hawkinson	For claimant	Comm'r affirmed	Comm'r reversed
Renner Adm. (Bodine) vs. Model Laundry	For defendant	Comm'r reversed	Comm'r reversed
Moses vs. National Union Coal Mining Co.	For defendant	Comm'r reversed	Comm'r affirmed
Buncle vs. Sioux City Stock Yards	For defendant	Comm'r reversed	Comm'r affirmed
Hughes vs. Cudahy Pkg. Co.	For defendant	Comm'r reversed	Comm'r affirmed
Kraft vs. West Hotel Co.	For defendant	Comm'r reversed	Comm'r affirmed
O'Neil vs. Sioux City Terminal Ry. Co.	For defendant	Comm'r affirmed	Comm'r affirmed
Franks vs. Carpenter	For claimant	Comm'r affirmed	Comm'r affirmed
Christensen vs. Hauff Bros.	For defendant	Comm'r affirmed	Comm'r affirmed
Serrano vs. Cudahy Pkg. Co	For defendant	Comm'r affirmed	Comm'r affirmed
Hannoon vs. Cudahy Pkg. Co	For claimant	Comm'r affirmed	Comm'r affirmed
Sparks vs. Con. Ind. Coal Co	For claimant	Comm'r affirmed	Comm'r affirmed

JUDICIAL

The functions of this department are ministerial rather than magisterial. It is our especial endeavor to avoid the delay and the expense of litigation wherever issues are at all definite and where fair settlement may be reached through negotiation. It is gratifying to be able to state that only in cases comparatively rare is it deemed necessary or expedient to exercise the rigors of the law.

When appeal is made for judgment in case of controversy, however, the statute affords process and proceeding simple, summary and effective. In arbitration the facts are developed without technical restraint and decision issues accordingly. In case of appeal, in a more deliberate manner the Industrial Commissioner reviews the arbitration record reduced to writing, in the light of the statute and the best authoities in compensation jurisprudence, whereupon review opinion becomes part of the record.

From this opinion appeal may be taken to the courts. In the statistical section of this report appears a complete list of cases decided in which is shown the holding of the department and of the District and Supreme Courts. It therein appears that out of the thirty-five cases reported, the department record in the higher court is: Affimations 29; reversals 6. This record is submitted with satisfaction in that it is held to give some measure of support to department accuracy and efficiency.

Following appear department opinions in cases of interest issued during the past two years:

DECISIONS IN REVIEW

DISFIGUREMENT—ABILITY TO EARN—OPPORTUNITY TO WORK—TOTAL PERMANENT DISABILITY

Ruby LaPour, Claimant,

vs.

Western Grocer Mills, Employer,
Employers Liability Assurance Corporation, Ltd., Insurer.
W. T. Bennett, for Claimant;
Miller, Kelly, Shuttleworth & McManus, for Defendants.

In Review Before the Iowa Industrial Commissioner

Early in 1920, at the age of sixteen years, Ruby LaPour took work with the Western Grocer Mills, at Marshalltown. On the afternoon of the 14th day of October following she was assisting in the work of filling coffee cans. The empty cans were stacked near the table used in the process, and, at the time the top cans were beyond her reach, so she climbed on the table to pass them down. Some three or four feet above this table ran a line shaft.

The story of witness, Anna Peterson, forewoman of this department, recites these facts. Miss Peterson also relates that Ruby "was on her knees the last I saw of her." Next she "looked and Ruby was hanging by her hair on the shaft."

Dr. R. R. Hanson described the condition in which he found claimant shortly after this accident:

"The scalp was torn off from the top of the head. When the scalp was torn off evidently the greatest power was exerted in the anterior part, and torn off from the fore part backward so the wound started from the line of junction, just below the left eyebrow and run about two inches to the left, the wound running down the left side of the cheek about four inches and then upward toward the junction of the skin area and the left eyebrow, then back over her left ear, down back of her left ear as low down as the exterior occipital protuberance, then around on the right side and above her right ear and run into her right eyebrow, that is, her right eyebrow was torn off and run down over the bridge of her nose probably half an inch and meeting this line we first started.

"The left ear was torn off and laid down on her shoulder and probably a half an inch of the external auditory canal torn out. Of course the entire top of her head was raw. There was nothing left there except the covering of the occipito frontalis fasia. This ear of course was stitched back immediately and the canal was pushed back in the bony canal and the area of this wound on the left side of her face was stitched up. This was all that was done at that time. The tinpanic membrane was all right.

Q. Afterwards what did you do?

A. We started to skin graft her head. Dr. French was called shortly after this to look at her ear. Then we skin grafted her scalp at different steps. I think I skin grafted her head about five or six different times, I am not sure."

Dr. Hansen says the grafting was "her own skin," taken "from her ankles up to the hips." "We took the entire anterior part of the thigh and the posterior part of the leg."

If the grave character of this case is not established in this hideous diagram, it may be mentioned that the Western Grocer Mills expended nearly twenty-three hundred dollars, in excess of the $200.00 paid by the insurer, in affording medical, surgical and hospital relief required. Parenthetically, it may not be out of place to draw attention to this almost unexampled humanitarian act on the part of an employer who had met all legal obligation in covering employes with insurance.

In arbitration October 5, 1922, it was held that claimant was entitled to award for sixty per cent of total disability, or the sum of $7.79 a week for a period of 240 weeks.

From this decision claimant appeals.

While disposed to make payment on the basis of the committee finding the defendant insurer insists no basis in law can be found for award so high. The cold rule of logic affords support to this conclusion. The claimant has the use of her limbs. She is in possession of a fair measure of vision. Her hearing is only partially impaired. All these members under given conditions might function more or less successfully. But this is not a practical diagram of the situation of Ruby LaPour.

Pain and suffering as proximate factors in compensation recovery are not in our vocabulary. Disability—earning capacity—afford the real basis of consideration. But pain and suffering which promotes disability and impairs earning capacity may afford substantial basis for compensation award.

The record of industrial misfortune contains few cases, the incidents of which are so excruciating. No one can read the detailed account of the condition in which claimant appeared to her doctor without wondering how she survived its horrors, or if she were to live, how her reason could remain. Following the accident she not only endured the agony from its immediate effects. For months she was continually tortured by the knife which stripped her flesh and from the wounds so caused while five graftings were applied to the naked cranium and related surfaces. After the lapse of two whole years her head is still suppurating and the doctors advise against wearing her wig that her wounds may finally heal.

What must have occupied the mind of Ruby LaPour during those awful months—dreams of girlhood destroyed—hope for the future dead—existence in gruesome deformity assured. In emerging from physical confinement how pitiful were the efforts to cover the denuded cranium. When in the course of nature the "glory of womanhood" may depart devices of art may mitigate humiliation, but when the scalp is torn away and the forehead and neck and side of the face is thereby hideously disfigured, artificial strategy is pitifully unavailing. The wig claimant wears

is of no usual character as the endeavor is made to conceal deep scars on the forehead and the side of her face.

Surprise is expressed at the reticence of claimant. She appears sullen, and doubt exists as to whether or not she is acting a part to accentuate her condition for the purpose of gain. In view of all she has suffered is it any wonder she should seem morose, indifferent and unresponsive? She shows the same indifference to the kindly offices of her legal advisor as she does to opposing counsel. Is it really strange that she should have been changed from the ways of a cheerful, happy girl to an attitude of grouching and resentment in view of her terrible experience?

With all this record in mind one should not wonder at the despair written all over that distorted countenance, and that she should be sorely warped in mind and temperament by the crucial developments of the past two years.

This case appeals almost irresistably to human sympathy, but compensation adjustment is not reached that way. While we must not permit sentiment to defeat the purposes of the law, we must not entertain an interpretation of the law which fails to recognize the distinct bearing of the foregoing upon the future usefulness of Ruby LaPour.

In some jurisdictions disfigurement is specifically recognized as compensable. The Iowa compensation statute does not mention disfigurement as a basis for recovery. It must be understood, however, that any injury arising out of employment which affects ability to earn cannot be ignored.

In this case award must be made either under schedule provision for permanent disability or on the basis of such actual earning capacity as may remain.

In subsection (j) of Section 2477-m9, Supplement to the Code of 1913, the compensation law recites a schedule of certain permanent disabilities specifically fixing the compensation due for each in terms of weeks. Following this partial disability schedule it is declared in paragraph 18:

"The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, caused by a single accident, shall constitute total and permanent disability."

In the next paragraph it is provided:

"In all other cases in this, clause (j), the compensation shall bear such relation to the amount stated in the above schedule as the disability bears to those produced by the injuries named in the schedule."

Is it not consistent to take this schedule as qualified by terms above expressed as a measure of disability in this case? If it is (and it seems to be) then:

What relation does the disability of Ruby LaPour bear to "those produced by the injuries named in the schedule?"

It will be observed that in nearly all the combined injuries constituting total permanent disability actual earning capacity remains to a greater or less extent.

If claimant had lost both feet and were otherwise normal, would she not have remaining far more of earning power than she now has? And how infinitely better off she would be in the labor market if she had lost an eye and a foot. She could hold her head in its native comeliness and exercise all elements of usefulness in heart and hope. She need not feel herself an object of curiosity, of repugnance or of pity. She need not instinctively avoid association with her kind under the humiliating terms of human tolerance.

If the foregoing rule were discarded then it would be necessary to base award upon the actual earning capacity still existing.

It is reasonable to assume that the demoralization of her nervous forces has seriously impaired the physical structure of this claimant, and with her remaining limited equipment how will she proceed to earning. Where will this girl find employment for such measure of service as she might perform? She is definitely barred from all employment where personality is taken into account. Would she be an acceptable workmate among others of her sex? If so employed a spirit of aloofness would be impossible of concealment, and it would almost surely suggest more or less of ostracism, which would tend to soon close her engagement.

With limited equipment and with dubious chance of using such as she may possess, what is the earning capacity of Ruby LaPour?

Some medical evidence in this record tends to minimize the disability of this claimant. All such evidence is duly considered. The service of physicians in cases of industrial misfortune is of value inestimable, but all compensation authority finds difficulty at times in reconciling the medical report with obvious evidence of existing conditions.

Within the two years since her injury, claimant would seem to have had no earnings except for a brief period in which she peddled toilet articles. How far were such sales as she made due to pity for her condition? The mutilated vendor of pencils may commercialize his calamity with more or less of financial success, but shall we say this process denotes earning power?

In view of this record and the conclusion it seems to justify, the condition of Ruby LaPour is held to be that of total permanent disability within the meaning of the statute.

In view of this record and the conclusion it seems to justify, the condition of Ruby LaPour is held to be that of total permanent disability within the meaning of the statute.

It is therefore ordered that the Employers Liability Assurance Corporation pay to this claimant the sum of $7.79 weekly for a period of 400

weeks, beginning with the fifteenth day following the injury, together with statutory medical, surgical and hospital charges and the costs of this action.

Dated at Des Moines, Iowa, this 10th day of November, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

NON-RESIDENT ALIEN DEPENDENCY—BURDEN OF PROOF SUSTAINED.

C. D. Royal, Greek Consular Representative of the non-resident alien dependents of George Marnelos, deceased employe, Claimant.

vs.

Douglas Company, Employer, and London Guaranty & Accident Co., Ltd., Insurer, Defendants.

Royal & Royal, for Claimants;
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

In this case it is admitted that the deceased, George Marnelos, died May 22, 1919, from injuries arising out of and in course of his employment by the defendant. Serious resistance is not offered to the claim that he had been duly married to the claimant widow and that to this union was born two daughters, named respectively, Lamprini and Garoufalia.

Contention exists chiefly because, as alleged by defendant, the record does not show these dependents to have been in existence at the time demand was made for compensation payment.

This case was arbitrated August 5, 1920, before Ralph Young, deputy industrial commissioner, additional arbitrators being waived. In this proceeding, defendant was held in payment to Maria Marnelos in the sum of $10.00 a week for a period of 300 weeks.

Called as a witness, Nick Marnelos, brother of the deceased, testified that he saw these parties married in the town of Elounta, in the Island of Crete, three years before the deceased came to the United States. He also testifies to personal knowledge of the birth of the two daughters named, and that the mother and two daughters were living when he left Greece in 1916. Also that to his personal knowledge the deceased brother was sending money to his wife frequently while the brothers lived together at Cedar Rapids, from 1916 until the death of George Marnelos.

Submitted in evidence are two letters, under date of July 26, 1918, and April 21, 1919, respectively, which Nick Marnelos wrote for the deceased, to his wife. These letters are in the original, with copies duly translated into English. Nick testifies his brother could not write, which accounts for the letters having been written by witness. The letters bear

evidence of genuineness in outlining family relationship and in the consideration of business matters.

In the record appears a certificate, dated Elounta, July 17, 1919, stating that Maria, nee Barbouni, was the legal wife of George Marnelakis, known in America by the name of George Marnelos, who was killed on May 22, 1919, at Cedar Rapids, Iowa; that their marriage was solemnized in the year 1907; that said marriage was never dissolved by divorce, but continued until the death of the husband; that from said marriage was born Garoufalia G. Marnelos, now ten years of age, and Lamprini G. Marnelos, now eight years of age, who are living with their mother and are supported by her. This certificate was signed by the Parish Priest, Emmanuel Mavrikakis, and by the Mayor, Hagi-Emmanuel Arnaoutakis. The genuineness of the signature of the Mayor is confirmed at St. Nicholas July 17, 1919, by the Prefect Lasithia, whose signature is attested at Athens September 25, 1919, by order of the Minister of the Interior of Greece.

Also appears in the record, under date of July 17, 1919, what purports to be the certificate of the Acting Justice of the Peace of St. Nicholas, stating that Maria, nee Barbouni, under oath, before him testified that she was the wife of the deceased, and that he was the father of her daughters, aged respectively, ten and eight years. Also that Nicholas Massaros, a merchant of St. Nicholas, and Michael J. Drakonakis, a farmer, resident of Elounta, under oath, stated that the deceased was the husband of Maria, nee Barbouni, and the father of her children. Certificate as to genuineness passes through several departments of state, being finally attested by the Greek Minister of Foreign Affairs.

Authority of C. D. Royal to appear in behalf of these alien dependents through delegation by the Greek Consul at Chicago, whose appointment is attested by the Department of State at Washington, is submitted.

As to regularity of the marriage relations between the deceased and claimant widow and as to the paternity of the children, as alleged, there would seem to be no basis for reasonable doubt. The testimony of Nick Marnelos justifies the assumption that they were all living in the year 1916. The letters alleged to have been written by Nick Marnelos for the deceased brother bear evidence of genuineness and strongly support the belief that no change in this situation had occurred as late as the year 1919. The official documents to which reference has been made are strongly confirmatory of the contention that this widow and her children were living at the home in the Island of Crete at the date of the death of George Marnelos.

Counsel contends that these documents are unworthy of credence in that they are merely conclusions and not statements of fact. This contention is held to be technical and without substantial foundation in the elements of reasonable dealing with such a situation. Any suggestion as to insufficiency of evidence is of minor consequence in view of the vastly

greater probability that the widow and daughters, or at least one of them, do, rather than that they do not survive.

He contends further that substantial doubt exists as to the survival of these claimants because of the unusual peril to life in Europe growing out of the great war. It is recalled that the Island of Crete is distant from the war zone, and there is no reason to believe conditions there were unusual as to personal safety.

To deny compensation in this case would be to assume not only that the mother has died, but that both children as well are not in evidence, for if either of the three survive payment in accordance with the arbitration decision is incumbent upon this defendant. The contention of the claimant, together with evidence submitted in support of the same, bears the imprint of good faith and appear to sustain reasonable judgment as to the validity of this claim.

A brief submitted by the claimant abundantly sustains his contention that as a general rule of law "Where a person is shown or appears to have been living at one time there is a presumption that he is still alive, at least for such period as does not violate the laws of nature." That in such cases the "burden of proof is on the party denying their existence to show that they have died."

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 2d day of February, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DEATH IN OIL TANK AROSE OUT OF EMPLOYMENT

Carrie Lisk, Claimant,

vs.

National Refining Company, Defendant.
Wolfe, Wolfe & Claussen, for Claimant;
Miller, Parker, Riley & Stewart, for Defendant.

In Review Before the Iowa Industrial Commissioner

An award of $11.76 a week for a period of 300 weeks was made to this claimant, as the widow of George Lisk, in arbitration September 9, 1920.

Review of this proceeding by the Industrial Commissioner is asked on many grounds. Chief of which are:

1. The deceased, George Lisk, did not come to his death by any accident arising out of and in course of his employment by the defendant.

2. The death of said deceased was due to suicidal intent.

George Lisk was in the employ of the defendant company at a distributing oil station at Clinton. In the discharge of his duties he met the varied requirements of general helper.

On the 25th day of September, 1919, toward evening, the helper was missed by the employer, the superintendent of the station. Two days later his body was found in a tank car.

The question is, was this death accidental? Did it arise out of as well as in course of employment? No case submitted for review in the experience of this department has been more interesting—no one has been given more thorough consideration. It must be admitted that the way to a decision has been involved in doubt and perplexity, though final conclusion is sustained by definite conviction upon what is believed to be sound basis.

A pump transferring the gasoline from the tank car to the storage tank had been in motion for several hours. It was the duty of Lisk to disconnect the pump when its work was done. Before so doing, it was necessary to ascertain that the tank was empty by visual inspection—by peering into the same. Counsel contends this was to be done while the feet of a workman was on a stand midway down the side of the tank. As the evidence shows, some tank cars have such footing while others have no place to stand except on a narrow platform at the base of the dome on the top of the car, and it could not be established in evidence how the car in question was equipped in this regard.

The dome through which entry into the car was afforded was about fifteen inches in diameter. The opening in the shell beneath the dome was about eighteen inches across. It is contended by counsel (1) that the performance of duty involved no risk on the part of the workman, (2) that entry through the dome into the car was so difficult that it could not have occurred accidentally. If these conclusions are established claimant cannot recover. If the deceased met death by voluntary entry, he was without the scope of his employment.

He had on a previous occasion entered another car to rescue a tool dropped into the tank. The employer had admonished him of the peril of this proceeding and directed him not to repeat the perilous experience. Upon the fatal occasion there was no tool missing, if that might have been an excuse, and there was no possible requirement for going into the tank. If the deceased met death by the accidental entry of his body, this claimant must receive compensation payment.

The arbitration committee had to face these facts: George Lisk was dead—dead in the course of his employment. His body was found near the range of his duties, affording basis for the inference that death arose out of employment. To abandon this inference substantial cause must be suggested. True, there are elements of improbability involved in the theory of accidental death. The entry way is small for the easy passage of the body of a man weighing approximately 185 pounds. Such

a fall suggests physical difficulty. On the other hand there is no basis for the inference that the deceased had in mind the performance of any duty to his employer requiring or suggesting voluntary entry into the tank.

While the burden is upon the claimant to prove that death or injury arose out of employment, in such cases as this, where no eye witness exists, where death is involved in mystery, claimant is not required to prove to a dead moral certainty the exact circumstances. If it be true that the theory of voluntary performance is not tenable, the basis for accident must be diligently sought. Before disconnecting the pump it was the duty of the workman to satisfy himself by personal scrutiny that the tank was empty. It is reasonable to assume that for this purpose he went on top of the tank. No other way of procedure appears in the evidence.

Superintendent Drews testifies that in making the inspection himself he did it from the top of the tank. The suprintendent estimated the height of the copula, or dome above the tank, at 2½ feet. In view of physical conditions it is not unreasonable to conclude that in satisfying himself as to whether or not the tank was empty, Lisk not only placed his face over, but actually inserted his head into the dome. In this posture he might easily have lost his balance. Or, it would not be at all strange if he became confused, to a degree overcome, by the fumes of gas issuing from the huge basin below. In either case, the operation of gravity might account for a plunge head first to death.

Honnold, on Workmen's Compensation, lays down these substantial rules:

Page 310:

"While proof which is as consistent with the theory of no accident as with the theory of accident is insufficient, proof of accident need not negative every other possibility, nor need it be direct and positive. It may rest on circumstances. Thus, where a person is found dead, the law imparts to the circumstances the prima facie significance that death was caused by accident rather than by suicide. This presumption persists in its legal force until overcome by evidence."

Page 467:

"By a 'preponderance of the evidence' is meant such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability is in favor of the party upon whom the burden rests."

Page 475:

"The presumption that a deceased workman committed suicide cannot be indulged in as a mere presumption, without any fact or circumstance upon which it can be logically predicated, for the presumption of law is in favor of life, and the natural desire and struggle to preserve rather than to destroy it. The presumption against suicide calls for proof of the fact which it negatives."

Page 779:

"Where it is difficult to determine where the weight of testimony lies concerning a given state of facts, or condition or manner in which an accident happened, the legal presumption favors the payment of compensation. In other words, if the evidence, though slight, is yet sufficient to make a reasonable man conclude in the claimants' favor on the vital points, then his case is proven."

"Proof of accident need not negative every other possibility, nor need it be direct and positive. It may rest on circumstances."

Do not circumstances successfully appeal to justice in this case?

"Where it is difficult to determine where the weight of testimony lies * * * * or condition or manner in which an accident happened, the legal presumption favors the payment of compensation."

In the case at bar, has not sound basis for "legal presumption" been established?

This death was, or was not accidental. To say that it was not is to assume the grossly improbable. The details of this incident must ever be involved in mystery. The claimant cannot prove definitely what happened or how it came about, or why this death occurred. The matter should be, and by this tribunal is decided upon the rule of "greater probability." With all the doubt that might be entertained, it is far more likely that this death was than it was not the result of accident and therefore compensable. Out of the maze of circumstance the claimant should not be, and by the Commissioner is not required to prove more than that by the rule of greater probability George Lisk did not take himself out of the scope of his employment in any act of supererogation, but that in a performance of duty he was overtaken by accident unforeseen and unexpected.

The defense of suicide submitted by defendant is against the presumption of law and with flimsy foundation in fact. As herein quoted, Honnold well says:

"Where a person is found dead, the law imparts to the circumstances the prima facie significance that death was caused by accident rather than by suicide. *This presumption persists in its legal force until overcome by evidence.*"

Again:

"The presumption of law is in favor of life, and the natural desire and struggle to preserve rather than to destroy it. *The presumption against suicide calls for proof of the fact which it negatives.*"

So strong is the rule as to making good where suicide is charged in relief of compensation obligation the burden would seem to arbitrarily shift to the defense.

The plaintiff met the reasonable requirements of the burden of proof in law and practice. She made her case by a "preponderance of evidence" in the "more convincing force" of the limited testimony available. Defendant unsuccessfully appeals for relief from obligation upon the plea of suicide and fails in the endeavor to sustain the theory that the workmen met death in a departure from the scope of employment.

Counsel suggests that the attitude of this department in *Bird vs. Capital Sand Company* commits us to the theory of defendant in the case

at bar. In the former, the workman met his death by courting the hazard of contact with high power electric wires after his employer, on the ground, had announced the requirement of expert service and while he was using the telephone near at hand in securing such relief from trouble. No similar situation is involved in this case.

Due consideration is given to authorities cited by counsel. Neither side, however, submits a case very remarkable in its application to the vital issues in this proceeding. I refer to *Wishcaless vs. Hammond, Standish & Co.* decided by the Superme Court of Michigan, and reported in 166 N. W. 993.

Frank Wishcaless was in the employ of defendants as the operator of a freight elevator. August 18, 1916, he disappeared. Three days later his body was found in the pit of the elevator shaft. On the part of the employer it was alleged that the deceased did not meet with an accident which arose out of his employment; that it was impossible because of the construction of the elevator and the size of the man to do more than merely guess how he reached his death—the theory of accidental death must be based on mere conjecture.

Quoting from appellant's brief:

"It is much more logical to accept the theory of several of the witnesses that he must have forced himself through the 8½-inch space than it is to adopt those advanced by the board. If he did that, no proof has been submitted that he was in the course of his employment while so doing, and that his duties required him to do any work under the elevator platform. Rather, the proofs are that he had no business under the car, and therefore it cannot be said that the risk was reasonably incidental to his employment."

Quoting from the record:

"The deceased had worked for defendant a number of years. His foreman said they had less trouble with the elevator he ran than any of the others. He had a wife and several children. He left home about 6 o'clock in the morning. There is testimony indicating that he was under the influence of liquor early in the day, but the effect of the liquor apparently passed away later in the morning. About 9 o'clock the mechanical superintendent reprimanded him because he was not more attentive to his work. There was testimony indicating that his wife had him arrested about three years before his disappearance. One witness said that about three weeks before August 18th, when he disappeared, that he heard him say he wished he was dead, but all of the witnesses who saw him on the day in question, who spoke upon that subject said there was nothing in his appearance or talk out of the ordinary, or that indicated he was despondent."

Quoting from the opinion:

"The serious question in the case is the claim that deceased must have committed suicide. We have already quoted testimony bearing upon that subject, but it is urged and witnesses testified that because of the size of the man, and the narrowness of the opening, he could not have got through it without intentionally squeezing himself through. After witnesses expressed themselves to this effect the committee took a recess and went and looked at the elevator, and found that the distance between the elevator and the east wall was greater than shown on the diagram

which we have before mentioned, and that it was about 8½ inches. They reached the conclusion that deceased passed through this opening to the pit where he was found.

The evidence as to the size of the deceased is not at all conclusive. No one testified as to the girth of the man; no one testified to the chest measure, the waist measure, or the hip measure. No one testified to having seen the man weighed. Witnesses gave their opinion as to his weight varying from 170 to 190 pounds. One witness, in answer to the question, 'Was he a man of your size or smaller?' answered: 'He was larger than I am and taller. He was not taller, but thicker. I am very slender.' Another witness, when asked, 'Was he a heavyset man, or a light thin man?' answered, 'Well, he was medium.'"

The opinion closes as follows:

"In the instant case the deceased was engaged in his usual work of running an elevator. It is found stopped between floors under such circumstances that he must have been in it at the time and did not pass out through the doors. There is no good reason shown why he should climb over the top of the elevator, and if he did that he would not account for the presence of the body in the pit. If he stepped or fell through the opening the pull of gravity which never ceases its work would take him where he was found. In *Papinaw vs. Grand Trunk Railway*, 189 Mich. 441, 155 N. W. 545, it was said:

"'This claim is by a dependent of a workman who was accidentally killed, and whose evidence is therefore not available. In *Grant vs. Railway Co.*, 1 E. W. C. C. 17, it is said: 'If in such a case facts are proved the natural and reasonable inference from which is that the accident happened while the deceased was engaged in his employment, I think it falls on the employer, if he disputes the claim, to prove that the contrary was the case'."

Reading the entire opinion merely intensifies the strict analogy of relationship in these cases. As a matter of fact, however, the citation diagrams a situation much less conclusive as to compensation requirements in a successful case than that submitted in the case at bar. The physical difficulties in the former are more conspicuous. Suggestions as to suicide are much more substantial.

Under the leading of facts and the interpretation of law as applied in compensation jurisdiction generally, this claimant has a good case.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 26th day of January, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

MEASURE OF DISABILITY IN LEG INJURY.

Glenn Albright, Claimant,

vs.

John Morrell & Company, Defendant,
London Guarantee & Accident Company, Insurance Carrier.
Jaques, Tisdale & Jaques, for Claimant.
Chandler Woodbridge, for Defendants.

Reopening Proceedings Before the Iowa Industrial Commissioner

In the employ of this defendant Glenn Albright sustained an injury to his right knee October 28, 1919.

The department files show that settlement incomplete as to duration of disability occurred between these parties December 9, 1919, in which weekly payment of compensation was fixed at $14.25 per week.

After payment in the aggregate of about $494.50, insurance carrier denied further compensation until final judgment should be reached.

Examination by Dr. O. J. Fay, medical counsel for the department, September 20, 1920, developed a report suggesting settlement at from 20 per cent to 30 per cent of the legal measure of the loss of a leg. A tender of this amount was refused by claimant.

Reopening was ordered upon petition of Glenn Albright and a hearing was dated for May 3, 1921.

At this hearing Jaques, Tisdale & Jaques, counsel for claimant, and Chandler Woodbridge, attorney for the insurer.

At this time it was agreed between the parties that claimant should be permitted to file affidavits of physicians in support of his claim.

In the meantime reports have been submitted to the Commissioner by Dr. O. J. Fay of Des Moines, and also by Doctors Howell, Barton, Vinson and Rambo of Ottumwa. In his report Dr. Fay recommends the payment of compensation on the basis of from 20 per cent to 30 per cent of the loss of a leg. The four Ottumwa doctors above named agree in recommending payment on the basis of 50 per cent of permanent disability to said member.

On the basis of these reports and in the exercise of his best judgment the Commissioner hereby fixes the permanent loss of function in the right leg of Glenn Albright at 40 per cent of the schedule value thereof under subsection (j) of Section 2477-m9, Supplement to the Code of 1913.

THEREFORE, defendant is ordered to pay to Glenn Albright 80 weeks of compensation, including payments already made, at the rate of $14.25 per week.

Dated at Des Moines, Iowa, this —— day of May, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

AWARD FOR EYE INJURED BY DUST IN WEED CUTTING.

Albert Blackburn, Claimant,

vs.

City of Dubuque, Defendant.
Frantzen, Bonson & Gilloon, for Claimant;
M. H. Czizek, for Defendant.

In Review Before the Iowa Industrial Commissioner

In arbitration October 6, 1919, it was found that for the total loss of vision of his left eye, Albert Blackburn was entitled to receive from the defendant the sum of $5.00 per week for a period of one hundred weeks.

On the part of the City of Dubuque, review proceeding is brought without any specific statement or indication as to the grounds for appeal from the decision of the arbitration committee. Defendant's answer to petition for arbitration indicates doubt as to any injury arising out of the employment having been sustained by claimant, and if such injury was sustained, resistance was made on the ground that defendant had no knowledge of the same within ninety days of its occurrence, as required by law.

The testimony of Albert Blackburn is to the effect that while cutting weeds on a vacant lot on the 10th and 11th days of July, 1916, he sustained injury to his eyes from contact with dust and pollen from the weeds which resulted in the loss of vision of his left eye; that within a few weeks, not to exceed five or six weeks, he informed Alderman Piamondon of the injury he had sustained.

Dr. Nicholas Bray testifies that this claimant came to his office July 20, 1916, and that he treated him twenty-six days. He said he had a "very sore eye, inflamed and decayed—the left eye." He says the sight of the left eye was destroyed when he first saw him. Dr. Bray was of the opinion the condition of the eye was consistent with the history of the case given by Blackburn, to-wit: that he had been cutting weeds for the city and that the dust from the weeds got into his eye, and that he had tried to take care of it himself but it "went wrong."

Mrs. John Sheasle testifies that during the month of July, 1916, Blackburn borrowed of her a sickle to use, as stated by him, in cutting weeds for the city; that when he returned the sickle his face and clothing were covered with a green colored dust. She said Blackburn told her about his eye and she observed that "dirt and matter was coming out of it."

City records were introduced to show that Blackburn had been in the employ of the city intermittently during the season.

The wife of Albert Blackburn, and Albert Blackburn himself, both testify that prior to July 10, 1916, claimant had had no trouble whatsoever with his eyes.

Louis Piamondon, City Alderman, in evidence admits a conversation with Blackburn in which injury to the eye was claimed. He is unable to state the date of such conversation, but makes no statement denying or in any way controverting the claim of this workman that such conversation occurred within a few weeks of the date of injury.

This would seem to complete the substance of the record in this case material to its character. It is by no means completely satisfying as to the entire situation involved. Incompleteness as to detail is naturally due to the fact that this hearing was held more than three years after the date of injury as alleged. Suspicion to a greater or less extent is likely to attend such long delay in bringing an action of this character. It is due the workman to say, however, that the files show Blackburn had employed an attorney and was depending upon him to prosecute this case within a reasonable period; and at the arbitration hearing explanation was made as to why his attorney had not brought action, which seemed consistent and in no way reflecting upon the claimant or his case.

A careful review of the evidence creates the impression that Albert Blackburn was cutting weeds, as alleged, for the City of Dubuque July 10th and 11th, 1916. Taking the testimony of Blackburn with that of Alderman Piamondon, the assumption is warranted that the City of Dubuque had legal knowledge through the alderman as to its obligation to this workman. The testimony of Dr. Bray is consistent with the history of the case and the claim of Blackburn.

Honnold, "On Compensation," at page 464, says:

"The burden is on the applicant to establish the fact of accident, if accident be essential under the act; that the injury complained of was proximately caused thereby; and that the incapacity or death resulted from such injury. This burden may be sustained by circumstantial evidence or inferences having a substantial basis in the evidence. A preponderance of the evidence is sufficient. By a 'preponderance of the evidence' is meant such evidence as, when weighed with that opposed to it, has more convincing force and from which it results that the greater probability is in favor of the party on whom the burden rests. . . . Evidence conclusively showing an injury adequately accounted for by acts of the workmen in the course of his employment is not overcome by the fact that the injury might by some possibility have resulted from some other cause not shown to exist. In such case the issue must be determined in the light of the greater likelihood."

This seems to be a fair and logical statement of the pending situation. There is basis for "substantial inference" in the evidence. Though evidence is not conclusive "preponderance" is manifest in that there is little substantial resistance. The "greater probability" is in favor of injury having occurred, as alleged, rather than that no such injury occurred as arising out of the employment. Determined "in the light of the greater likelihood" award is fitting. The case bears the imprint of good faith and the story of the claimant invites credence. No attempt is made to deny the statement that Blackburn's eyes were all right before July 10, 1916. Under the evidence it may be readily assumed that he was engaged in weed cutting, as is claimed. There is no escape from the conclusion that medical aid was sought within a few days of this alleged date of injury, and from this state of facts it is reasonable to assume that the loss of vision in Albert Blackburn's eyes arose out of his employment by the City of Dubuque in accordance with his own testimony.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 13th day of October, 1920.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

IMPAIRED VISION OF GRADUAL DEVELOPMENT NOT COMPENSABLE.

A. Earhart, claimant,

vs.

Gas Tank Recharging Company, Employer,
The Fidelity & Casualty Company of New York, Insurance Carrier.
Hughes & Dolan, for Claimant;
G. A. Hodgman, for Defendants.

In Review Before the Iowa Industrial Commissioner

Alleging serious impairment of vision as a result of employment by the Gas Tank Recharging Company, A. Earhart, the claimant herein, seeks an award for such disability.

In arbitration December 15, 1920, it was found:

"That the impaired condition of the claimant's eyes is the result of the nature and the ordinary conditions of his employment and not the result of an accident within the meaning of the compensation law."

The facts in this case as developed in the record are substantially as follows:

In February of 1920, this relation of employer and employe was established. During this employment, to-wit: On May 18, 1920, an accident occurred to claimant in which his right eye was burned by a spark from the furnace. On the part of the insurer liability was accepted and compensation paid for disability accruing up to and including June 5, 1920. From the evidence it would appear that the defendant is justified in denying liability further than that met in these compensation payments because no permanent injury as result of such accident is apparent.

On the part of claimant it is alleged, however, that

"While undergoing said treatment he discovered that the sight of both eyes was so impaired that he has lost the use of both to such an extent that he cannot pursue any kind of labor that he was accustomed to follow and charges that this loss of sight has been caused by his employment of said Gas Tank Recharging Company's business by the excessive use of heat, electric light and lime."

The record indicates that arising out of and in the course of his employment substantial loss of vision was sustained by A. Earhart.

The only question involved is as to whether or not injury sustained under circumstances disclosed is within the coverage of our Workmen's Compensation statute.

Dr. F. J. Chapman, eye, ear, nose and throat specialist, who had charge of this case, testifies (transcript p. 24) as follows:

"A. I could not improve on my diagnosis. He has amplyophia which is the term for poor vision from a cause I could not discern. I could not find any organic lesion in the eye which accounts for it.

"Q. What, in your opinion, would be the effect of intense electric light near which he was engaged all the time?

"A. It is very similar to snowblindness which produces degeneration of the retina."

The compensation statute in subsections (f) and (g), Section 2477-m15, in qualifying the words "injury" and "personal injury" as applied to industrial experience, states:

"They shall not include a disease except as it shall result from the injury."

The word "accident" occurs seven times in the Iowa Workmen's Compensation law. It has not been held by this department that no recognition whatever shall be given to industrial injuries which do not find inception in what may technically be termed an accident. And yet it is believed our compensation statute does not cover industrial injuries which are not centered in some focalized incident of comparatively definite character. From the evidence it would appear that the impairment of this workmen's vision was of gradual development and attributable to the exposure of the employment and not to focalized injury in the employment.

It has been held by this department that where gas fumes result in disability with comparatively brief and definite exposure compensation is due. Also where injury results from unusual exposure to low temperature or high temperature, though the minute or perhaps the hour of culmination cannot be ascertained, compensation must be forthcoming. But in cases like the one under consideration, where experience long drawn out results in disability without evidence of any accident or any definite injury to be confined in its inception to reasonable limits, the law does not afford relief to the workman. Many citations might be submitted in support of this conclusion.

We have reluctantly accepted this interpretation of the statute. All injuries of any kind or character arising out of and in course of employment should call for compensation payment. The Commissioner has so recommended to the legislature. It is necessary, however, to administer the law as it is rather than as it ought to be in the judgment of any individual. If this case is compensable all disability arising from occupational injury or disease is covered by our statute.

It is therefore held that the injury sustained by A. Earhart in his employment of this defendant is not compensable in character under the Workmen's Compensation statute.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 2d day of June, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by District Court. Pending in Supreme Court.

HERNIA, WHEN NOT COMPENSABLE.

Frank L. Springsteel, Plaintiff,

vs.

Hanford Produce Company, Defendant,
London Guarantee & Accident Company, Insurance Carrier.
C. R. Metcalfe, for Claimant;
E. M. Corbett and Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Sioux City December 3, 1920, this finding was made:

"That Frank L. Springsteel suffered a personal injury on the 8th day of March, 1919, in the course of and arising out of his employment by the Hanford Produce Company.

"That as a result of this injury, excepting for eleven months, the claimant has been totally disabled since the date of injury and that he is now totally disabled as a result of his injuries and that hernia apparently resulting from the injury, contributes largely, if not solely to such disability.

"Defendants are ordered to pay claimant at the rate of $13.50 a week for disability to date and in addition are ordered to arrange for and tender the claimant an operation for his hernia and if accepted to pay for the same, including hospital and incidental expenses and to pay claimant compensation at $13.50 a week for such period as he is disabled following the operation, and also to pay claimant compensation at $13.50 a week from date up to time operation is performed.

"Should claimant refuse such operation when arranged for and tendered defendant shall in that event pay claimant compensation at $13.50 a week from this date until operation is tendered and in lieu of operation pay the claimant six weeks compensation at $13.50 a week and in addition $100.00 as reasonable cost of operation, whereupon they shall be discharged of further liability."

From this decision both parties appealed. The defendant denies that the hernia now promoting disability is chargeable to the injury of March 8, 1919. It alleges that if an order is made for compensation payment it should be on the basis of $11.54 per week. A letter from claimant's counsel in the department's record concedes this demand. The claimant denies the right of the committee to conditionally limit the award and to order an operation, and demands judgment for 400 weeks of compensation payment.

The record discloses that on or about the 8th day of March, 1919, this claimant with another employe of defendant were loading butter from a platform into a freight car. As they were wheeling a truck loaded with tubs across the intervening plank, the said plank slipped from the platform. Whereupon these workmen fell upon their backs and received upon their persons a number of tumbling tubs. The fellow workman escaped without injury.

On the date of injury the employer reported this case to the Industrial Commissioner as required by law as "legs bruised."

Springsteel testifies (transcript p. 11):

"It ketched me right across the legs, and the corner of the truck ketched me right in here.

"Q. Well, where is that—you say right in here—

"A. Right in the groin, four inches above my groin, it was all tore up and skinned up and I really had pain there ever since."

Dr. Dailey was the attending physician following this accidental injury. He testifies, (transcript p. 66):

"I found abrasions on the left limb, the right knee, the right limb, and the left leg half way between the knee and the hip, and the left hip had some abrasions. There had been some hemorrhage into the hip up near the pelvic bone."

Dr. Dailey said he discovered no internal injury.

Springsteel returned to the employment of the defendant on the 5th day of May following the accident of March 8th. He did not (he says he was unable to do so) return to his old line of employment but was given an elevator to run where he received wages higher than he was receiving at the time of the injury. He continued at elevator service for a period of eleven months, when he quit work because of hernial development.

On the 21st day of April, 1919, there was filed with this department a Memorandum of Settlement between this workman and the Hanford Produce Company with compensation payment as agreed upon at $11.54 a week, commencing March 23, 1919. Weekly payments ceased when Springsteel returned to work.

Application for arbitration was filed with the department July 7, 1920, with hernia evidently as the cause of action. At this time claimant was manifestly suffering from rupture on both sides. Since there was no basis for settlement upon what is known as the schedule for permanent injuries any disability chargeable to this accident must be under the legal rule made and provided for temporary disability.

If the hernia from which Springsteel is suffering is due to the accident of March 8th, 1919, he is entitled to compensation on this basis. It becomes necessary, therefore, to ascertain whether or not the record justifies the assumption that the rupture was so caused.

Upon its understanding of the law as applied to cases of hernia this department has uniformly held that in order to justify a claim for compensation there shall be definite evidence of hernial development attended by pain and manifest need of surgical operation immediately attending the injury; that compensation cannot be consistently awarded in cases where hernial development occurs at a time more or less remote from industrial injury alleged to be the cause of the same. This is believed to be the rule of medical science and of legal jurisprudence everywhere.

At the time of this accident claimant gave no suggestion either in his person or in anything he expressed as to hernial ailment. He testifies (transcript p. 17) that the first he knew of his hernial trouble was five or six weeks after the accident. He further testifies (transcript p. 30-31) that he visited Dr. Dailey at his office about nine weeks after the accident. Asked: "Did you tell him you had a rupture or anything of that kind?" The answer was: "No, sir, I didn't know it. I commenced to think in June or July that I had a rupture because when I would cough right hard I could feel something come out and then go back again."

Tom Heney was the workman handling the butter tubs with Frank Springsteel. In describing the situation immediately following the accident, these statements appear: (Transcript p. 8)

"Q. Did he say anything where the pain was?

"A. He claimed his leg—this left leg.

"Q. Did he say anything whereabouts on the leg the pain was?

"A. Well—his leg, that is all I could get from him.

"Q. Did you hear him say anything about having a pain in his abdomen, or being hurt in any way?

"A. Not at that time, any more than just the pain in that leg—that is all I know anything about at that time."

Dr. Dailey, the attending physician, testifies as follows relative to abdominal trouble (Transcript p. 68):

"Q. Did you make any examination into the groin, or the lower portion of the abdomen for any other injury?

"A. Yes, sir. At the time of the injury, do you mean?

"Q. Yes, sir.

"A. Well, I looked all over the abdomen, there—

"Q. Did you discover at that time any symptoms of a hernia or a rupture?

"A. No, sir.

"Q. Was there any hernia present that you could see on either side?

"A. No, sir.

In this connection the doctor states that the patient was lying in bed and that he "might not have detected any rupture there at that time."

He examined him later—March 8th, 10th, 13th and 28th and at the office on April 4th.

(Transcript p. 69.)

"Q. Did you at any of those later dates make any examination of him?

"A. Yes, sir.

"Q. What examination did you make?

"A. I wouldn't say which date it was, it was either the 13th or the 21st of March; we had him set up on the edge of the bed and we examined him, and on the last one or two days I had him sit up in the chair entirely out of the bed, and with his feet propped up in another chair, and the last day we had him stand up.

"Q. On that date that you said you had him standing up, was there any evidence of injury to this left groin, near the pelvic bone?

"A. No, sir.

"Q. Any evidence at all of such an injury?

"A. Yes, there was the evidence on the hip and on the legs.

"Q. But was there any evidence of any injury to his abdomen—to the abdominal cavity, more particularly with reference to a hernia in the scrotum?

"A. No, sir."

William Moissmer, foreman of the Hanford Produce Company (transcript p. 86) testifies that at the time of the accident Springsteel complained only of pain in his legs and mentioned no other injury. When he returned to work the foreman states his complaint as to disability was merely as to his legs and that he said nothing whatever about any abdominal trouble of any kind.

Defendants' Exhibit "B" is a duly authenticated report of Dr. Chas. E. Magoun upon examination dated June 28, 1919. This report notes the presence of varicose veins; also says:

"Springsteel complains of numbness slightly at times in right foot below ankle, left leg below knee and slight pains in left thigh while standing. However, on examination he has normal sensation, motion, function and strength."

Called by claimant, Dr. Schott testified to the presence of double hernia upon his examination a few days previous to the arbitration. Further:

(Transcript p. 47.)

"Q. Now, you would not say that these injuries, or these hernia, as you have them here, were produced by this accident, would you?

"A. Not unless they came down soon after the injury.

"Q. When you say not unless they came down soon after the injury, when, in your judgment would that be, within what time—within a day or an hour or what?

"A. They would have come down within an hour or a half hour after the injury, or you might not have observed the protrusion or the hernia at that time.

"Q. But the probability is in the greater number of cases, that they would come down within say twenty-four hours, isn't it?

"A. Yes, they would be started within twenty-four hours."

On page 387 of *Bradbury's Workmen's Compensation*, Third Edition, appears this statement:

"To establish the fact that hernia is caused by accident arising out of the employment it is necessary for the injured employe to show that the injury caused immediate disability by reason of the pain at the time of the accident. Where such accident is followed by a later development of hernia the accident must usually be regarded as the occasion rather than the cause of the injury and compensation be denied."

A long list of cases in support of this declaration is appended.

In the same volume, page 389, is an extract from a Connecticut decision, *Mackay vs. American Brass Co.*, which follows:

"Hernia is ordinarily a disease; genuine traumatic hernia is very rare. A sudden or severe strain incident to an employment may be and frequently is 'an exciting cause' of a hernia. When a man who has to all appearances previously been in good health, gives a history of a sudden pain following some unusual strain incident to his occupation and immediately thereafter the tumor of hernia is found where no such condition existed before, there may be fairly be said to be such a causal connection between the employment and the hernia as to justify an award."

From *Honnold, on Workmen's Compensation*, Vol. 1, page 295, we quote:

"In Coley's monograph on Hernia in Keen's Surgery, Vol. 4, p. 27, it is said: 'Kaufman of Zurich has made a careful study of this question based upon medical jurisprudence. These are his conclusions: A hernia in order to be entitled to any indemnity, must appear suddenly, must be accompanied by pain, and must immediately follow an accident."

The case of *Meade vs. Wisconsin Motor Company*, 199 N. W. 619, affords suggestion of deep significance applying to the case at bar.

In its decision dismissing the application for compensation, the Industrial Commissioner stated:

"Inguinal hernia rarely results from accident. It comes from inherited or acquired weakness, and develops gradually. Because of this it has been necessary for the commission to require definite proof that the hernia was produced by accident. The applicant must prove that the accident was such as could produce a hernia, that the hernia appeared immediately after the accident, that it was followed by pain immediately disabling the applicant, and that the applicant gave immediate notice of the injury to the respondent."

The circuit court reversed this decision, as circuit or district courts are wont to do.

In its opinion sustaining the Industrial Commission, the Supreme Court of Wisconsin said:

"The commission assumes from common knowledge that inguinal hernia is rarely caused by accident, but is generally the result of inherited or acquired weakness. These facts concerning the cause of hernia seem to be so generally known and undoubted that no proof of them is required. The proceedings in compensation cases sustain the conclusion that this assumption is correct."

Numerous cases cited.

Restating the rule of the Industrial Commission—

"* * * * To require definite proof that hernia was produced by accident; * * * that the accident was such as could produce a hernia; that the hernia appeared immediately after the accident; that it was followed by pain immediately disabling the applicant."

The court concludes:

"We cannot say that these requirements are not reasonable and essential in determining whether or not hernia is due to accidental injury nor that the commission wrongfully applied these tests in determining whether or not plaintiff was injured in the course of his employment as he claims."

There would seem to be substantial foundation for the statement that in medical and legal jurisprudence the opinion is so general as to be practically unanimous that hernial development cannot be charged to industrial accident unless abdominal pain and protrusion are in evidence immediately after the injury in question. Citation could be multiplied indefinitely in support of this statement.

While under some circumstances hernia is clearly compensable under the laws of this and other states as uniformly interpreted, justice demands that great care be exercised in the application of rules so well established in medicine and in law.

Counsel evidently considers a point is gained in demanding of the defense explanation of the hernial condition of this workman since no later accident is in evidence. It should be remembered the burden is on the claimant to prove himself entitled to compensation upon the basis of injury arising out of and in course of the employment.

Workmen's compensation under existing laws is not health insurance, neither is it old age pension. It assumes to deal only with injuries arising out of and in course of the employment. It does not afford coverage for anything that may happen to a workman without the hours of his industrial engagement. When not so engaged a workman may fall down stairs or get a severe jolt in getting off a street car, or stepping from a curb. It is a well known fact that hernia is largely due to congenital causes. Under certain congenital organization rupture is most likely to occur. A cough or a sneeze has frequently produced it, or it may appear without a possibility of being traced to any distinct shock to the physical structure.

It is only necessary for us, however, to consider this case as to the probability of the existing hernia having had practical or presumable contact with the injury in question. Under the evidence interpreted by medical skill and legal genius such contact is impossible of establishment.

The fact that the decision of the arbitration committee liberally awarding compensation with the very common requirement in such cases as to an operation is resisted by this claimant. Any doctor of standing will testify that an operation of this character would restore this workman to usefulness and that very little danger attends such operation. If no compensation were involved almost any man under such circumstances would sacrifice anything he possesses to secure such service with such definite prospect of restoration to usefulness. The evident determination to demand 400 weeks of payment on the basis of total permanent disability while resisting the suggestion of operation is so unreasonable as to afford grounds for prejudice.

This department is abundantly on record as to its sympathetic administration of the compensation statutes. It has been distinctly loyal to the humane policy of resolving reasonable doubt in favor of injured workmen or their dependents. It must not, however, contribute to the plain miscarriage of justice. Rights well defined must not be sacrificed to sentiment.

It is to be remembered that in such cases as this in the final analysis the insurer has not much at stake. He gets the measure of cost of carriage and adjusts his premium rates accordingly. Nor is the employer finally much concerned in such rates. He merely passes any extra charge on to the consumer. The general public, of which the workman is a part, has no escape from the burden of such charge. Regardless of consequences, society must be taxed to share with the workman or his dependents the misfortunes of industrial accident, but care should be exercised in confining the burden within bounds absolutely legitimate.

In this spirit is the case at bar considered. The unfortunate claimant is suffering from hernia, and, according to medical evidence in this record, sundry other physical ills. Interpreted in terms of law and medicine and common experience, however, these misfortunes do not arise out of the accident of March 8, 1919, and the defendant is not held in liability for unrelated consequences.

WHEREFORE, the award of the arbitration committee is not sustained and the Hanford Produce Company is held in no further liability to Frank Springsteel except in the sum of $33.70 as admitted by defendant.

Dated at Des Moines, Iowa, this 12th day of May, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in District Court.

HERNIA—FAILURE OF PROOF.

Mike Bunich, Claimant,

vs.

Sheffield Tile Company, Employer,
Integrity Mutual Casualty Company, Insurer.
Robinson & Boomhower, and L. A. Moe, for Claimant;
H. W. Raymond, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Sheffield, April 6, 1921, decision in this case was for defendant on the ground that claimant had failed to sustain the burden of proving that the hernia for which he seeks compensation payment resulted from injury arising out of and in course of his employment by the Sheffield Tile Company.

The evidence upon which the arbitration committee based its decision fails to disclose any measure of corroboration in support of this claim.

Bunich testified that on December 8, 1920, he was assisting in transferring cars of tile from the drier to the setting gang when the car ran off the track, and while aiding in putting the car back on the rails he had a sharp pain in his stomach and felt dizzy. Felt "sick all afternoon and felt so dizzy, and had kind of a pain through my stomach." Said he told the "other fellow" that he was sick. Could not remember the name of the "other fellow" and was unable to locate him.

B. S. Andrews, yard foreman of the defendant, testified that the only days claimant was engaged, as he declares in transferring cars from the driers to the kilns, was on the 11th and 14th of December. He is positive he could not have been so engaged on the 8th, as the record kept by himself plainly designates the 11th and 14th only as devoted to such service. Andrews says he never knew of any accident of any kind happening to this workman while in the employ of the defendant, though he was all the time practically under his immediate supervision; that he never said anything about getting hurt; that he continued to work for a number of days after the date he alleges to have been hurt without any apparent disability or distress; that subsequently, when advised that Bunich was making this claim, he made particular inquiry among the workmen and was unable to get any report whatever as to any accident or injury having occurred to the claimant during his engagement with defendant.

J. M. Edgington, superintendent of the Sheffield Tile Company, corroborated the statement of Andrews that when Bunich left the employ of defendant he spoke about needing an operation for appendicitis but never made any mention whatever of any accident or injury having occurred during this employment; that recent diligent inquiry among the workmen failed to disclose any evidence whatever as to such injury.

George Cutler, an employe of defendant, in a capacity of kilnsetter, corroborated the testimony of the foreman that Bunich worked transferring tile only two days during his engagement; that he never heard the workman make any complaint about having an accident or being hurt; that "Mike told me he had appendicitis two years ago."

Upon this record the arbitration committee was unquestionably justified in its decision adverse to claimant.

For consideration in the review proceeding, the deposition of Walter Lampe is submitted. This witness is alleged to be the "other fellow" referred to in the arbitration testimony of this claimant as being able to corroborate the circumstance of injury as alleged.

In this deposition Lampe testifies that he was working with Mike Bunich on December 8, 1920, and during such engagement while shoving the car off the track to the transfer, claimant complained of pain and said he was sick. Does not remember whether he finished the afternoon or not. Supposes he did. In cross-examination, asked if he recalled the date he had given as the time he worked with Bunich, he replied: "I don't recall if it was that same date. It was somewhere along that time." He worked with him only one day. Asked if the claimant said anything about having hurt himself, witness answered: "No, he said he was sick—that's all." Very hazy about date. Doesn't remember when Mike first subsequently spoke to him about this occurrence. "It was early in the Spring. The ball season was open."

Quoting from Recross-examination:

"Q. Your memory about the date is not so definite but that if the records of the plant showed that the day you worked with Mike was in the latter part of November—that might be true, might it not?

"A. As far as I know, it might have been. I don't remember the date.

"Q. This is what I wanted to get, Walter, your knowledge is only approximate—that is—it might have been the last part of November, or it might have been the first part of December, that is as near as you can tell?

"A. Yes.

"Q. Now, Walter, isn't it a fact that you knew nothing about December 8th being the exact date you worked with Mike, until you talked with Mr. Moe just before this examination? That is, he suggested to you that December 8th was the date that this happened?

"A. That is what he said just a few minutes ago.

Redirect examination:

"Q. Are you sure that it was after the bonus was declared?

"A. It seems to me like it was. I don't remember the date. I only remember this particular day, because it was the only day that I ever worked with Mike.

"Q. I told you that that was when Mike claimed it was?

"A. Yes."

The testimony of this witness is so vague and vacillating as to be of little practicable value as corroboration. He knows of no accident or injury as the basis of any measure of disability as alleged by Bunich. He is so accommodating in spirit as to endorse almost any sort of expression suggested by counsel in support of either contention.

In compensation generally, hernia is held to be compensable only when it arises from specific injury involving some definite tangible incident of employment. The demand upon the workman is not so drastic as to make difficult the establishment of a claim if good faith is manifest and substantial corroboration, circumstantial or otherwise, can be submitted in evidence. The law cannot be so broadly interpreted, however, as to sustain a claim for compensation in cases where no corroboration of practical value is in evidence.

The fact that a workman is operated upon for hernia at about the time he was in some certain employment does not suggest the burdening of such employment with such injury, unless it is clearly shown to have arisen out of the employment. In this case there is no substantial basis for such conclusion.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 30th day of November, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

CARETAKER INJURED IN STREET ACCIDENT—AWARD.

Edward Pierce, Claimant,

vs.

Wallace Benjamin, Employer,
Travelers' Insurance Company of Hartford, Connecticut, Insurer.
A. S. Hazelton, for Claimant;
Bert J. Hull, for Defendants.

In Review Before the Iowa Industrial Commissioner

Stipulation on file waives arbitration proceeding and authorizes submission of this case to the Industrial Commissioner for proceeding in review.

Facts agreed to in stipulation are substantially as follows:

Edward Pierce was in the service of this employer as custodian and janitor of the Merriam Block at Council Bluffs. In the performance of his duties it devolved upon claimant to serve clients of Wallace Benjamin having to do with the occupancy of the Merriam Block; also to make frequent trips in the course of his employment to various points about the city in the interests of his employer.

In crossing the street with a prospective client to visit the office of his employer, on October 5, 1921, it is agreed that "Edward Pierce was run down by an automobile and severely injured; that his hip was broken, his back injured, thigh severely bruised and soft tissues lacerated."

Upon this statement of fact counsel or court may take either side in controversy and find in the authorities plenty of support. Injury sustained under similar circumstances has been many times given and denied award of compensation. Such conspicuous conflict in opinion would seem to justify this tribunal in the exercise of its own judgment and conviction as to what ought to be done in this case, under the plain leading of law and fact.

At the time of his injury Edward Pierce was where he was expected to be, doing what he was required to do under his contract of employment. He was doing in the ordinary way the tasks developed out of the day's work. He was strictly within the scope of his employment. His sole purpose was to serve the interests of his employer. It is agreed that he was required to make frequent use of the streets in passing between the Merriam Block, of which he was in charge, and the office of his employer, and to go upon all sorts of errands elsewhere about the city of Council Bluffs in the discharge of his duties.

In view of the plain facts of the case, to cavil over the technicalities of "common street hazard" is to endeavor to "make the worse appear the better reason."

To seriously assume that this injury did not in deed and in fact arise out of the employment is to specialize in the devious while ignoring the obvious.

WHEREFORE, it is held that the injury sustained by Edward Pierce October 5, 1921, arose out of and in course of his employment.

Accordingly, award is ordered in the sum of $15.00 a week, under statutory limitations, together with the payment of medical, surgical and hospital expense to the extent of $200.00.

Dated at Des Moines, Iowa, this 29th day of May, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

EPILEPSY NO BAR TO RECOVERY IN CASE OF INJURY FROM ACCIDENT—SUFFICIENT PROOF OF NON-RESIDENT ALIEN DEPENDENCY.

Antonia Helia, by Czecho-Slovak Consul, Omaha, Nebreska, Claimant,

vs.

Quaker Oats Company, Employer,
Employers Liability Assurance Corporation, Ltd., Insurance Carrier.
Joseph T. Votava and S. V. Shonka, for Claimant;
C. F. Jordan, for Defendants.

In Review Before the Iowa Industrial Commissioner

Defendants appeal from the arbitration decision, dated January 16, 1922, by the Deputy Industrial Commissioner, Ralph Young, additional arbitrators having been waived.

November 8, 1920, Joseph Helia lost his life in the employ of the Quaker Oats Company, of Cedar Rapids.

The equipment of this company includes a lift ran by an endless belt, with platforms at convenient distances, upon which workmen pass from floor to floor in the course of their employment. On the date recited the deceased workman stepped upon this lift and shortly thereafter his body came tumbling down the shaft, death ensuing almost instantly.

Resistance to this compensation claim is based upon these grounds:

"1. That the death of this workman did not arise out of his employment because he was subject to epileptic seizure to which infirmity his death was due.

"2. That if this defense is not held to be valid, the record does not justify an award of dependency, as claimed, because of failure upon the part of the claimant to establish such dependency."

The record sustains the allegation that Joseph Helia was subject to occasional epileptic attack. Testimony of several witnesses supports the statement that about an hour before the accident the workman sustained such an attack while at his usual employment. Evidence submitted indicates, however, that when Joseph Helia entered the lift he was in normal condition of mind and body.

The claim that the fatal accident was due to impairment of faculty related to epilepsy is mere conjecture. If it were admitted, however, that Helia lost consciousness while in the lift and fell to his death because of such loss, this fact would not constitute a substantial defense to this claim.

The workman was in his line of duty. He had been by his foreman directed to use the lift to carry him to the performance of duty on that particular occasion.

No doubt can exist as to the fact that Helia's death was due to his fall from a perilous position, which would call for compensation payment even if it were known that the fall from this point of peril was occasioned by epileptic seizure.

From Honnold, on Workmen's Compensation, at page 461, we quote decisions following:

"Where a man working on the edge of an open hold on a ship had an epileptic fit and fell into the hold, the accident arose out of the employment. *Wicks vs. Dowell & Co., Ltd.*, (1905) 7 W. C. C. 14, C. A. This case was followed in the case of *Driscoll vs. Cushman's Express Co.*, Mass. W. C. C. (July 1, 1912-June 20, 1913) pp. 125, 130, where the driver of an express wagon, employed by the defendant, while driving his wagon, suffered a fainting fit or an 'epileptiform attack,' falling from his wagon and fracturing his skull dying from the effect of the fracture. It was held by the Industrial Accident Board in review, and in confirmation of the decision of the Committee on Arbitration, that the employe was exposed to a substantial and increased risk owing to his occupation, that the injury arose out of and in the course of his employment, and that the dependent mother was entitled to compensation. In *Fennah vs. Midland, etc., Ry.*, 4 B. W. C. C. 440, where an engine driver, at work on his engine while stopped at a station, tightening up a nut, fell to the permanent way and died from the effects of the fall, and where it appeared that he had previously had fainting fits, it was held that recovery could be had—that it was an accident arising out of his employment."

The more recent Illinois case, 122 N. E. 759, is directly in point. A workman, named Madison, subject to epileptic attack, fell into an ash pit and was so badly burned as to cause his death. The Supreme Court of Illinois held that while the fall may have been caused by epileptic fit, it was by his falling into the pit while engaged in performing the duties of employment that Madison was so severely injured that he died from the injuries. Deceased did not die from epilepsy or pre-existing disease, but from burns he received from falling into the pit. If the injury was due to the fall the employer is liable even though the fall was caused by the pre-existing disease.

This theory is held to be sound and the consequent conclusion is just and fair. The fatal factor in this case was not the infirmity of epilepsy. The fall due to peril involved in the course of employment and to which this workman was subject by specific order of his superior is clearly the proximate cause of death.

As the widow of Joseph Helia this claimant appeals for dependency provided by statute. Her residence is in Bohemia under the government of the Czecho-Slovak Republic. Numerous exhibits submitted tend to establish the existence of this widow, her marriage with Joseph Helia and uninterrupted marital relations through correspondence and remittances of support by the husband. Counsel denies the sufficiency of this evidence.

In all cases of non-resident alien dependency claimants are embarrassed by difficulty in securing and transmitting evidence required to establish their claims. If it were necessary to prove beyond all reasonable doubt material facts alleged, it would be hardly possible to make a competent record.

It becomes necessary in all such cases to consider all evidence submitted in the light of greater probability. A preponderance is created by evidence tending to establish validity where only general denial is plead in defense.

In this case it is not necessary to rely upon conjecture. It would seem to be well within the range of probability that Antonia Helia was married to the deceased workman and at the time of his death sustained legal marital relations with him.

The defense would seem to be justified in alleging error in the matter of weekly compensation as found in arbitration. The record discloses the weekly earnings of Joseph Helia at the time of his decease to have been $24.23, which would entitle this claimant to $14.54 a week instead of $15.00 a week for a period of three hundred weeks as awarded.

The arbitration decision is thus amended and as so amended it is duly affirmed.

Dated at Des Moines, Iowa, this 16th day of September, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

MODIFICATION OF AWARD.

Carl Mattson, Claimant,

vs.

Johnson Cement Sidewalk Company, Employer,
London Guarantee & Accident Company, Insurer.
Max M. Hemingway, for Claimant;
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at the department May 28, 1921, the defendant was held in compensation payment to Carl Mattson to the extent of 160 weeks on the basis of 40 per cent of total permanent disability.

Review was requested by defendant. At the hearing on this date argument was submitted by counsel for both parties.

Upon due consideration of all evidence and argument submitted, it is hereby ordered that the arbitration decision be modified in that the period of compensation payment shall continue for 150 weeks instead of 160 weeks as previously decided.

Dated at Des Moines, Iowa, this 13th day of June, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INJURY TO PROSTATE GLAND—AWARD.

William Rhoades, Claimant,

vs.

Consolidation Coal Company, Defendant.
Clarkson & Huebner, for Claimant;
Mabry & Mabry, for Defendants.

In Review Before the Iowa Industrial Commissioner

Claimant was disabled for a period of several months on account of the development of an abscess in the prostate gland, due, as he alleges, to an injury arising out of and in course of his employment by the defendant company.

In arbitration April 19, 1922, claimant was awarded compensation at the rate of $15.00 a week to cover the period of disability, costs being assessed to defendant.

The record submitted is substantially as follows:

On the 1st day of June, 1921, William Rhoades and his miner buddy, Plummer Higgins, were pushing a coal car around a curve into a mine room, when the feet of claimant slipped and he fell upon the rail of the car track which he was straddling during the pushing process. This fall was followed by intense pain in the groin. After a time an effort was made by him to resume labor. He proceeded to bore a hole for blasting but was unable to perform any further labor during the day, though he stayed in the mine until evening.

Some three days later he returned and attempted to work but got no further than the boring of another blasting hole when he was unable to work any more. Some three days later he called a Dr. Chester, who administered simple treatment to the parts evidencing distress. A day or two later, in the absence of Dr. Chester, a Dr. Snyder was called, who insisted upon hospital treatment. Claimant was taken to the Miners Hospital, at Albia, where he was treated or operated upon for abscess of the prostate gland.

Defendant employer denies liability on the ground that the cause of disability is not found in any accident or incident of employment as alleged by claimant. On its part it is contended that if the incident as described by Higgins and Rhoades is true, the fall described could not have been the proximate cause of disability. Both parties devote considerable testimony to the details of the car pushing incident, the plaintiff to show how easily violent contact with the track rail might have caused this injury, and the defendant to show how impossible it was for the fall as described to have afforded any basis for the disabling abscess because the seat of infection could not have had actual contact with the track rail.

Dr. Gutch testifies to a belief that the contention of defendant is highly probable. In the deposition of Dr. H. C. Eshbaugh, of Albia, sup-

port is given to the contention of claimant, that is to say, that the experience as related in the record of the arbitration committee afforded substantial basis for the presumption that the abscess had its inception in the injury as alleged.

The defendant submits a plausible theory in this denial of obligation. It is not unreasonable to suppose that falling prostrate, as Rhoades and his buddy declared Rhoades did, in describing the situation, does not indicate traumatic injury.

With this admission, however, what are we to do with the evidently intimate relationship between this fall and the subsequent disability? There is nothing in the record to discredit the claim that William Rhoades, up to the date of this car pushing incident, was performing the work of an able bodied man. Nothing is submitted tending to prove that his disability did not commence on the day of the fall, as claimed by Rhoades and Higgins. Must we assume that by a mere coincidence Rhoades was able bodied on the last day of May, and that on the first day of June he suddenly became unable to further function as a miner?

It is not necessary to assume disability to have resulted from actual contact with the affected parts. In any event, the fall as described would produce an unusual strain and jolt to the physical structure. It may have been that disease was already doing its work at the point of infection and that this strain and jolt precipitated developing more immediate disability. Absolute knowledge is not available.

The burden is on the claimant, but this does not require proof to a dead moral certainty that no cause other than that alleged affords basis for disability. If he has established in evidence the inherent probability of his contention, his case is made. Of course the defendant is not required to prove a negative but where disability is by evidence of credible tendency, linked with accidental injury arising out of employment, something more than general denial on the part of defendant is necessary to the defeat of compensation.

In a situation more or less involved it becomes necessary to exercise the reasonable rule of greater probability. The disability of William Rhoades may have been due to a cause other than that alleged. The fall upon the railway rail may have had nothing to do with the disabling abscess. But in view of all the facts submitted it is more reasonable to assume this to have been the source of injury than that, in the absence of any suggestion of another cause, the fall and disability coming in close relationship was a mere coincidence.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 18th day of August, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in District Court.

LACK OF NOTICE—DISPUTED DEPENDENCY OF MOTHER—AWARD.

Sarah Barton, Claimant,

vs.

Ottumwa Railway & Light Company, Employer,
The Fidelity & Casualty Company of New York, Insurer.
Lloyd L. Duke and Newton W. Roberts, for Claimant;
McNett & McNett, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration proceeding at Ottumwa, May 14, 1919, Delmar Green, as the alleged son of Harley E. Green, deceased, contested with Sarah Barton the right to dependency in this controversy. At this hearing it was decided that Delmar Green was unable to establish dependency either upon the basis of conclusive presumption or actual contribution from the deceased. It was also decided that Sarah Barton, mother of deceased, was actually partially dependent upon the basis of contribution from the deceased son to the extent of $364.00 a year.

Review proceeding was instituted by the defendant on the ground that Delmar Green nor no one authorized to represent him had received due and legal notice of the hearing, wherein his claim for compensation was denied.

Also that Sarah Barton was not a dependent of deceased, Harley E. Green, within the meaning of the statute, but if so, to any extent the arbitration committee is not supported in the amount of its award by the record in this case.

At a supplemental arbitration hearing at Ottumwa, August 2, 1921, after due notice upon a legal representative of Delmar Green, the arbitration committee reaffirmed its formal decision as to want of merit in the claim of Delmar Green without disturbing its award to this claimant, Sarah Barton.

In this review proceeding as of date November 15, 1921, Delmar Green is eliminated from the record because of non-appearance, explained, perhaps by a current report as to his recent demise.

Therefore, the only issue involved herein is as to whether or not the arbitration committee erred in its award of dependency to Sarah Barton.

Harley Green, son of this claimant, lost his life under compensable relationship in the employ of this defendant March 4, 1918. For some time prior to his death he had been an inmate in the home of his mother. On page 4 of the transcript Mrs. Barton testifies she "got all his wages, except four or five dollars to get his clothes." On page 41 of the transcript she testifies that she received from him as support, sums ranging from nineteen to twenty-two dollars per week during a considerable period preceding his death.

The only evidence in support of this claim is that of Mrs. Barton and her husband, Frank Barton. Counsel denies the establishment of any claim whatever because of inconsistencies of their testimony and in view of its self serving character. No evidence is introduced in rebuttal; and hence, it becomes necessary to reach a conclusion based wholly upon the statements of these interested witnesses.

It is always necessary to make a good deal of allowance for lack of details in support of claims for actual dependency because of the improbability of existing evidence of a definite and absolute character. But for this lenient practice it would be difficult, if not impossible, to establish a fair measure of contribution in the most favorable cases. Of course, there is no expectation of the calamitous event which creates the claim. The average dependent is not given to methodical practice in accounting and if he were, the circumstances do not suggest such record of contribution as would be at all exact in statement. The demands of justice, under the terms of the statute, makes it necessary to use all diligence and exercise all possible sources of information in developing from an involved situation conclusions just to all concerned.

Scrutiny of this record suggests the imminent probability of contribution as support from Harley Green to his mother. He had no other obligation except as to the purchase of his own apparel and necessary incidental expenditures. The mother evidently needed the support. The defendant fails in the effort to show the improbability of this conclusion. So it is reasonable to assume that Mrs. Barton appears in this controversy with a rightful claim to dependency. The question remains—to what extent?

The claim of Mrs. Barton, transcript page 4, that her son made regular weekly contributions of from nineteen to twenty-two dollars is wholly improbable and grossly inconsistent. It is clearly in evidence that he at no time earned more than $4.00 a day. He had no other means of support for himself or others. With maximum earnings, it is manifest he did not contribute any such sums as claimed. For some time prior to his death, the earnings of this workman were only $2.75 a day, making the weekly earnings substantially less than the weekly amounts said to have been contributed. So it becomes necessary to abandon these unreliable statements. When it becomes necessary to substantially discount conscious overstatement in sworn evidence, it is difficult, if not impossible, to exercise the process of elimination with nicety of precision.

The claim of Mrs. Barton was originally filed with this department June 8, 1918, about three months subsequent to the death of the son, by Attorney W. S. Asbury, who died a few months later. In his petition it was alleged:

"That during the summer months decedent furnished the complainant on the average of $5.00 per week, and during the winter months, or about six months out of the year when this complainant's husband did not have work, decedent furnished this complainant about $7.50 a week for her support."

It is only reasonable to assume that this petition was founded upon detailed statements of the claimant, Sarah Barton. While counsel might have, indeed he may have, made the figures of his instrument a little liberal, making allowance for shrinkage in the laundry of litigation, it is hardly conceivable he would minimize the amounts contributed to the average weekly sums of $6.25 if told by this claimant only a few months after the contributions were made that they were considerably greater in amount.

The arbitration committee found that contribution had been made to the amount of $364.00 a year, which means $7.00 a week. This is higher than the claim filed at the inception of this controversy, as shown above.

It does not appear either in the findings of the committee or in the petition filed by Mr. Asbury that any account was taken of the fact that during this period of dependency the son regularly boarded with his mother. In a number of cases this department has uniformly held that from the contribution must be deducted such sum as would be represented by the cost of food stuffs actually consumed by the deceased. Surely, it could not be consistently held otherwise.

A careful review of the very indefinite testimony upon which conclusion must be based does not create the impression that this workman could have contributed to his mother a sum in excess of $7.00 a week. From this sum a most reasonable deduction for the consumption of food, purchased by this contribution, and consumed by the workman himself could not amount to less than $2.00 a week. Hence, the conclusion is reached that in paying to this dependent mother compensation upon this basis, the obligation of the employer will be generously met.

It is therefore ordered that the award of the arbitration committee be so modified as to reduce the sum of weekly payment from $3.50 to $2.50, and as so modified, the arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 23rd day of November, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

LOSS OF EYE BY HOTEL CLERK ASSAULTED BY GUEST—AWARD.

E. J. O'Callahan, Claimant,

vs.

The Grand Hotel, Employer
Iowa Mutual Liability Insurance Company, Insurer.
E. F. Richman, for Claimant;
Sampson & Dillon, for Defendants.

In Review Before the Iowa Industrial Commissioner

In this case, September 27, 1921, an arbitration award was made in the sum of $13.84 a week for a period of 100 weeks for loss of left eye on January 2, 1921.

The review petition is based upon many counts, the more material of which are:

"1. That the alleged injury did not arise out of, or in the course of the employment;

"2. That at the time of his injury, claimant was without the sphere of his employment;

"3. That the injury was caused by the wilful act of a third person directed against the employe for reasons personal to him and because of his employment."

For sixteen months prior to January 2, 1921, E. J. O'Callahan had been in the employe of the Grand Hotel as night clerk. According to testimony of claimant he entered upon his shift as usual at six o'clock in the evening on the day of his injury. Just as he went to work two or three men came downstairs and complained of noise and loud talk on an upper floor. The offenders, as alleged, were Frank Moorehead, a registered guest, and two of his friends. This party soon afterward left the hotel, returning at a quarter to twelve.

The clerk protested against Moorehead taking his friends with him to his room because of complaints as to noise the parties had been making and insisted that they do their visiting down in the lobby. With much indignation and abuse the party of three proceeded to the stairway. The clerk hastened to head them off near the head of the stairs. Moorehead felled him to the floor by a blow on the left eye, and in so doing exhibiting furious indignation and applying vile epithets.

Claimant declares he was offering no more resistance than necessary in order to meet the requirements of duty, and that he was not abusive to Moorehood.

Frank Moorehead's story is to the effect that he and his friends had been entirely orderly and had done no drinking or carousing; that when he came in, near midnight with his friends, he was first refused his key, which was later delivered, but he was told that his friends must not accompany him to his room. He says near the head of the stairway the clerk offered resistance and called him a vile name. He thereupon delivered the blow which destroyed the left eye of claimant.

Ernest Moorehead and Omar Tomlin, the friends alluded to, corroborate the statements of Frank Moorehead, all insisting that none of them had taken drink; that they had been conducting themselves in a manner entirely above reproach and that the clerk had given Moorehead abundant cause for his assault. All three allege bad language and evidence of hostile intent on the part of the clerk.

In case of such serious conflict in evidence, it becomes necessary to consider the same as to inherent reasonableness and in the light of any measure of corroboration, substantial or otherwise.

O'Callahan had been night clerk at the Grand Hotel for sixteen months. There would seem to be ground for the conclusion that he was

disposed to adopt the usual attitude of a good hotel clerk toward guests of his employer. It would not appear he was in any degree quarrelsome by nature, and there is manifest no motive for engaging in controversy with Frank Moorehead other than that of his obligation to maintain order and to promote conditions consistent with good service to patrons of his employer.

Frank Moorehead and his friends would seem to protest too much as to their strict sobriety and absolutely irreproachable conduct. From the testimony of Ernest Moorehead, Frank's brother, the party had been at a pool room near the hotel. Doesn't remember whether or not his brother played pool. Doesn't remember whether or not there was any whisky in the room in the afternoon, but does know none of the party had been drinking and that all of them had been "very quiet."

Omar Tomlin couldn't say for sure whether he met the Mooreheads on the street or in the pool room, but he was with them in the pool room. Don't know how long they stayed, but should judge an hour or so.

Frank Moorehead says he hit O'Callahan "on the left side of the face," and "ordinarily I don't hit anybody with my left hand until I have to, unless it is to guard, or something." It wasn't his regular system. He didn't usually knock 'em that way, so to speak. This would not seem like the language or the attitude of a perfectly peaceable young man, but more like that of a sport or prize fighter.

All the testimony just reviewed was from interested sources. The claimant might not be disposed to make his side of the case any more unfavorable than necessary in the recital of his story. The young men would seem to have been associated for purposes offensive and defensive under such circumstances. A young man is no more likely to admit being drunk than a profiteer is likely to admit extortion, as neither is considered good form in polite society. But there would appear to be substantial corroboration to testimony submitted from disinterested sources.

In the hotel lobby at the time of this fracas were Charles Strohm and Charles Kane, both at that time residents of Muscatine.

Strohm testifies that when Moorehead and party came into the hotel near midnight, he was sitting in the office, some fifteen feet from the clerk's desk. Asked as to the condition of these men "as to being intoxicated or otherwise by reason of their actions and talk" he replied: "They were either drunk or crazy." He said when Moorehead wasn't allowed to take his pals up to his room with him "he cursed and swore and kept on going harder all the time." Asked if O'Callahan used any insulting language to Moorehead, he says: "No, sir, he talked to him like a gentleman."

The affidavit of Charles Kane, at present residing at St. Paul, was admitted to the arbitration record.

We quote from this affidavit as follows:

"O'Callahan preceded Moorehead to the top of the stairs, or rather to the first landing, the stairs being in two sections.

"He told Moorehead he could go to his room but that his companions could not go up and confronted the crowd to keep them back. O'Callahan was not talking in a loud tone of voice nor was he using profanity. Moorehead was talking loudly and profanely. I got up from the chair in which I had been sitting and went near to the parties to see what occurred and hear what was said. O'Callahan was holding out his foot toward them who stood below him. He was seized by the foot and was struck in the face by Moorehead and knocked down in the corner of the landing and on his trying to arise was again struck by Mocrehead.

"I am told Moorehead now is claiming that O'Callahan called him a son of a bitch and that was the reason he, Moorehead, made the attack on O'Callahan.

"I was close enough to hear all that was said and I did not hear O'Callahan make use of such language or call Moorehead any vile name prior to the assault nor do anything to provoke the attack, except his refusal to permit Moorehead to take his companions up to his room.

"The only swearing I heard was done by Moorehead.

"I would say that in my opinion Moorehead and his companions were under the influence of intoxicants."

Strohm and Kane, it will be observed, deny vile language or hostile attitude on the part of claimant, as alleged.

Scrutiny of this record would seem to support the conclusion that E. J. O'Callahan was well within the sphere of his employment in his dealing with Frank Moorehead. As night clerk he was assumed to exercise full authority of the entire hotel situation during his hours of service, in preserving order and in promoting the comfort of guests of the hotel as well as the interests of his employer.

There is evidence to justify the conclusion that Moorehead and his party were under the influence of liquor and that they were inclined to be more or less disorderly. On the part of the clerk the apprehension was justified that this party of young men would further disturb patrons of the hotel in the silent hours of the night if permitted to function socially in a room surrounded by guests.

The record does not impress us as justifying the conclusion that the clerk was insolent or that in his exercise of authority he used any extreme phyical or vocal means. Assuming, however, that he had, in the excitement of his justifiable endeavor to maintain order, used means more harsh than absolutely necessary, in view of his responsibility and evident endeavor to perform a service loyal to his employer, he would not thereby have deprived himself of compensation coverage.

This injury certainly occurred in the course of employment, and in view of all the circumstances involved, it arose out of the employment.

The element of defense worthy of most serious attention is the provision of law contained in subsection (f) of Section 2477-m16, Supplement to the Code of 1913, which reads:

"(f) The words 'injury' and 'personal injury' shall not include injury caused by the wilful act of a third person directed against an employe for reasons personal to such employe or because of his employment."

It is understood this provision at the time of its enactment was peculiar to the Iowa statute and existed in no other jurisdiction. It has always been difficult of construction and has been a matter of embarrassment in administration.

In this case what are we to do with the proposition which excludes as compensable "injury caused by the wilful act of a third person directed against an employe for reasons personal to such employe or because of his employment?"

After mature deliberation the conclusion is reached that legislative intent at this point should not be assumed to exclude injuries under such circumstances where animosity of sudden development, at the moment of assault, led an assailant to inflict personal injury. Rather, it should be assumed that the legislature had in contemplation the existence of cherished malice which inspired an angry third party to seek out the employe for the purpose of administering premeditated punishment. An employer should not be penalized in a case where an employe is subjected to punishment and sustains injury not because of any incident of his employment but because of personal rancor against a workman based on previous personal antagonism.

If Moorehead had come into the Grand Hotel the night of January 2nd with revenge in his heart because of an existing resentment, and had proceeded to castigate O'Callahan, surely neither the employer nor his insurer could be properly held in payment for any injury sustained. But because this injury arose out of loyal service to his employer and the public on the part of the clerk, and the sudden resentment of Moorehead because of such loyal service, it would be gross injustice to deny compensation for this serious disability and the legislature certainly never intended any such unjust application of the statute in question.

Counsel protests against the admission of certain affidavits in evidence. Our Supreme Court has definitely justified this procedure in *Reid vs. Automatic Electric Washer Company*, 179 N. W. 323.

At the time of his injury E. J. O'Callahan was receiving as wages his room and board at the hotel, together with cash payment of $50.00 a month. The arbitration committee estimated the value of meals and room at $50.00 a month. This estimate is hereby changed to $40.00, which reduces earnings of claimant to $90.00 a month, reducing compensation payment from $13.84 to $12.47 a week.

As so amended, the award of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 6th day of May, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in District Court.

Affirmed by District Court. Pending in Supreme Court.

INJURY FROM ELECTRICAL SHOCK—AWARD.

Katherine McGourity, Claimant,

vs.

Standard Telephone Company, Employer,
London Guarantee & Accident Company, Insurer.

In Review Before the Iowa Industrial Commissioner

October 7, 1919, arbitration award was entered in favor of this claimant in the sum of $6.00 a week for a period of 30 weeks, together with statutory medical, surgical and hospital charges and costs of this action.

On or about the 16th day of April, 1918, Katherine McCourity sustained an excision of a portion of her left breast for the removal of a cystic tumor. The proximate cause of this tumor and need for this operation is alleged to exist in an accident occurring February 28, 1918, while this claimant was engaged as night operator in the plant of defendant at Waukon. Said accident is said to be due to contact between a telephone wire and a high tension circuit. Medical evidence in this record sustains this assumption.

At the arbitration hearing more than a year and a half after the accident and operation, claimant testified as to a weakened condition of her left arm which promoted a definite measure of permanent disability in that she was unable to use this arm except to a limited extent in switchboard service.

Defendant denies relationship between the injury, as alleged, or any other injury arising out of the employment, as a basis of any measure of existing disability, if such there be. As an element of defense, it is also plead that since the defendant employer carried this claimant on the pay roll during the period she was incapacitated from labor that no insurance obligation remains.

The committee finds a limited measure of permanent disability. In such a case as this, time lost has nothing to do with compensation obligation. Furthermore, the obligation of insurer is definite and unavoidable in case of injury and defendant insurer is estopped from pleading generosity on the part of the employer in liquidation thereof.

This case was evidently brought and prosecuted in good faith. The evidence of the claimant appeals to deliberate judgment. Surgical testimony tends to sustain this claim.

While there may be ground for doubt as to relationship between this accident, as alleged, and this operation and subsequent impairment, the rule of greater probability would seem to encourage holding in favor of this award.

The arbitration committee was evidently convinced as to the existence of some measure of permanent disability in the left arm. It could hardly reduce such limit below the finding made of 15 per cent.

The Commissioner is not disposed to reverse this decision, and the same is hereby affirmed.

Dated at Des Moines, Iowa, this 19th day of April, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DEPENDENCY AWARD WHERE WORKMEN DIED OF CANCER WITH TRAUMA AS PROXIMATE CAUSE.

Mrs. James C. Joslin, Claimant,

vs.

C. L. Percival Company, Employer,
Integrity Mutual Casualty Company, Insurance Carrier.
B. O. Montgomery, for Claimant;
H. W. Raymond, for Defendants.

In Review Before the Iowa Industrial Commissioner

Action is brought to reverse the decision of an arbitration committee, dated January 20, 1922, awarding this widow compensation in the sum of $15.00 a week for a period of 300 weeks.

On the 21st day of January, 1921, James C. Joslin fell in an elevator shaft to a cement floor, a distance of 12 to 15 feet. In this fall he sustained injuries technically described by his surgeon as "a very long oblique fracture about the middle and upper third of the right femur and what is known as the *os iliacum* process."

In the operating room the day of the accident it was found that "he was in a state of profound shock and in such physical condition that we did not dare to give him anaesthetic for fear that he would die on the table."

Three days later, on the 24th, it was decided "that he was in a condition to make it safe to undertake the operation, and yet," says the physician, "I feared the effect of ether upon him." When the leg operation had been performed, it was decided that the patient "ought not to be subjected to further anaesthetics at that time." So he was put back to bed and on the 26th, two days later, the operation on the arm was performed. This information is from the testimony of Dr. Bond, the physician in charge, called as a witness for the defense.

For some time there seemed to be promise of normal recovery under such circumstances. Along in the second month, however, it would appear from the record that the workman commenced to complain of "something wrong with his stomach," a condition the doctor seemed to lay to "the reaction from the fall."

This trouble seemed to increase until about the middle of July when X-ray examination disclosed the presence of carcinoma of the stomach. On August 5, 1921, Mr. Joslin died.

The only question at issue in this case is as to whether or not the death of this workman at the time it occurred was due to the accident of January 21, 1921.

Dr. R. Frederick Throckmorton was called in this case August 1st, five days before death occurred. He describes in detail the symptoms manifest and treatment exercised. He also assisted in the post-mortem examination, the finding of which he describes. He terms the malignant condition developed as fibrous cancer. As to the relation of the injury to the death, Dr. Throckmorton testifies:

"Anything that would reduce his natural vitality to the extent of having to lay in bed for two or three months and have to undergo two or three surgical operations under anaesthetic I would think that would be a very great aggravation to any condition that the man had, no matter what it was."

"Q. From the history given you and the observation you made of the case while treating h.m, is it your opinion that death was hastened by this accident?

"A. Materially hastened."

Dr. Daniel J. Glomset, called by claimant, assisted in the post-mortem examination. He says:

"I found that he had a cancer of the stomach, and a chronic peritonitis.

"Q. Assume, doctor, that there had been a cancer there previous to this time that had given no trouble, would this fall aggravate the condition and hasten the death of the patient?

"A. In so far as it would lower a person's vitality it would hasten the development of the cancer."

Dr. Bond, called by the defense, testified that he could not see any connection "between the injury and the *cause* of the carcinoma."

In reply to the question:

"Is it possible that this entire trouble could have come from this injury," Dr. Bond says:

"I don't think so, in my judgment."

He says, however, that the ordeals suffered by workmen "might possibly have increased the rapidity with which the cancer could grow, but that is pure speculation."

As to whether or not the chances were less for prolonged life where he had received a fatal injury of this kind, he answered: "Why, speculatively, if it reduced his resisting power, yes; but that, as I say, would be pure speculation. I know of no authority that would enable me to make a positive statement either one way or the other."

Dr. J. F. Strawn, called by defendant had been called in consultation in this case. Asked: "Would you say whether or not that accident had any connection with the carcinoma?" Dr. Strawn replied: "In my opinion it did not have any relation to it."

As to whether or not the conditions developed in this case would tend to increase or aggravate the condition and cause the cancer to grow more rapidly, Dr. Strawn's answer was:

"I do not think you have got any statistics whereby you can prove that one way or the other."

He declined to answer either way as to this problem.

At the close of Dr. Strawn's testimony, replying to questions by the Deputy Commissioner, the record has the following:

"Q. Can severe injury have anything to do with vitality?"

"A. I suppose you would have to answer that if you have a real severe injury that it would affect the vitality to some extent.

"Q. Does vitality have anything to do with resistance of the individual?

"A. Yes, it does, to some extent.

"Q. Does resistance have anything to do with disease or the effect of disease?

"A. It might in such an individual increase just a little more rapidly."

Dr. Julius S. Weingart, testifying for the defense:

"Q. Would you say that that fall had anything to do with increasing the rapidity with which this carcinoma developed?

"A. That, of course, is problematical. There is this to be remembered, that all of us may have pathological changes in the body which give symptoms below the threshold of consciousness as long as we feel right, and then when worry or when we have an accident or are feeling poorly these symptoms may begin to arise above the threshold of consciousness and we can feel the symptoms, and the question of the effect on the rapidity of the growth of carcinoma nobody can say anything about that."

Dr. Weingart declined to say whether or not the results of a fall, in shock, operations, etc., would be in any measure responsible for this death.

The medical testimony leaves much to be desired in the way of definite information. This is doubtless due in a measure to the unsolved mysteries surrounding the cause and development of cancer.

Dr. Glomset and Dr. Throckmorton seem firmly established in the conviction that lowered vitality and diminished resistance due to this injury and its concomitant developments tended to hasten the growth of this malignancy which meant death at an earlier time than it would have been without such experience.

Doctors called by the defense are inclined to feel this attitude unjustified, but are unwilling to go on record in denial of such possibility or probability.

In reaching a decision it becomes necessary to scan medical opinion and supplement the same by the application of the ordinary rules of common experience and common knowledge.

The accident was very serious. To a man weighing around 150 pounds, a fall of 12 to 15 feet to a cement floor without any premonition as to such peril would hardly fail to produce serious physical results. The condition of Joslin after the fall was much more serious than the breaking of an arm and a leg under ordinary circumstances would develop.

The record shows conclusively that the workman was in good physical condition, doing a full day's work of an able bodied man without any loss of time. He was in good physical form to resist fracture injuries such as he sustained. Under such circumstances it is not ordinarily necessary to postpone the administering of an anaesthetic for three days before proceeding with operation, and it is very unusual in such a case when it becomes necessary to perform the surgical operations required with an intervening period of two days.

Dr. Bond does not overstate the situation in referring to Joslin's condition as that of "profound shock," a shock even more serious in its physical effects than the breaking of an arm and a leg in the usual course of events. Following these serious injuries and this profound shock, with the ordeal of anaesthetic and operations, came the entire revolution of daily habits on the part of one accustomed to steady manual labor. There can be no question as to the definite tendency of this experience, in the lowering of vitality and in the loss of resistance in its effect upon any physical ill that might infect the human system.

The element of intoxication is rather ruthlessly injected into this record. The employer and his manager, testifying as to the drink habits of Joslin, speak chiefly as to evidence in 1913 and 1914, some seven or eight years prior to this accident. The former did not testify as to such habits at the last employment. Manager Morehouse says in those later days his attention was called to this matter by an apprentice and that he saw Joslin under the influence of liquor but never saw him drunk. Fellow workmen and neighbors who had known him more or less intimately for years testify they knew nothing to identify him as a drinking man. Dr. Bond had it tipped off to him by a female relative of the deceased that Joslin had been addicted to drink and for this reason he prescribed alcohol at the hospital. He said, however, that he never saw any evidence of the past use of alcoholic stimulants, and he presumed that whether or not the man had been addicted to the use of alcohol, in view of the history of the accident he would have shown the same outward and inward appearance and manifestation of shock. While not disposed to ignore this part of the record, it is not believed to be entitled to any weight whatever in deciding this case.

To sum up this situation: Here was a man robust, alert, by all signs sound and well. He was working six days in the week and nine hours a day without a break in his working record during months preceding his injury. He has a very serious accident, involving important fractures and "profound shock." Three days later the attending physician says he "feared the effect of ether" on this recently rugged man. He was brought so low in vitality as to make it necessary to wait two days before completing the operation upon fractured members. Stomach trouble soon develops, increases. In a few months the cause is found in cancer. Shall we say this hasty development is merely a coincidence? Is it reasonable to assume that this robust man of January 21st, without intervening trauma, would within this brief period have gone down and out?

That this malignant development had its origin in trauma seems highly improbable. Dr. Bond would seem to be justified in saying he could not see any connection "between the injury and the *cause* of carcinoma." However, this may be, the accident of January 21, 1921, with its terrible strain of physical tribulation caused the death of this workman at a time when it would not otherwise have occurred seems to such a degree probable as to convince unbiased judgment. If this is true, the case is won by the claimant widow under the rules laid down generally in compensation jurisdiction.

In order to hold for this claimant it is not necessary to consider her claim established beyond doubt or cavil. It is only necessary that by the rule of greater likelihood, by the law of inherent probability, the record shall support the contention of claimant, and this is manifest by the record.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 4th day of May, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in District Court.

NON-RESIDENT ALIEN DEPENDENCY—AWARD.

C. D. Royal, Consular Representative and Administrator of Mike Kolar, Deceased, Claimant,

vs.

Hawkeye Portland Cement Company, Employer,
The Fidelity & Casualty Company of New York, Insurance Carrier.
C. D. Royal, for Claimant;
B. O. Montgomery, for Defendants.

In Review Before the Iowa Industrial Commissioner

In the employ of the Hawkeye Portland Cement Company, Mike Kolar was instantly killed on the 4th day of May, 1918.

No controversy has existed except as to the dependency of the non-resident widow and children of the deceased.

In arbitration at the department October 31, 1921, such dependency was established in the sum of $10.00 per week for a period of 300 weeks.

The record in arbitration would seem to establish by a preponderance of evidence the marriage of the deceased workman to Sava Chalich, the birth of three children to this union and a reasonable presumption as to the existence of all these dependents at the time of this decision.

A number of exhibits admitted to the record at the review hearing April 6, 1922, would seem to substantially support this conclusion. Additional character and value is given to exhibits introduced herein by the deposition submitted at the review hearing of Dr. S. Zelelitch, Consul of the Kingdom of the Serbs, Croats and Slovenes, at Chicago, Illinois, to which objection on the part of defendant is overruled.

In this deposition, from evidently substantial source, laws and customs of the said Kingdom are so defined and interpreted as to make it extremely probable that all reasonable requirements of the law have been met by this claimant in support of her compensation claim.

Any unprejudiced examination of the complete record in this case will justify the conclusion that if the dependency of this widow and these children is not established to the satisfaction of our statute, then it is practically impossible to make a case in successful support of any claim for non-resident alien dependency.

Attention is called to an omission in the caption of the arbitration decision in that it fails to mention the name of the widow as claimant, but merely gives as the party plaintiff the name of the Consular representative and administrator of the estate of Mike Kolar, deceased, Mr. C. D. Royal. This omission is held to be merely technical and in no degree subversive of the just claim of Sava Kolar and her children.

As corrected in this respect the decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 8th day of April, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in District Court.

DISABILITY HELD NOT DUE TO INJURY.

George W. Parkinson, Claimant,

vs.

Brown-Camp Hardware Company, Employer,
London Guarantee & Accident Company, Insurance Carrier.
James E. Goodwin, for Claimant;
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

An award of $13.29 a week for an indefinite period, based on total disability, was made in favor of George W. Parkinson in arbitration February 10, 1922.

Reversal is asked by defendants on the ground that there is not sufficient competent credible evidence to support the award.

The record in this case is substantially as follows:

In the employ of the Brown-Camp Hardware Company, in March or April of 1918, it is alleged this incident occurred: In company with Alfred Lundgren, claimant was running a truck load of heavy hardware across the floor. Mr. Parkinson, who was pulling, fell down because of the giving way of a stake on the truck. He arose without assistance and proceeded with his usual duties. He lost no time and employed no doctor. He continued his engagement with the defendant until August 3, 1918, when he quit to take work with the Rock Island Railway Company at higher salary.

November 20, 1918, claimant came down with the "flu" and was so sick that his life was in serious danger.

About December 15th he returned to his employment with the Railway Company, working till about March 20, 1919, when he was operated upon for gall bladder trouble. In the latter part of May, 1919, he returned to work continuing till August 1, 1919. A second operation was performed August 16, 1919. Claimant resumed work October 24, 1919, continuing his engagement with the Railway Company until January 16, 1920, when, by the development of what is known as Potts disease, he was disabled to such an extent as to necessarily retire him from further labor, a condition which has continued until the present time and is doubtless permanent.

The question at issue is as to whether or not this disability is chargeable to the incident of employment with the Brown-Camp Hardware Company, previously outlined.

In his testimony before the arbitration committee claimant gives his alleged accident considerable emphasis. He says he "fell full length on the floor;" that he "felt an awful pain in his back;" that he "laid off two or three half days;" that he would have taken a good deal more time off on account of his distress but that his superintendent, E. A. Rockholtz, would call him by 'phone and urge him to return to work; that owing to the condition of his back he "wasn't able to lift anything scarcely at all;" that his "back bothered him all the time." Says he went to the railway work because his "condition was getting worse."

In the record of this case appears defendant's Exhibit 1, introduced at the arbitration hearing. This exhibit is a statement given to counsel for the defense in this case by George W. Parkinson October 5, 1920. The signature is identified by Parkinson and his statements therein contained are admitted by him to be as he made them to counsel.

In response to questions as to what time he had worked for the railway company, he mentions no loss of time until from November 20, 1918, to December 15, 1918. He says: "I was off because I was sick; that was during the time of the influenza epidemic." "I never could say I

was well after I had the flu in November, 1918. I never could straighten up because my back always hurt me." In response to the question: "When did this pain between your shoulders begin?" the answer was: "It began during the time I had the flu."

Variation in the medical testimony seems to be due almost wholly to various angles from which this case is regarded. In every case we believe physicians testify to the belief that if the claimant was subject to pain in his back from the time of the Brown-Camp incident on, this incident is probably the inception of the existing Potts disease.

The affidavit of Dr. Steindler submitted to the arbitration committee assumes from statements of Parkinson that following the alleged fall "the patient shows a history of continuous backaches and if not abating up to the time of his admission, it is reasonable to assume that his injury has contributed to the development of the tuberculosis of the spine."

In a subsequent affidavit submitted at the review proceeding as defendant's Exhibit 5, Dr. Steindler says that if the fall on the cement floor "was not followed by Potts disease pain, nor by the lighting up of Potts disease for a period of approximately nine months, and the man continued to work practically every day for nine months and was not compelled to consult a physician, and at the expiration of approximately nine months such man suffered an attack of 'flu,' and such an attack was shortly, or within a reasonable time, followed by the Potts disease pain and by the active lighting up of Potts disease, then it is reasonable to assume that the attack of 'flu' was the cause of the Potts disease."

This statement seems to reflect the general professional opinion relative to this case. The disease must be based upon history that will justify a conclusion on this basis. What in the way of history is developed in this record?

This case came to the attention of this department through a visit of the wife of the claimant in the latter part of September, 1920, two and a half years after the alleged accident, as shown by defendant's Exhibit 2 herein.

A letter of inquiry, addressed to the employer, brings this reply from one of the partners: "I know of no accident to him while in our employ."

November 19, 1920, arbitration petition was filed. A day was set for hearing, but continuance was made necessary by illness of claimant's counsel. A little later it developed that the case had been placed in the hands of another attorney who did not seem anxious to press the issues. In the meantime defendant was urging a hearing. Counsel now in the case appeared some time later in the record. Applying the rule in general litigation and in many compensation statutes, this case would have been barred by the statute of limitations nine or ten months before this action was brought.

It is most unusual for a workman to be unable to locate more definitely than "either in March or April" an injury upon which claim for compensation is made. Is it at all possible that with continual backache and waning physical powers, beginning with the injury, claimant would have been utterly unable to locate within weeks the date of the alleged accident? While the employer has no knowledge of the fact, claimant insists he sent him notice of injury the day it occurred. This statement makes it the more peculiar that not even the month of the injury can be fixed.

This department is not disposed to deny any workman any service called for in the way of affording opportunity for trying out issues in case compensation is denied. It is admitted, however, that long delay in bringing action without sufficient cause for the same does not tend to inspire confidence.

The theory of counsel is that this claimant was in continual distress with the backache all through the months following the incident at the Brown-Camp Hardware. If this is true, the claimant surely had such notice of injury as to move him to a demand for compensation, which, if denied, should have been submitted to litigation.

It is important to scrutinize with care an incident alleged to have been the cause of compensable injury. Sometimes such incident is of decidedly minor character. Then it becomes necessary to carefully follow the experience of succeeding days and weeks if in such case injury is alleged.

Now what happened at that time in March or April of 1918 at the hardware store? Parkinson and Lundgren were wheeling the truck. The former in the process fell but arose before Lundgren could reach him from the other end of the truck and the work proceeded without delay. Lundgren says he does not remember whether or not he asked him if he was hurt, but the work proceeded and the truck was immediately unloaded. This load consisted of kegs of nails weighing 100 pounds each, and bundles of sheet iron weighing somewhat more. All these were handled by Parkinson in the unloading process according to the story of Lundgren, admitted by Parkinson himself. He says Parkinson worked the rest of the day, and as far as he can remember until he quit the employ of the company; that he heard him make no complaint the rest of the spring and summer that he was there; that he knew nothing of any claim on the part of Parkinson as to having been injured at that time until a couple of years afterward.

Defendant's Exhibit 4, admitted to the record at the review hearing is an affidavit by E. A. Rockholtz, who was foreman of the department in which George Parkinson was employed at the hardware store. In this affidavit he says:

"I have a very hazy recollection that Parkinson did have some insignificant accident occur, but I cannot now state what it was that happened. * * * I remember that I went to him and asked him if he was hurt and he said he was not. Furthermore, George Parkinson continued at his usual work with no loss of time whatsoever and never claimed to have suffered any injury * * * nor did I call him on the telephone at his home to arrange for him to come to work because it was never

necessary to do so. The first time I ever had, or obtained knowledge that George Parkinson claimed any injury ever occurred to him while he was employed at the Brown-Camp Hardware Company was about October 1, 1920, when Mr. Camp advised me that Parkinson was so claiming; that Parkinson worked every day until August, 1918, when he left the employ of said hardware company."

During the year following the incident at the hardware store Parkinson was in the hands of several doctors to whom he made no mention whatsoever of the Brown-Camp incident.

The first time in our record of this case where the fall fgures as an incident, is in the testimony of Dr. H. C. Welpton, who says that late in 1918 the time he had the "flu" Parkinson gave him the history of such a fall. For many months later under serious treatment by other doctors it is shown that no such mention was made.

At the review hearing two men working with him in the railway employment testify in the behalf of claimant. There would seem to be little weight in this testimony from the fact that their memory is so defective in the matter of the periods at which claimant was in service as a fellow workman. There was evidently no intentional misstatements made by these witnesses, but their testimony as to condition of Parkinson upon his entering upon his engagement with them is so much at variance with all evidence as to physical condition at the time he left his former employment as to make it seem probable that they were twisted in their dates as to time when they observed the waning physical capacity of Parkinson. Following the "flu," after he had returned to his railway employment, such condition was probably apparent but hardly before that date unless we discard much other direct and wholly disinterested evidence.

A careful scrutiny of the record in this case leads to the conclusion that suffering with pains in his back and from any failing physical powers during nine months succeeding this alleged accident is highly improbable. It challenges credulity to assume that such a condition could have existed without the knowledge of men working with him every day meanwhile; that he should have failed to mention the fact to doctors who were diagnosing his case in the endeavor to locate physical ailment is more than a matter of mere oversight. In the statement of Parkinson in defendant's Exhibit 1, on page 2 thereof, he is asked: "When did this pain between your shoulders begin," the answer, "It began during the time I had the flu," positively corroborates other substantial evidence that the back trouble all came nine months or more after the trivial truck incident.

This alleged injury did not light up any latent disease. The conclusion is justified that the disease from which claimant now suffers gave no sign until after the serious experience with influenza. It is not reasonable to suppose that it had its incipiency in the Brown-Camp incident when there is no competent or disinterested evidence in the record indicating imminent symptoms during nine months following the same.

If this be true, this claim necessarily fails. If it be not true, then the claimant is seriously at fault in concealing the fact at a time when it would have been so easy to secure adjustment of his legitimate claim to compensation.

It therefore becomes necessary to reverse the decision of the arbitration committee on the ground that the existing disability of George W. Parkinson did not arise out of his employment by the Brown-Camp Hardware Company.

Dated at Des Moines, Iowa, this 30th day of March, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Reversed by District Court. Pending in Supreme Court.

AWARD FOR ACCIDENTAL INJURY—DISEASE DEFENSE DISCREDITED.

Mrs. Ada McFarland, Claimant,

vs.

Green Squire, Employer,
The Travelers Insurance Company, Insurance Carrier.
Livingston & Eicher, for Claimant;
Paul H. Marsden, for Defendants.

In Review Before the Iowa Industrial Commissioner

An award of $15.00 a week for a period of 300 weeks was given this claimant in arbitration at Washington, Iowa, May 13, 1921, on account of injuries sustained June 2, 1920, resulting in the death of Edward G. McFarland, husband of claimant.

The following statements of fact seem justified by the record submitted:

On June 2, 1920, in the employ of the defendant, Squires, Edward G. McFarland was assisting in a preparation for roofing when a scaffolding gave way, causing him to fall to the ground, a distance of some sixteen feet. It would appear from the record that the workman fell flat on his back, striking his head on a small pile of two-by-fours. When approached by fellow workmen he was found to be in a semi-unconscious condition, very pale, and with a scalp wound two and one-half or three inches in length, according to the testimony of Dr. Henry C. Hull, who was called to take charge of the case.

Mr. McFarland remained in bed at home for two days, and in about a week returned to his work as a carpenter. After working five or six weeks he was forced to suspend work, soon became prostrate and died some ten days after his second confinement.

It seems established in evidence that the workman complained during the weeks he was at labor, between injury and death, of pains in his

head. When he took to his bed in his last illness his headaches became violent and vomiting was more or less frequent.

Dr. C. W. Stewart, then in charge of the case, testifies:

"I found him with apparently a gastro-intestinal trouble. He was complaining of more or less nausea; was vomiting to a moderate degree and he complained of quite severe headache."

From later developments and later professional diagnosis, there would seem to remain little ground for doubt but that the death of this workman was due entirely to brain trouble. Dr. Stewart says: "He continually had the headache, though he did not continually have the vomiting." It would seem from his testimony that while he did not at the time of death consider fatality due to the accident of June 2, 1920, consideration of the matter at a later date seemed to create the impression in his mind that there was probably direct connection between the blow on the head and the later death of McFarland.

Dr. Stewart, in the death certificate he filed in this case, gave the cause of decease as intestinal infection. At the arbitration hearing he testifies to the conviction that the said death was due to abscess of the brain.

Dr. G. W. Hay, qualifying as a practicing physician and surgeon of twenty-five years experience and holding the position of county coroner, in reply to a hypothetical question diagraming the circumstances and conditions attending the injury and death of McFarland gave it as his opinion that the injury of June 2nd was the "remote cause of death." In his rather involved statement, Dr. Hay seemed to mean by the term "remote cause" that trauma in this case was a contributing cause of death.

The medical testimony submitted at the arbitration hearing indicates on the part of the physicians testifying much confusion of mental attitude and involved expression.

The case of this dependent is substantially strengthened by evidence introduced at the review hearing.

Dr. Henry C. Hull, who had the deceased in charge for necessary treatment following the accident, and who was called in counsel a few hours before death of Mr. McFarland, was called as a witness by the defendant. Counsel for the defense submitted this query:

"Q. Now, doctor, I want to read a hypothetical question to you from the record of the proceedings before the committee. I will read this in the manner it was put at that time:

"(Reading) 'Now, doctor, I want to ask you a hypothetical question. Assuming that a man 54 years of age, weighing about 175 pounds, about five feet six or eight inches in height, previous good health, no stomach or head trouble, falls from a scaffold to the ground about sixteen feet, perhaps striking some timber on his way to the ground, but lighting on his back and striking the back of his head against a pile of two-by-fours with sufficient force to cut a gash in the back of his head two inches long, at a location about the medial of the ears, and peeling off the skin so as to require two or three stitches, knocking him unconscious for a short time, but in a few minutes he was able, with some assistance, to get up and walk to an automobile, was taken to a doctor's office, where three stitches, two or three stitches are taken in the wound on his head, and is taken home, remains in bed for two days, returns to his work as a carpenter in five or six weeks, but at frequent intervals complaining of severe headaches and pains in the side, and remarking on several occasions he had not felt right since his fall, and about eight weeks after his injury becomes attacked with vomiting spells, and continually increasing headaches, becomes confined to his bed, and is treated with cleaning out and digestive medicine, and shows a slight response to treatment at first, then becomes worse, headaches continue to increase in severity for a period of nine days, after which he became confined to his bed, then he becomes unconscious and dies twenty-four to thirty hours later; assuming these conditions that I have named to be true, state whether or not, doctor, in your opinion, the injury that I have described contributed directly or indirectly to his death.'

"A. I couldn't say that the injury had anything to do with his death."

Questioned and cross-questioned Dr. Hull reiterated his opinion that there was no logical reason to regard the injury of June 2, 1920, as the cause of the death of Mr. McFarland on the 17th of August. He definitely supports the later conclusion of Dr. Stewart, however, that the death of the workman was due to brain affection.

In cross-examination the doctor recognized Keen & White's American Text Book of Surgery as an accepted standard of medical authority. He also gave endorsement to Dr. William Osler's work on Modern Medicine and to Practice of Medicine by the same author. From these authorities counsel for claimant read into the record copious extracts which bear definitely upon the conditions and circumstances involved in the case of McFarland.

Taking the testimony of several witnesses as to what happened in the way of accident, as to circumstances following the subsequent movements of the workman, as to conditions developed in the interim and particularly near the hours immediately preceding decease, there would seem to be little room for doubt as to the cause of the death of Edward McFarland. The testimony referred to could not have been made to fit the medical authorities in question for no such authorities were submitted at the arbitration hearing and their terms could not have been in the minds of any witness testifying.

In reading from these authorities counsel repeatedly asked Dr. Hull if he agreed with conclusions stated, to which he uniformly replied in the affirmative. At the close of this reading, however, he reasserted the opinion that the injury of June 2nd was not the proximate cause of the death of this workman.

We do not have to reconcile this manifest inconsistency, but it does become necessary to recognize it and to apply the reasoning of these eminent medical authorities, together with their endorsement by Dr. Hull, as having great weight in the formation of the logical conclusion as to the relations between the accident in question and the death of Edward

McFarland. The circumstances of injury, the continuing headaches, the recurring vomiting, the apparent hebetude, the indications of pulse and temperature are all definitely significant in sympathetic analogy with the diagram of brain abscess, its causes and development, as laid down in the medical authorities quoted.

The deceased had a record of many years of good health and of steady application to his mechanical trade. Standing out as it does in this record, the accident referred to almost makes it necessary for the defendant to develop some consistent or logical incident or circumstance suggestive of some measure of probability, at least, as to the cause of this death before its relation with the accident can be overlooked in final conclusion.

This accident may not have been the proximate cause or a contributing cause of the death of Edward McFarland, but with the entire record under consideration the element of inherent probability is so strongly suggestive of traumatic origin as to make any other conclusion seem strained and illogical.

Mr. McFarland may have died from some cause of which medical science can find no possible explanation. But such conclusion is so grossly improbable as to be unworthy of serious consideration. Unless it seems necessary to cast into the discard the conclusions of medical authority, based upon generations of experience and research, we must apply the reasoning of the learned doctors read into this record to the circumstances and conditions of this case. So doing, there is no logical means of escape from the conviction that the arbitration committee is sustained in its finding for the dependent widow.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 2nd day of March, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

ALLEGED EYE INJURY—FAILURE OF PROOF.

Frank Hayes, Claimant,

vs.

Northwestern States Portland Cement Company, Employer,
London Guarantee & Accident Company, Insurer.
J. E. Williams, for Claimant;
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Mason City, April 8, 1921, claimant was found to be entitled to the sum of $15.00 a week for a period of 50 weeks for permanent impairment or injury to his left eye to the extent of fifty per cent.

Before the arbitration committee Frank Hayes describes the incident of employment upon which his claim is based. January 17, 1920, he was lifting on a heavy tie when his foot slipped and he fell, striking the left side of his head and bruising his nose. He was sent to Dr. Weston, who, he says, "took a little sticky cloth and put it across his eye and when he went back he put iodine on my finger." Says his "eye kept fading away."

Hayes' evidence differs considerably from a statement he signed March 25, 1920, in this record as Exhibit "A." He stoutly denied signing this statement until confronted with the document, when he reluctantly admitted his signature, saying: "There are times when I remember things and times I don't."

Dr. Weston, whose aid was sought immediately following the accident, is not inclined to treat the injury very seriously. Asked in evidence what he found when applied to for treatment, he replies: "He had pinched the end of his finger and the skin above his left cheek was cut. Nothing serious; maybe one-fourth by one-half inch." Did not consider the injury "at all serious." Asked as to the possibility of there being a skull fracture, he said: "None whatever."

Called by claimant, Dr. Frank C. Murphy qualifies as an eye, ear, nose and throat specialist. He says examination on July 4, 1920, convinced him that the left eye "had at least very little sight, if any at all."

Dr. F. C. Carlson, a specialist of the same practice, says he examined left eye of claimant in the spring of 1920. Doesn't know whether in April or May. He says at that time there was vision in the said member, but in examination the day previous to the arbitration hearing he "was unable to get any vision from the left eye."

Dr. S. A. O'Brien, eye, ear, nose and throat specialist, called by defendant, testifies that he examined Frank Hayes on May 5, 1920. He says: "He could not localize definitely but could tell light from dark from my notes here, patient evidently malingering from his actions." "He claimed he could not see at all, but at the time I was trying to get him to do this he would close that left eye. He was malingering at the time. He wouldn't try to help me in any way. He got so he would not read for me at all." Claimant testified that the examination by Dr. O'Brien was at the request of his own attorneys.

The deposition of Dr. James A. Downing, taken January 21, 1921, is submitted in evidence for review consideration. Dr. Downing explains the system of thorough tests to which he subjected Frank Hayes on April 29, 1920. He says he "found the vision in the left eye was as good as the vision in the right," though the patient denied any sight at all in the left eye. The evidence of Dr. Downing points specifically to a belief in the insincerity of the claimant as to the condition of the left eye.

The deposition of Dr. W. W. Pearson, taken on February 16, 1922, was filed in this record February 21, 1922. He testifies to examination of

Frank Hayes on January 23, 1922. In reply to Interrogatory 3, the doctor says:

"I started to make an examination of his eyes and found that he had a prompt light reflex in the left eye which was the injured eye. He complained about the discomfort and all in a way that I knew was absolutely wrong. It was so apparent that I would be unable to make any examination so I dismissed him—clearly a case of malingering.

"Int. 5. Did the eye of which Mr. Hayes complained react to light and accommodation? If so, to what extent?

"Ans. Absolutely and normally.

"Int. 7. State whether Mr. Hayes so conducted himself as to render you full assistance and cooperation in making an examination or just how did he conduct himself?

"Ans. One experienced in the examination of eyes cannot be misled by the manner in which this man performed.

"Int. 8. State what the conduct and demeanor indicated, in your opinion as an eye specialist, and from your experience, as to the honesty and integrity of his claim that he is unable to see with this eye.

"Ans. His conduct was such as to indicate that he was trying to impress me that the eye was in such shape that the least touch of the lids caused him great suffering and he jumped around like one endeavoring to straddle a mule, all of which I knew to have been affected, as we know of no condition which would provoke this action with the careful methods employed in such an examination.

"Int. 9. State any other facts you deem necessary to a full and fair determination of the question as to whether Mr. Hayes has or has not normal vision in this eye.

"Ans. Aside from the light reflex, which convinced me that he had vision in this eye, I have no means of answering as the result of personal examination. But I have absolute faith in the confidence of my assistant, Dr. Downing, who examined his eyes completely during my absence from the office April 29, 1920. His notes made following that examination state that with the red and green lettering test at a distance of ten feet he saw as well with one eye as with the other. There is no reason in the world to assume that Dr. Downing would make a mistake in this carefully made examination."

On January 23, 1922, Frank Hayes appeared at the department preliminary to his examination by Dr. Pearson for and on behalf of the Industrial Commissioner. His conduct was far from reassuring as to good faith and sincerity of purpose. He assumed to say he would not be examined in the presence of anyone aside from the examining physician. He was told that it was contrary to the practice of the department to permit any party representing the defendant to be present at the examination. This was not satisfactory. He insisted on entire privacy, contrary to the usual custom on the part of examining physicians, a custom established wholly in the interest of the best possible service.

After his examination by Dr. Pearson, Hayes admitted he had not permitted much of an examination because some of the doctor's assistants were in the room. He has the frame and general appearance of a rugged man which makes more ridiculous his squeamishness as to pain in ordinary examination. A little frail woman would scorn to display such evidence of effeminacy evidently simulated to give an impression of deep injury. The attitude of Frank Hayes on this occasion was so inconsistent and unreasonable and so apparently insincere as to inspire confidence in the opinion of the several doctors who declared him to be a malingerer.

His own witness, Dr. Murphy, declares: "He doesn't seem to appreciate accuracy in the statements and I had quite a little difficulty." His examination was after the thorough treatment he received from Dr. Downing in which he became aware of the doubt cast upon his veracity as to the alleged condition of his eye. In the subsequent examination Dr. Murphy admits that his test was not infallible "if they could get on to what you were doing." Further:

"Q. In the Snellen test or the red and green letter test if a man has been examined with that test once and gets on to it, is it possible for him to evade the test the second time?

"A. Yes."

Dr. Thomas Burcham, X-ray specialist of Des Moines, in an affidavit filed with the department on August 25, 1921, testifies that he made X-ray films of Frank Hayes which disclosed "that there has never been any fracture of the left side of the skull of said Hayes or on any portion of said skull or orbit of the left eye." This testimony supports evidence of several other doctors in opposition to the claim that in the alleged accident of January 17, 1920, Hayes had sustained a fracture of the skull.

Dr. W. W. Pearson has the entire confidence of this department, established through long service to the state in the examination of cases sent to him by the Commissioner. In the Hayes case, as in all other such cases, he is paid by the state. He has a reputation as a doctor of integrity of purpose and of rare independence in the expression of his professional opinions, based upon definite technical knowledge. Dr. Downing has been with him for ten years and besides having the confidence of his chief enjoys in his own right an excellent reputation.

It is evident that Frank Hayes had been deficient in vision for years. He was very near-sighted and the dizziness and nausea of which he complains as an alleged result of this incident of January 17, 1920, was annoying him before this date. Deliberate scrutiny of this case in all its phases does not justify the opinion that the condition now existing as to the vision of Frank Hayes is due to the alleged accident. If some measure of impairment may have resulted from this cause the conspicuous insincerity and unreliability of this claimant in his relations with this claim so far discredits his statements as to make it absolutely impossible to form any conclusion as to the extent of such impairment.

Compensation award based upon a record like this is inimical to the integrity of the compensation service. It is subversive of sound administration and suggests miscarriage of judicial function.

The arbitration committee erred in finding for claimant probably because the record submitted in review was substantially stronger against this claim than was the evidence before the committee.

The arbitration decision is reversed.

Dated at Des Moines, Iowa, this 28th day of February, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DEATH IN HIGHWAY CONSTRUCTION—AWARD TO WIDOW.

Mrs. Susie Root, Claimant,

vs.

Shadboldt & Middleton, Defendant.
United States Fidelity & Guaranty Company, Insurance Carrier.
Davidson & Burt, for Claimant;
Miller, Kelly, Shuttleworth & Seeburger, for Defendants.

In Review Before the Iowa Industrial Commissioner

Hauling gravel on a highway contract in Palo Alto county, February 25, 1921, Oscar Root, husband of this claimant, sustained fatal injury by a cave-in at the gravel pit.

In arbitration at Emmetsburg September 16, 1921, the said Oscar Root, deceased, was found to be an employe of the firm of W. G. Middleton and Shadboldt & Middleton, which finding entitled this claimant to compensation in the sum of $15.00 a week for a period of 300 weeks.

Defendants appealed from the arbitration committee to the Industrial Commissioner for review of this proceeding on statutory grounds.

In accordance with stipulation on file, this case is submitted to the Commissioner in review without argument. In the meantime the depositions of Ed. Ault, Will Hagan, Wm. M. Twigg and W. G. Middleton had been received in evidence. The motion of defendant to suppress is overruled, to which ruling exception is noted.

The facts involved in this case are substantially as follows:

Under contract with the county of Palo Alto this defendant was gravelling a highway between Ayrshire and Ruthven in said county in the latter part of 1920 and the earlier months of 1921. The work had been sublet to the Motor Truck Service Company of Minneapolis. In the latter part of November, 1920, the Minneapolis contractor abandoned the work.

On or about December 1, 1920, W. G. Middleton, a defendant herein, arranged with Wm. M. Twigg, a farmer living in the vicinity of the work, to take charge of the gravel operation on the part of these defendants as contractors for the county. The engagement was made on the basis of conversation more or less confirmed by a letter dated December 2, 1920,

from W. G. Middleton to Wm. Twigg, which appears in this record as Exhibit "A." Under this arrangement Twigg proceeded to employ farmers living in the vicinity of the work to haul gravel from a pit supplied by the county to a point on the highway under construction, as directed by a representative of the county and of the contractors in accordance with requirements of the situation. Oscar Root was one so employed, who contributed to the performance of this contract the services of himself and his team.

Manifestly, the defense chiefly relied upon by these defendants is based upon the claim that Wm. M. Twigg and not W. C. Middleton or Shadbolt & Middleton was the employer of these haulers, and consequently the one beholden to this claimant in compensation or in damage contribution.

Under the arrangement between Middleton and Twigg, the latter was to have entire immediate charge of the work and do all the hiring of haulers, while payment of wages was to be made entirely by the former.

Exhibit "A" referred to, contains very vague definition of the relationship between Middleton and Twigg. It is simply a letter written, as it states, to confirm arrangements made in conversation.

In *Anderson vs. Foley Brothers*, 124 N. W. 987, the Supreme Court of Minnesota makes this statement:

"Whether an employer was an independent contractor does not necessarily depend upon the contract he operates but may depend entirely upon the conduct of the parties."

This judicial declaration above quoted would seem to be of practical application in this case. The "conduct of the parties" would seem to justify the conclusion that it was never the intention either of Middleton or of Twigg that the latter should be regarded in a legal sense as the employer of the men hauling gravel. Scrutiny of the evidence discloses the superior authority of Middleton and the inferior attitude of Twigg in contractual relationship.

It was the custom of workmen on the job to appeal from Twigg to Middleton as to matters of employment. Middleton was regarded as the one higher up in actual control of the situation.

There is nothing in the record which seems to logically point to the conclusion that Twigg should be regarded as a subcontractor to Middleton rather than his employe. Firm ground seems to exist for the opinion that Shadboldt & Middleton or W. C. Middleton was the contractor, the only contractor, the final authority in this relationship.

Another question given much less emphasis by the defense is worthy of more serious consideration. There is in the record evidence suggesting independent employment on the part of the hauler on this highway work. The fact that they were paid by the yard instead of by the day is not controlling but more or less significant. The further fact that they were not required to commence work at any given time in the morning, or

to continue work until any definite time in the evening, and that they might drop out for the day when it was for their interests so to do, is more or less consistent with the elements of independent employment.

While this may be regarded as a border line case, however, there would seem to be basis for the conclusion that there was exercised enough of control as to the manner in which this work was performed, of the method of employment and power to discharge as to bring the employment of Oscar Root within the relationship of an employe of the contractor.

At the gravel pit definite authority was exercised as to the order of loading, the manner of loading and as to keeping the pit in order for successful service. The right to discharge was exercised by Twigg when a hauler named Gene Sherlock was dismissed from employment because he persisted in disobedience of pit rules. (Transcript p. 17.)

In *Powly vs. Vivian & Company*, as reported in Bradbury, on Workmen's Compensation, at page 133, is found searching analysis in concrete form as to underlying principles of contractual relationship applying to the instant case.

Quoting:

"The true test of a contractor would seem to be that he renders the service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. The one indispensable element to his character as an independent contractor is that he must have contracted to do a specified work and have the right to control the mode and manner of doing it."

In the same opinion, on page 134, appears this significant expression:

"An independent contractor is one who, exercising an independent employmet, contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work."

It cannot be assumed that in his relations with his employer Oscar Root was responsible only as to the "result of his work." It would seem safe to assume that he was strictly held "to the means by which it is accomplished." To assume that he had "the right to control and the manner of doing" is to ignore conditions of service plainly manifest in the record. Is it right to say that he was doing his work "according to his own methods and without being subject to the control of his employer except as to the result of the work?"

Honnold, on Workmen's Compensation, at page 208, declares:

"It is not possible to lay down a hard and fast general rule or state definite facts by which the status of men working and contracting together can be definitely defined in all cases as employe or independent contractor. Each case must depend on its own facts. Ordinarily, no one feature of the relation is determinative, but all must be considered together. A contractor is ordinarily one who carries on an independent employment and is responsible for the results of his work, one whose contract relates to a given piece of work for a given price. These characteristics, however, though very suggestive, are not necessarily controlling. Generally speaking, an 'independent contractor' is one who exercises an independent employment and contracts to do a piece of work according to his own method, without being subject to the control of the employer, save as to the results of his work. One test, sometimes said to be decisive, is as to who has the right to direct what shall be done, and when and how it shall be done, who has the right to the general control."

As suggested, "the right to direct" and "the right to general control" is vital in the establishment of employment relationship. As frequently held, the degree to which direction and control is exercised is not so important as the manifest right to direct and control where controversy may arise. Familiarity with this record develops the impression that the controlling factor in this road making proceeding was the defendant herein, as represented by himself or by his agent; that it was within this authority to direct as to means employed and manner of performance and to discharge, peremptorily or otherwise, any workman on the job.

Travis vs. Hobbs, Wall & Co., 2 Cal. Acc. Comm., is singularly analogous with the case under consideration:

"While working as a shingle bolt maker applicant was injured by a log rolling upon and over him. It appeared that he was put to work cutting shingle bolts by defendant's foreman, being paid at the rate of $1.75 a cord. Although the work was on a piece basis applicant received his pay on defendant's regular pay day, when the men in defendant's camp working on a monthly basis were also paid. He did not report daily to the company and was not controlled as to the amount of time put in by him. The foreman showed him where to start and the size of shingle bolts to be cut and inspected his work from time to time. The Industrial Accident Commission held that the fact that applicant was paid by the cord or was a piece worker did not necessarily determine his statuts, and that it has been affirmatively held that these circumstances did not remove him from the category of employes. In re Cowell's Estate, 167 Cal. 222, 227, 139 Pac. 82, 84 (1914). While it was true that there was not to be found here a considerable measure of direction, control and order of the work, there was a general supervision and a general direction of the work by defendant's foreman. The nature of the work done, the terms of the employment and the location of the place of employment made it plain that close supervision of the work was not required or contemplated by the contract of hire between the parties. An award was made in favor of applicant."

All this cogent reasoning upon a state of facts, certainly no more favorable, applies with emphasis to the instant case.

In reaching the conclusion that the rule of greater probability justifies an award to this claimant, the Commissioner does not lose sight of the conclusions or the reasoning of our Supreme Court in *Pace vs. Appanoose County*, 168 N. W. 916, or *Norton vs. Day Coal Company*, 180 N. W. 905.

It is believed that careful analysis of the evidence in the pending case and a comparison with facts developed in the cases referred to, justify

holding for this claimant without in any degree doing violence to these decisions or the reasoning therein.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 7th day of February, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by District Court. Pending in Supreme Court.

KILLED AT BREAKFAST HOUR—AWARD TO WIDOW.

Karolyne Nester, Claimant,

vs.

H. Korn Baking Company, Employer.
Henry Vollmer, for Claimant;
Lane & Waterman, James E. Lamb, for Defendant.

In Review Before the Iowa Industrial Commissioner

In the course of his employment by this defendant Baking Company, Kasper Nester lost his life April 25, 1918, under circumstances substantially as follows:

For a period of about nine years, the deceased workman had been in the service of this corporation as teamster, as his employer alleges, "taking care of the horses, hauling freight to and from the depot." He was required to begin work between three and four o'clock in the morning and his service was practically continuous until noon, or thereabouts.

On the morning of April 25, 1918, as was his usual custom, he drove a horse, belonging to the employer, to his place of residence to get a hasty breakfast. He usually tied the horse to a telegraph pole. On the morning in question the horse was left untied, as he could from the room where he was snatching his breakfast keep the animal in range of his vision. A railway track runs in the street in which the horse was standing. A belated train unexpectedly came along. Hearing the same, Kasper Nester rushed to the street to control the animal and in this endeavor he was killed by the passing train.

The question at issue is, Did the death of this workman arise out of as well as in course of his employment?

In arbitration at Davenport, January 20, 1921, it was held that Karoline Nester, surviving widow, was entitled to compensation in the sum of $7.69 per week for a period of 200 weeks.

This review proceeding is brought by the defendant employer on the ground:

1. That on April 25, 1918, when he sustained said personal injuries, Kasper Nester was engaged voluntarily on a private mission of his own;

2. That by failing to obey the employer's instructions and the ordinances of the city of Davenport by tying his horse, Kasper Nester by his own conduct wilfully and needlessly exposed himself to a new and added peril, and said accident and personal injuries and death of Kasper Nester were due to said new and added peril.

It appears in evience that it was the custom of the Baking Company to serve coffee and rolls at the plant to workmen required to enter service at an early hour. Defendant holds this to be evidence conclusive that the deceased workman did not need to go to his home for breakfast.

It further appears that before taking refreshment at home, Nester deposited a pan of ashes into a tub or some such receptacle in the delivery wagon. This fact is plead by defendant to prove that at the time of the accident the workman was not in the service of his employer, but on a "private mission of his own."

An ordinance of the city of Davenport, requiring horses to be hitched while standing on the streets, was read into the record. Upon pointed interrogation, employer testified that his workmen had general instruction to tie their horses and to heed the ordinance of the city.

At the bakery plant and in the neighborhood of the Nester home, it was evidently a matter of common knowledge that for years it had been the custom of Kasper Nester to come home for a hasty breakfast, driving a horse of his employer.

W. H. Korn, secretary and manager of the company, testifies as follows:

"Int. Did you know about him going home for breakfast?

"Ans. Yes.

"Int. And that he used the delivery wagon?

"Ans. Yes.

"Int. Was this with your consent?

"Ans. Yes."

He further testified:

"It was understood that he could go home for breakfast, and he asked permission to use the horse and wagon."

He further stated that it was to the interest of both the workman and the company that he use the horse and wagon; that it was more convenient for both.

The incident of the ash pan is exceedingly trivial. One of the regular duties of this teamster was to haul ashes from the plant to a dumping place. It would appear from the record that on the morning in question he was to make such a delivery for his employer and merely proposed to include his own pan full in this delivery.

The Workmens Compensation system gives no consideration whatever to negligence as a bar to compensation recovery. Evidently, the workman was negligent in failing to tie his horse. Presumably, he might have found a safer place to leave him while at breakfast. But these facts do not constitute an element of defense in this case. If workmen or their dependents were to be penalizd for acts more or less thoughtless and inconsiderate, a large share of claims now recognized would be denied. Neither employer nor employe is held to account for acts of negligence in compensation jurisdiction.

In going from the plant of the defendant company to his home for breakfast, driving the horse of his employer, Kasper Nester was distinctly within his rights. He lost his life in the endeavor to prevent the destruction of the property of his employer, hence the widow is entitled to the relief acorded by the Iowa statute in such cases.

WHEREFORE, the decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 31st day of October, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by District Court. Pending in Supreme Court.

ALCOHOLISM FAILS AS A DEFENSE.

Laura Mae Sparks, Claimant,

vs.

Consolidated Indiana Coal Company, Employer.
N. D. Shinn, for Claimant;
Sargent, Gamble & Read, for Defendant.

In Review Before the Iowa Industrial Commissioner

Award for claimant was found in arbitration at Melcher, Iowa, September 14, 1921, in the sum of $10.45 per week for a period of 300 weeks.

Review proceeding was instituted by defendant on the ground that statutory requirements in such cases were not met by claimant in proof submitted.

Riley Sparks, husband of the claimant, met his death in a room of a mine operated by defendant, September 29, 1919, under circumstances involving doubt as to the cause thereof.

Walter Sparks, son of the deceased, testifies to this effect: The father had given no evidence of indisposition the morning of his death. Father and son had eaten breakfast together at home and walked to the mine, a distance of about a quarter of a mile. They proceeded to the work of mining coal in the same room at about 8 o'clock. After the lapse of about two hours while the son was laying track, the father was working a drill in preparation for blasting. Separated by a distance of about thirty feet, some sort of sensation caused the son to turn and face the father,

whom he discovered to be crumpled up and in a dying condition lying back on a pile of coal.

The son at once observed fresh blood from wounds on the nose and at the right temple of the deceased, who was lying in such a position as to indicate a blow from some solid substance or instrument. In his frank statement he does not assume to frame a theory. His back was turned to his father. He heard the fall of the body back on the pile of coal, and testifies in this connection to a rattle suggestive of particles falling from the roof of the mine, though he could not identify any fresh chunks. Evidently the wounds did not result from the fall, as the deceased did not fall on his face. In this the testimony of the son is confirmed at the review hearing by that of Steve Snyder, a fellow miner, who evidently saw the body just as it lay after the fall.

The roof of the mine was evidently lined with what miners call kobo, a substance similar in weight to stone or coal. Part of the roof had been stripped the day before, but the kobo had not been removed from that portion over the drilling operation.

Counsel states: "No one undertakes to say that kobo hit the deceased. Indeed, the evidence is clearly to the contrary." I do not so read the record. While the son did not see the fall, nor identify any fresh chunks, basis for such inference is by no means destroyed.

Counsel further declares: "The position of the deceased as he worked at the drill was such as to cause his face to be turned downward." Any noise at the roof, as suggested by the son, would cause the workman to turn his face in this direction; then this fact might not "negative the probability of his having been hit by a rock or a piece of kobo falling from the ceiling."

I am unable to find in the record testimony sustaining the statement of counsel that "the evidence demonstrates that the *drill and the chunks* were in position after the deceased was discovered reclining on the floor of the room."

In the absence of any plausible theory accounting for his death from natural causes, the defendant relies heavily upon "alcoholism." It is admitted that Riley Sparks was a drinking man. The company doctor generalizes fluently on this vague charge, without submiting much substantial basis for his fluency. He assisted in post-mortem examination, which he says disclosed no suggestion in explanation of natural death. Such testimony affords no aid in the endeavor to account for the death of Riley Sparks.

Granting, however, that "alcoholism" whatever this might mean, may have undermined the physical forces of the deceased; that he was in danger of untimely death from such a source, what would this defense avail? It would merely make less difficult the solution of this perplexing case. It would mean that with powers of resistance substantially reduced, death might easily have occurred from some seemingly

inadequate cause, such as this accident is by defendant held to be. Such pre-existing cause would afford no bar to compensation award, and liability would inevitably result.

Certain it is that intoxication played no part in this tragedy, as it is clear that deceased had not been drinking the day of his death nor the day previously.

In compensation jurisdiction it has been commonly held that where a workman is found dead from a cause unexplained, at a place where his employment required him to be, doing what he was expected to do, such circumstance affords substantial basis for inference that the death arises out of and in course of the employment.

Honnold on Workmen's Compensation, Volume 1, page 219, declares:

"A prima facie case is made when it is shown that an employe was at his usual piece of employment, at the usual time of day when he was expected and required to be there, and an injury of any character is shown."

In *Flucker vs. Carnegie Steel Co.*, C. L. J. Volume 3, page 783, the Supreme Court of Pennsylvania gives this explanation:

"When the dead body of an employe is found on the premises of his employer, at or near his regular place of service, under circumstances fairly indicating an accidental death which probably occurred during the usual working hours of the deceased, the inference may fairly be drawn, in the absence of evidence to the contrary, that the employe was injured in the course of his employment."

While the law of Pennsylvania does not include arising out of employment as a condition precedent to compensation, it is clear that this language is not weakened by this fact in its application to the case at bar.

In the *Westman* case, Workmen's Compensation Law Journal, Volume 4, page 218, the Supreme Court of Maine says, as to the burden of proof:

"Even slender evidence may be sufficient if it would satisfy a reasonable man, and that reasonable inferences may be drawn from the evidence. But it is also true that in attempting to prove accidental death it is not necessary to negative every other possibility of death except that by accidental means."

Reported in *Bradbury's Workmen's Compensation*: Page 616:

"A cook on a ship lying in harbor was resting in his bunk at 4 P. M. when he was told by the captain to prepare tea. At 5:30 the chief officer, on going to see why he did not bring the tea, could not find him. His body was found next day in the sea near the spot where the ship had been lying in the harbor. There was evidence that he was subject to sudden attacks of sickness. It was held that the accident arose out of the employment. *Kerr or Lendrum vs. Ayr Steam Shipping Co.* (1914) 6 B. W. C. C. 326."

"The chief engineer of a new steamer, was by his direction, called early one morning and was last seen walking aft to observe the propeller, which he had stated he thought to be defective. He disappeared entirely, probably having fallen overboard, and it was held that the County Court judge properly drew the inference that the engineer's death was caused by accident arising out of his employment. *Proctor vs. S. S. "Serbina"* (1915) 10 N. C. C. A. 618."

Page 618:

"A railroad employe was found, after a train had gone out, lying some three or four feet from the rails, with his feet toward the track, having an injury in his head, and he died shortly thereafter from a broken neck. It was held that an inference arose that his injury was caused by accident arising out of his employment. *Muzik vs. Erie R. Co.*, 4 N. C. C. A. 732."

"A floatman on a pier in Brooklyn was ordered at night to go aboard a float lying at another slip. Some hours later his body was recovered from the water, it appearing that he had been drowned. It was held that the injury arose out of the employment. *Tirre vs. Bush Terminal Co.*, 12 N. C. C. A. 64."

Many decisions might be cited in support of a claim for compensation, based on facts distinctly similar to those submitted herein. Death of workmen during their hours of employment under circumstances unexplained is by no means rare, and the rule has been to recognize such consequence as arising out of and in course of employment.

Honnold, "On Compensation," at page 464, says:

"The burden is on the applicant to establish the fact of accident, if accident be essential under the act; that the injury complained of was proximately caused thereby; and that the incapacity or death resulted from such injury. This burden may be sustained by circumstantial evidence or inferences having a substantial basis in the evidence. A preponderance of the evidence is sufficient. By a 'preponderance of the evidence' is meant such evidence as, when weighed with that opposed to it, has more convincing force and from which it results that the greater probability is in favor of the party on whom the burden rests."

Squared by such standards this case is secure. Surely, "inferences having substantial basis in the evidence" are justified. The proof is preponderating in that there is nothing to overcome. Who will not say that "weighed with that opposed to it, it has 'more convincing force'." Who will not believe that the important element of "greater probability" distinctly supports this claim?

The death of Riley Sparks occurred in immediate contact with his employment. No evidence of bodily ailment is in the record. A well man one moment, a dead man the next. Why?

It is conclusively shown by the testimony of several witnesses that on the right temple of the deceased, a very susceptible point in the human anatomy, distinct injury was evident—injury resulting from some incident at the instant of death. Claimant's Exhibit "A" is a photograph of the dead body of this workman properly identified. No one will examine this exhibit without at once having his attention attracted to the wounds at the temple and on the nose. Witnesses may differ, but the camera is faithful to fact. Here is indubitable evidence apart from spoken testimony as to a specific injury having been inflicted, since it is clearly shown that those wounds were received at the instant of decease.

How and why these injuries caused death we may not know, and in the absence of any other reasonable theory or presumption it is not necessary to determine. By the rule of greater likelihood, so often applied in compensation jurisdiction, the death of Riley Sparks was not due to natural causes, but arose out of and in course of his employment.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 17th day of December, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by District Court. Reversed by Supreme Court.

TOWN MARSHAL WITHOUT COMPENSATION COVERAGE.

Mrs. Ida A. Hanshaw, Claimant,

vs.

Town of Batavia, Iowa, Defendant.
Jaques, Tisdale & Jaques, for Claimant;
Clyde E. Sparks, for Defendant.

In Review Before the Iowa Industrial Commissioner

The evidence in this case discloses that on August 1, 1917, W. R. Hanshaw, as town marshal of the town of Batavia, was killed by J. M. Lewis, whom he was attempting to place under arrest.

In arbitration January 7, 1920, decision was for defendant on these grounds:

1. That as town marshal of the town of Batavia, W. R. Hanshaw was an appointive officer, and that he was acting in the capacity as an appointive officer at the time he received his fatal injury;

2. That the fatal injury suffered by W. R. Hanshaw was caused by the wilful act of a third person directed against him.

There is no controversy as to the facts in this case. It is admitted that W. R. Hanshaw was killed in the performance of his duties by J. M. Lewis.

The town of Batavia relies upon two defenses for the defeat of this claim:

1. That under the provisions of subsection (b) of Section 2477-m16, Supplement to the Code of 1913, the deceased, Hanshaw, was excluded from compensation coverage as an official appointed by the town of Batavia;

2. That in accordance with paragraph (f) of subsection (e) of the aforementioned section, the town of Batavia is relieved from compensation payment "by the wilful act of a third person directed against an employe for reasons personal to such employe or because of his employment.

The ground of defense first named would seem to be based upon the definite statutory statement. There appears to be no escape from the

conclusion that as town marshal, the case of W. R. Hanshaw comes within the exceptions noted in subsection (b) of Section 2477-m16.

If the position of town marshal is not included in this exception, it is difficult to understand why such exception finds place in the statute. In towns such as Batavia the statute authorizes the appointment by the mayor or by the council of several definitely named officials. Among these appointive officials the town marshal is first in importance. If this official is not in the excepted list, no such claim can be made as applying to any appointive official of incorporated towns, and therefore the language of the statute must be considered not only irrelevant but without meaning in fact.

Counsel in argument emphasizes his reliance upon this provision found under the first section of the statute relating to Workmen's Compensation:

"The provisions of this act shall not apply as between a municipal corporation, city or town, and any person or persons receiving any benefit under, or who may be entitled to, benefits from any 'fireman's pension fund, or policeman's pension fund,' or any municipal corporation, city or town."

It is urged by counsel that this provision justifies the conclusion that this statutory statement is tacit recognition of coverage afforded an official of the character of Hanshaw when injured in the performance of official duty. It is well understood this language is an amendment engrafted upon the original compensation statute for the purpose of meeting a situation in the city of Des Moines. The said pension fund is created for the relief of policemen and does not apply to the chief of police, except as he shall have been promoted from the ranks to the head of the department.

In Iowa and in compensation jurisdiction generally, it is believed, policemen are held to be included in the benefits of the compensation statute. All policemen in the State of Iowa, below the chief, are so held by this department, except where denial is made necessary by this pension fund provision. Here, as elsewhere, coverage is denied the chief of police, a position conformable to that of town marshal, who is the head of police authority in his jurisdiction.

Citations submitted in support of this claim are believed to be based upon laws unlike that of the State of Iowa as to coverage of officials. Most of these citations, as is recalled, were from the jurisdiction of California in which compensation coverage is specifically afforded to "all elected and appointed paid public officials." The radical difference between this statement and that of the Iowa statute is conspicuous.

The defense of the city of Batavia is held to be good on the ground that W. R. Hanshaw, as marshal of said incorporated town, was an appointive officer within the meaning of Section 2477-m16, Supplement to the Code of 1913.

There may be some question as to the validity of the second ground of defense, based upon "the wilful act of a third person directed against

an employe for reasons personal to such employe or because of his employment."

J. M. Lewis was known to be a drug addict, and it seems to be conceded that at the time of his murderous assault he was not in a normal mental condition. There would seem to be in the evidence ground for conclusion that Lewis was disposed to run amuck with any established authority attempting to deprive him of his liberty or interfere with his delusions.

The question would seem to turn upon the word "wilful" as applied to this awful deed. There is basis for the conclusion that in his mental condition Lewis was not capable of forming a rational intent. If the evidence justifies this conclusion, it would seem necessary to hold that the act of Lewis was not wilful within the meaning of the statutory declaration. Since this question is evidently not controlling as to the issue involved, the Commissioner does not assume to make definite holding as to this defense.

It is held, however, that W. R. Hanshaw, as an appointive officer within the meaning of subsection (b) of Section 2477-m16, Supplement to the Code of 1913, was not an employe within the meaning of said section, and that this claimant is not entitled to an award of compensation as his dependent widow.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 3rd day of February, 1922.

A. B. FUNK,

Iowa Industrial Commissioner.

Pending in District Court.

NON-RESIDENT ALIEN DEPENDENCY—MOHAMMEDAN DIVORCE—AWARD.

C. D. Royal, Consular Representative of the Dependents of Aleck Hanoon, Deceased Employe, Claimant,

vs.

Cudahy Packing Company, Defendant.
C. R. Jones and Royal & Royal, for Claimant;
H. S. Snyder, for Defendant.

In Review Before the Iowa Industrial Commissioner

In arbitration at Sioux City, December 2, 1920, it was held that Aleck Hannon lost his life August 13, 1917, in the course of and arising out of his employment by the Cudahy Packing Company; that he left surviving him as his widow, Fatima Hanoon, residing in Betrona, Zebadany, Syria, and that she is entitled to dependency in the sum of $10.000 per week for a period of 300 weeks.

Defendants institute this proceeding in review on the ground that marriage between the deceased and this claimant is not established in the record, or if established, all rights accruing to such marriage are extinguished by an alleged divorce proceeding in accordance with a custom of Mohammedism to the tenets of which these parties respectively subscribe.

Careful examination of the record would seem fairly conclusive as to marriage having been consummated between Aleck Hanoon and this claimant; that they lived as man and wife until the deceased came to this country some nineteen years prior to his death. Consequently, the only way remaining in which to defeat compensation benefits under the law of this state is to establish proof of divorce, or that Fatima Hanoon "wilfully deserted deceased without fault upon the part of deceased." In the exercise of this process the burden shifts to the employer.

It appears in the record as a matter of hearsay only that Aleck Hanoon assumed to divorce his wife by simple declaration to this effect in the presence of three witnesses, none of whom are produced in this proceeding.

Under date of July 18, 1921, there was filed with this department the deposition of M. Ali, living at 93 Lenox avenue, New York City. This witness qualifies as Chaplain of the Imperial Ottoman Embassy at Washington, D. C. He alleges familiarity with Mohammedan laws and customs of marriage and divorce. The process relating to divorce which he describes is definite denial of the validity of the means alleged to have been employed by the deceased in his mooted endeavor to effect legal separation from his wife.

It is not necessary to affirm nor deny the binding effect in this jurisdiction of a divorce held to be valid under Mohammedan custom. Suffice it to say that even if such proceeding might constitute a valid divorce, this record does not prove that legal separation was ever established under such custom.

Chaplain Ali advises us that at one and the same time a Mussulman may have and hold in the bonds of wedlock four separate and distinct persons of the female sex. Having strenuously asserted the validity of Mohammedan law as to marriage and divorce, why should counsel plead as a bar to the claim of Fatima Hanoon the rumor that her husband was disposed to take a second spouse in the person of a "Cedar Rapids lady?"

It appears in the record that when informed of the alleged divorce proceeding Fatima Hanoon, who had lived with relatives of her husband, left their abode and lived elsewhere. This is not desertion. It is merely natural conduct on the part of a wife who believed herself wronged and aggrieved. And if it were desertion, it is certainly not "without fault on the part of the deceased."

Since a widow is conclusively presumed to be dependent upon her deceased husband, absence of actual contribution is not material.

The payment of a large sum as workmen's compensation—a sum that means actual affluence in foreign countries—to a widow who for nineteen years maintained the status of nonresident alien, neglecting to contribute in any degree to our domestic institutions, may to some seem repugnant. Be this as it may. This claimant has qualified as the dependent spouse of Aleck Hanoon, and it therefore becomes necessary to permit the statute in such cases made and provided to freely exercise its humane functions.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 16th day of August, 1921.

A. B. FUNK,
Iowa Industrial Commissioner

Affirmed by District Court and Supreme Court.

NONRESIDENT ALIEN DEPENDENCY—FAILURE OF PROOF.

Guadalupe Serrano, et al, Claimants,
vs.
Cudahy Packing Company, Defendant.
C. R. Jones, for Claimant;
Snyder, Gleysteen, Purdy & Harper, for Defendant.

In Review Before the Iowa Industrial Commissioner

In arbitration at Sioux City, December 5, 1920, it was found that Guadalupe Serrano and Natividad R de Serrano, his wife, were entitled to the sum of $4.125 a week for a period of 300 weeks as dependent parents of Manuel Serrano, who lost his life in the course of and arising out of his employment by the Cudahy Packing Company February 4, 1920.

In this review proceeding defendant denies:

1. That this action has been instituted by authority of the proper person; and

2. That dependency in no degree has been established by the record in this case.

It would appear that the provisions of Section 2477-m13, Supplement to the Code of 1913, are technically at variance with the record in this case, but it is held that in recognizing the power of attorney granted by these claimants the spirit of the law is vindicated and that this objection on the part of the defendants should be overruled.

Therefore, the only question at issue is as to whether or not the record in this case justifies an award to these parents as dependents of the deceased, Manuel Serrano.

At the arbitration hearing it is evident that the award was based upon depositions of the dependent parents supported by testimony of

Manuel Ayala as to the transmission of money from the deceased to these parents. In these depositions each parent alleges contribution on the part of their deceased son in the sum of $15.00 a week. Further on in the deposition each testifies that the contribution amounted to only "$40.00 to $50.00 a month." As to each interrogatory calling forth these statements there would seem to be a degree of positiveness not usually manifest under such circumstances.

In the very nature of a case dependents careful of their veracity are much perplexed in testifying to actual contribution because of the fact that they do not expect to be called upon for such showing and because record of any kind is rarely kept and direct support to statements they may make as to contribution is very difficult to obtain. Under such circumstances cock-sureness is not at all reassuring as to good faith, particularly where ignorance abounds and contributions are said to have been unusually large.

The witness Aysla testifies:

"I sent money to his family—sometimes I bought money orders from the postoffice for his father, and sometimes I sent that money through a money changer in Kansas City." Didn't remember how many times. "It would be about several times." As to amounts—"Sometimes $20.00, sometimes $25.00. I remember once—from twenty to thirty dollars, I don't remember, it is a long time ago, see?"

Held to more specific statement in cross-examination, Ayala could remember on one occasion of sending a money order "and that was about near Christmas." Asked as to the amount, the answer was—"if I remember, $25.00." He testifies that the money order in question was bought at the Sioux City postoffice.

Ayala further testifies that at a time he thinks, two or three weeks later, "I sent money to Kansas City to Ignovolo Herrar, a Mexican money changer, living at 505½ Main Street."

This is the record upon which the arbitration committee evidently based its award. The award may have been justified on the basis of liberal dealing usually exercised toward workmen and their dependents.

In the meantime, however, several depositions have been admitted to this review proceeding. The first considered is that of H. M. Holt, who qualifies as money order cashier at the Sioux City postoffice and testifies that he "had charge of the issuance of foreign or international money orders and the transmission of money through the Sioux City postoffice to foreign countries." From the records in his custody Mr. Holt testifies that "there were no orders issued to Manuel Serrano in the months of December, 1919, or January, 1920, in favor of Guadalupe Serrano or any other person in Mexico."

Next to be considered are the depositions of Joe Wilson, L. Leiva and M. Morales, produced and examined at Kansas City before M. M. Smith,

Notary Public. All these witnesses are Mexicans and residents of Kansas City.

Wilson testifies as to familiarity with Main Street thereof in the neighborhood of street numbers on said street from 500 to 600. Further, that at 505½ Main Street nor at any other place in this block in the month of January, 1920, was any such Mexican as Ignovo.o Herrer or Ignacio Herrera engaged in the money exchange business; that he was generally acquainted with all Mexicans in Kansas City; that he had never heard of a Mexican engaged in that business by either of those names.

L. Leiva testifies as to twenty years residence in Kansas City and that he never knew of any such man engaged in the money exchange business in said city.

M. Morales was Mexican Consul at Kansas City in January, 1920. He declares he never knew a Mexican by the name of either Ignovois Herrer or Ignacio Herrera.

The none too substantial structure upon which award was founded at the arbitration hearing seems to crumble under the influence of damaging evidence just considered.

Manuel Serrano may have made contribution to his parents in months previous to his death, but the record is so vague and indefinite and dubious that claimants have utterly failed to meet the burden of proof in accordance with legal requirement.

The decision of the arbitration committee is reversed.

Dated at Des Moines, Iowa, this 10th day of August, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by Supreme Court.

INSURER RELIEVED BY SUBROGATION RECOVERY.

Elsie May Roessler, now Elsie May Butler, and Lester C. Lewis, and Mary Roessler, Claimants,

vs.

Chain Grocery & Meat Company, Employer,
Travelers Insurance Company, Insurance Carrier.
C. R. Metcalfe and Otis H. Godfrey, for Claimants;
Snyder, Gleysteen, Purdy & Harper, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Sioux City, December 1, 1920, it was held that claimant Elsie May Roessler, now Elsie May Butler, was entitled to compensation at the rate of $10.00 a week for a period of 300 weeks, as widow of Charles Roessler, deceased, but that in view of the fact that this claimant had recovered in damages the sum of $3,000.00 from a party,

other than the employer for the death of her husband, the employer was released from all obligation as to compensation payment within statutory limits.

Review proceeding was instituted by each of the three parties in interest, on grounds as appears in the record.

Charles Roessler lost his life on the 29th day of June, 1918, in what is known as the Ruff disaster at Sioux City, in which a number of lives were destroyed by the collapse of a building undergoing changes and repairs. It is contended by the defendant that since the said changes and repairs were entirely foreign to any purpose on the part of the Chain Grocery & Meat Company, the death of their employe in the said disaster did not arise out of and in course of his employment.

Claimant, Mary Roessler, contends that the record shows Mrs. Butler to have been a deserter from her marriage relation with Charles Roessler, which entitles her, as the mother of Charles Roessler, to recovery of compensation on the basis of actual dependency because of contributions from her son before his death.

Claimant, Mrs. Butler, married this deceased workman May 21, 1917. A few months later she went to Des Moines, as she says, to visit a sister, and during the months intervening between this time and the death of her husband, marital relations would not appear to have been resumed. The widow and a married daughter insist no alienation existed. There is some rather vague testimony to the contrary. While the conduct of this claimant during the life time of Roessler seems more or less reprehensible, and her third marriage less than fifteen weeks after the awful death of her husband is suggestive of grave moral obliquity, there is ground for conclusion of the arbitration committee as to the validity of her claim for dependency upon the basis of conclusive presumption.

Elsie May Butler appeals from the decision of the arbitration committee on the ground that she was entitled to receive the net amount of $2,000.00 as the dependent widow of Charles Roessler. That since she had paid out a considerable share of the sum recovered under subrogation proceeding she is entitled to an additional award to cover such expenditure, together with other and further relief.

This claimant was the mother of a son about eleven years old when she married Roessler. It is contended that in addition to the subrogation recovery of this mother, her son, Lester C. Lewis, as the stepson of Charles Roessler is entitled to an award of $10.00 a week for a period of 300 weeks.

The decision of the arbitration committee will not be disturbed in its findings:

1. That Elsie May Butler is entitled to receive in compensation for the death of her husband, Charles Roessler, the sum of $10.00 a week for a period of 300 weeks;

2. That since she has received this amount in subrogation recovery under Section 2477-m6, Supplement to the Code of 1913, no further compensation recovery is due.

While the arbitration decision is affirmed as to these findings, it is ordered that an additional sum of $100.00 be paid to Elsie May Butler as statutory allowance for expenses of burial.

It is further held that the arbitration committee did not err in denying reimbursement to Mrs. Roessler for sums alleged to have been paid out in connection with the suit for recovery of damages from the Western Iowa Company.

It is further held that in view of the recovery of Elsie May Butler from the Western Iowa Company, all claim for compensation in this case is extinguished and that the claim of the stepson, Lester C. Lewis, is without foundation in law.

Dated at Des Moines, Iowa, this 29th day of October, 1921.

A. B. FUNK,
Iowa Industrial Commissioner

Affirmed by District Court. Pending in Supreme Court.

FAILURE OF PROOF OF ACCIDENT—INSUFFICIENT NOTICE.

William Pitts, Claimant,

vs.

Miley Brothers, Defendants.
United States Fidelity & Guaranty Company, Insurers.
J. F. Abegglen, for Claimant;
Miller, Kelly, Shuttleworth & Secburger, for Defendants.

In Review Before the Iowa Industrial Commissioner

A petition filed with the department October 23, 1919, alleges that on or about the 8th day of January, 1917, in the employ of this defendant, claimant sustained a very serious injury; that on or about the 16th day of January, 1917, in the employment of the same employer, he received a second serious injury; that because of these injuries William Pitts was totally incapacitated for his usual work as a laborer.

In arbitration November 24, 1920, plaintiff was held entitled to compensation payment in the sum of $5.00 a week for a period of 62 weeks.

On the part of defendant, obligation is denied, on these grounds:

1. That as to the first accident alleged no notice was given to or knowledge obtained by the employers within the time prescribed by statute.

II. That at the time of the second accident, William Pitts was not in the employ of the defendants.

III. That this action having been brought after more than two years had elapsed from the date of both injuries as alleged, claimant is barred by the general statute of limitations from the establishment of any right of recovery that might have existed.

At the time of these accidents, as alleged, Miley Brothers were engaged in the business of cutting timber for mine and other purposes in Lucas county. For several months the claimant had been in their employ more or less as a day laborer.

The record would seem to justify defendants' allegation that the employers were without notice or knowledge of the accident said to have occurred on or about January 8, 1917, within the 90 day period prescribed by the compensation statute.

As to the accident alleged to have occurred on or about January 16, 1917: William Pitts and Frank Gardiner were riding on the running gears of a lumber wagon from one camp to another, at which these employers were engaged in getting out timbers. Gardiner testifies only two were on the wagon, and that he was driving. Pitts says, there were three men along, and that the third man, whose name he could not remember, was the driver. Gardiner says the team belonged to Miley Brothers. Further, that so far as he was aware, Pitts was not accompanying him as an employe of the defendants. Gardiner himself was an independent contractor, helping the defendants' upon this occasion as a matter of mutual accommodation. Pitts says he fell from the wagon because the team ran away. Gardiner declares the team did not run away, but simply started to "trot up." In this fall the claimant sustained injuries more or less serious, although only one visit from a doctor is recorded.

One of the Miley Brothers admits he was informed relative to this accident, alleging, however, that it was of no legal concern to his firm because William Pitts was not at the time of the accident in its employ.

The claimant testifies he was on the wagon at the time of the accident because he had been sent to the other camp by the foreman, upon consultation with the employer, Pearl Miley. The foreman, David Noah, declares he had discharged William Pitts from the employ of defendants at about 11:00 o'clock on the day in question; that no such interview relative to the sending of Pitts to the other camp between himself and claimant or with Pearl Miley ever occurred, and Pearl Miley absolutely denies any knowledge of such an incident as the conversation in question. He confirms the statement of Noah, that the claimant had been dismissed from service in the forenoon. Leon Logsdon, another employe, corroborates evidence relating to the discharge of Pitts at the time stated.

There is no support in the record for the denial of Pitts relative to his discharge, or as to his statement that he had been commissioned to go to the other camp in the service of the employers. The only self-serving witness to this proceeding is the claimant. The employers were insured, hence served no financial interest of their own in supporting the case against Pitts, incidentially to the benefit of the insurer. The foreman, David

Noah, was at the time of the arbitration in other employment in another community, and evidently without motive tending to shape his testimony.

The burden is upon the claimant to establish in evidence facts justifying a compensation award. He need not submit absolute proof as to details, but he must at least justify the Committee and the Commissioner in the assumption that the element of greater probability substantially supports his claim. In the attempt to discharge this obligation, William Pitts has failed. The weight of evidence is against him.

As to the third count of the defense: Consistent with previous holdings of the Department and in accordance with present conviction this case is not barred by the statute of limitation, for the reason that the general statute relied upon by defendants does not apply in compensation cases.

The case under consideration might seem to suggest the propriety of limiting the actionable period to two years. The accidents for which payment is demanded, occurred in January, 1917. The record discloses no endeavor on the part of Counsel to submit his case to the Department until more than two and one-half years later. Upon the witness stand, Counsel testified as to an appeal of the claimant to him for legal assistance a short time after the accidents, as alleged. The fact that he did not proceed in the endeavor to establish this claim for a period of two and one-half years is quite unusual. No unworthy motive is suggested but it may be assumed that he had little confidence in the case. Long delay is very prejudicial to a good case. Too much must be left to conjecture based upon hazy recollection. Witnesses almost invariably become scattered. Some evidence is entirely lost, while other evidence is difficult to obtain.

When substantial reason is not given for years of delay in submitting a claim for Department adjustment the defendant is unduly prejudiced and doubt as to the character of the case can hardly fail to exist.

It is the purpose of compensation administration to deal leniently with a workman who comes with claims against employment for injuries received, but the integrity of the service requires that he does not slumber indefinitely upon his rights and rely upon a range of testimony involved in mazes of uncertainty and improbability.

In dealing from memory with the mass of testimony submitted, and in the haste necessarily exercised, the arbitration committee evidently erred in its finding.

Hence, it becomes necessary to reverse the arbitration decision.

Dated this 4th day of February, 1921, at Des Moines, Iowa.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

LOANED EMPLOYE—REGULAR EMPLOYER HELD.

Albert Upton, by his next friend, Anna Upton, Claimant,
vs.
Independent School District of Ogden,
Marcy Telephone Company of Ogden, and
Town of Ogden, Iowa,
Iowa Mutual Liability Insurance Company,
Employers Mutual Casualty Association of Iowa, Defendants.
T. J. Mahoney, for Claimant;
Miller, Kelly, Shuttleworth & Seeburger, Sampson & Dillon, for Defendants.

In Review Before the Iowa Industrial Commissioner

At Ogden, May 23, 1922, it was held in arbitration that in the employ of the Marcy Mutual Telephone Company, Albert Upton sustained a personal injury on the 15th day of September, 1921, resulting in temporary total disability up to and including May 15, 1922, and fifty per cent partial disability from May 15th to October 1, 1922.

The arbitration committee sustained the motion of counsel to dismiss the case as to the other two defendants named herein.

The issues in this case are more or less involved.

The Marcy Telephone Company had in its employ as lineman C. W. Shaffer, who was chief of such service, employed on a salary basis and paid by the month. Albert Upton was his assistant, working on a day basis. He did not put in full time because the requirements of the situation did not demand it, but he would seem to have been given all the line work not performed by the foreman, Shaffer, which usually amounted to considerably more than half his time during the month.

This arrangement as to Upton had been in effect for about a year prior to the injury. The work in which the claimant was engaged at the hour of his injury was upon a telephone line belonging to the Independent School District of Ogden, in charge of an electrical employe of the town of Ogden. Hence, the question arises: Who is held in obligation for compensation payment?

Albert Upton, testifying in his own behalf, says that in the forenoon of September 15th, the day of the accident, he was told by the manager of the telephone company, Ben Treloar, that he was to help Casserly, electrical expert of the Town of Ogden, on the school line job in the afternoon. Treloar testifies that he doesn't remember any conversation with Upton relative to this school job on the day of the accident.

Ben Treloar in this record qualifies as manager of the Marcy Telephone Company of Ogden and as president of the School Board of the Independent School District of Ogden. He would seem to have been introduced by the defendant Telephone Company for the purpose of showing that Upton at the time of his injury was in the employ of the Independent School District.

Treloar says that, prior to the accident, he told Percy Casserly that he would furnish him a man when he took up this school line job. Says he spoke as for the school board.

Percy Casserly, in charge of the school job at the time of the injury, testifies that Upton told him in the afternoon to help on the school job; that he had had no previous talk with Upton about his coming over and doing the work. He says, relative to appearance of Upton, "I believe he said Mr. Shaffer didn't want him that day, and he could come over here. I don't know whether Mr. Shaffer sent him or not." He says, further, that some time previously Ben Treloar had told him whenever he was ready to do this work he would send a man over to help him.

C. W. Shaffer qualifies as lineman and wire chief of the Marcy Telephone Company. He says on the morning of September 15th he told claimant he would not be needed in the afternoon; that in fact he did not work for the Telephone Company on the afternoon of September 15th. Asked who Upton did work for, he answered, "I don't know." Later he qualified the statement that he would not be needed by the Telephone Company in the afternoon by saying that he told him "he could help Joe Casserly finish that job." (Joe Casserly is the son of Percy Casserly.) He says: "Mr. Treloar said to let him off, so I did." Shaffer says Casserly "came over to the fence in the forenoon of the 15th and said he would like to have Albert that afternoon. At first he said he could not let him go, but later changed his mind and said he could go.

It appears from the record that on July 20th, less than four weeks prior to the accident, C. W. Shaffer had taken Upton and put in a half day's time upon the school district cross-arm job. For this work Upton was paid by the Telephone Company. Shaffer says he himself received straight time from the Telephone Company. Treloar says that while the Telephone Company paid for the work, the school board was billed with it but the bill hadn't been paid.

It was to finish this school job that the services of Upton were required by the Town of Ogden.

Shaffer says he couldn't tell for whom the work was done. He says Casserly asked him if he could change the cross-arm for him, and that "Jack (meaning Upton) was working with me and went along with me to change the cross-arm." He kept the time book and had given claimant pay from the Telephone Company for this work on July 20th. He did not give him pay for the afternoon of September 15th. He gives as a reason some excuse as to one job being exchange work, while the other was not.

It is held that that portion of the arbitration decision dismissing this case as to two defendants is not availing as to review action. All issues developed in arbitration are subject to review by the Commissioner and the courts upon appeal.

Albert Upton would seem to have fallen upon a time "when a feller needs a friend." At the age of eighteen he went to work for the Telephone Company. For a year he held his job, evidently to the satisfaction of his employer, since during all this time he seems to have had all its line work except that which the chief lineman was able to do alone.

The record justifies the conviction that on the 15th of September he believed himself assigned to duty under Casserly, doing a school job, and that this belief was justified by circumstances. Less than a month previously he had been in at the beginning of this job, and for this work he was paid by his regular employer. Why should he not expect that in taking hold to complete the job he should be paid in the same way by his regular employer?

On the top of a telephone pole he came in contact with a high tension wire and tumbled to the earth. The wonder is he was not killed. Dead to the world he was loaded on a truck and hauled to the hospital. As to his injuries, Dr. Ganoe says in evidence:

"We found some burns about his head and neck, and several burns about the lower extremities, especially below the knees. There was a burn on the middle of one shin bone that was charred, apparently, to the bone. There were several burns on the same extremity of lesser extent. There was another burn on the ankle of the other extremity that was deep, penetrating to the heavy tendon at the back of the heel, and a similar burn, I believe, just over the ankle on the foot. There were several burns about the neck, a burn back of the forehead and there we found later to be two burns on the scalp."

For ten days his doctor says he was not mentally normal and for considerable time more in a highly nervous condition. The arbitration committee found that for eight months he was wholly incapacitated, and for four months afterward was disabled to the extent of fifty per cent.

Meanwhile, the issue of support is acute. The parties beholden are passing the buck. In such an involved situation an insurer may naturally seek avenue of escape from liability. An employer is in honor bound to shield his insurer from imposition. He should tote fair in settlement controversy between the insurer and his workmen. Nevertheless, he is by no means expected to exercise ingenuity that a faithful workman shall be abandoned to dire misfortune when laid low in the performance of duty. He is expected to go to the limit of candor and consistency in securing to the unfortunate victim of industry the relief the law affords.

The testimony of Shaffer that he told Upton that the Telephone Company would not pay him for this work is incredible. The logical presumption is that he released him from telephone service for the purpose of furnishing his services to the performance of this school job in charge of the Town of Ogden. Had Upton been told that the work was to be done for the School District, to be paid for by the School District, and had he taken on the job with this understanding, the School District would be held in compensation because of its relationship to him as a loaned employe. The logical presumption, however, is that there was no such understanding.

On the part of the Town of Ogden and the School District, it is contended that Upton was not in their employ at the time of the injury. If this defense is not held good then the plea of casual employment must avail to afford them relief from obligation.

It is held that casual employment is not involved in this case. All these employers are within compensation jurisdiction. In compensation parlance at the time of his injury Albert Upton was a loaned employe. He might have been loaned either to the Town of Ogden, or to the Independent School District, depending upon circumstances involved. Either of these three co-defendants might be charged with liability as facts are developed in evidence.

Schneider's "Workmen's Compensation Law" is the latest reference work available. Upon its merits it is entitled to recognition as one of the best of compensation authorities that has appeared. In section 24 we find the following:

"*Loaned Employees.* The common-law principle that an employee lent to a special employer, and who assents to the change, becomes a servant of the employer to whom he is loaned, applies to cases arising under the workmen's compensation act.

"In a recent Wisconsin Case the Court said: 'When a workman is transferred with his own consent, by an employer to a special employer, the latter may become liable to pay an indemnity when he is in the exclusive control and management of the work in which the injury is received. But where the employe had no knowledge of the fact that he had been loaned the original employer was liable.

"When a miner loaned to another company to assist in extinguishing a fire, and while so engaged was subject to the control of the latter company, it became his employer, even though his wages were not fixed, so that a claim for compensation was properly awarded against it.

"An employer cannot transfer his employe to the employ of another employer so as to constitute the employe a special employe of the latter, without the consent of the one transferred, with the understanding that he is submitting himself to the control of a new master."

As an element of defense it is plead that the work out of which grew this injury was in the nature of exchange between Upton and Joe Casserly.

In said Section 24, Schneider says:

"The unauthorized exchange of jobs between two employees will deprive them of their right to compensation. But where the exchange is authorized, the injured employee may recover from his regular employer."

These employers seem to emphasize the understanding as to exchange between Upton and Casserly boys, if any such exchange is to be considered, it would seem to have been authorized.

The weight of compensation decision sustains this claim. Circumstances might have identified either of these defendants as obligated under the law, but the facts developed in arbitration point to the Marcy Mutual Telephone Company as the employer liable to statutory payment.

The arbitration committee awarded a weekly compensation of $9.00. Upon review it appears that in the computation resulting in such figure

the statute was not strictly followed. With the application of the statutory three hundred day rule the award is increased to $9.09 a week. The corrected figure is arrived at by computing an average daily wage of $2.628 from the earnings and period of employment as of record and multiplying such average daily wage by 300 and dividing by 52, thus finding an average weekly wage of $15.16. Sixty per cent of such average weekly wage is $9.09, the weekly compensation found due the claimant in this proceeding.

The decision of the arbitration committee will be amended to conform to this revised award, and as so amended it is affirmed.

Dated at Des Moines, Iowa, this 19th day of October, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in District Court.

LOSS OF VISION—AWARD.

W. K. Greene, Claimant,

vs.

Rowat Cut Stone Company, Employer,
Iowa Mutual Liability Insurance Company, Insurance Carrier.
Sullivan & Sullivan, for Claimant.
Sampson & Dillon, for Defendants.

In Review Before the Iowa Industrial Commissioner

May 3, 1921, compensation in the sum of $12.98 a week for 100 weeks was awarded W. K. Greene for injury October 10, 1918, arising out of and in course of his employment by the Rowat Cut Stone Company.

Defendants appealed from the arbitration award on the ground that the injury for which compensation is claimed was not due to his employment by this defendant and that the findings of the arbitration committee were in conflict with the evidence submitted.

Claimant testifies that injury to his left eye was sustained in the work of stone cutting. That while tapping tools with a steel hammer something hit him in the eye—"a piece of hammer or tool, I don't know which."

There would seem to be no denial as to this incident. Claimant reported to his foreman who sent him for treatment a few moments later to Dr. H. L. Rowat, the company doctor.

Dr. Rowat testifies that he treated the injured member. Doesn't know whether or not he found foreign body. Has no report on file and testifies from recollection only. Pronounces injury he found "slight abrasion."

No further developments are in evidence until early in December of 1920, when claimant declares he first noticed trouble with his eye. In

driving an automobile something happened to cover up the right eye which seemed to shut off his vision from which accident was narrowly averted.

Doctors H. L. Rowat and C. C. Walker called by the defense are of the opinion that the condition of this eye as is disclosed by examination in December of 1920, was not due to the injury of October 10, 1918.

Called for the claimant, Dr. G. A. May at the arbitration hearing in examination December 9, 1920, found little vision, and on January 17, 1921, found no useful vision remaining. The rusty colored pigment he found "near the posterior capsule, the posterior portion of the lens," he attributed to "a retention of metallic substance." Dr. May believes the theory of the claimant as to the cause of this loss of vision is not inconsistently based upon the injury of October 10, 1918.

Subsequent to the arbitration hearing the deposition of Dr. W. W. Pearson was taken by the claimant. He examined W. K. Greene, March 23, 1921, and again November 16, 1921. These examinations included access to X-ray examination by Dr. Burcham, which disclosed the presence of no metal in the injured member. Dr. Pearson found either rust pigment or blood pigment in the left eye which he said would be indicative of one or two things. "Either had steel in the eye which had became oxidized forming a deposit in the iris, or it might be the blood pigment deposited on the iris." He was "inclined to think that it was the steel that caused the trouble." Asked "if he got a small piece of steel or metal in his eye, would that metal dissolve in the eye?" The answer was—"If it were steel, yes." The opinion of Dr. Pearson as to the cataracteus condition of claimant's eye being due to the presence of steel in the injured member was with full knowledge as to the development of the X-ray which disclosed no existing presence of metal. He says: "In the case of Greene we were unable with the X-ray to demonstrate the particle of steel in the eye. We have learned, however, from experience very small pieces of steel would oxidize and as a result disappear other than the little that remains on the iris here, so the X-ray will not demonstrate it, they are so small."

Dr. Pearson and Dr. May both testify that experience has shown it is nowise improbable that vision in the injured eye had been failing for a long time before discovery of the fact was made by claimant. That the claimant should have been able to continue his work without apparent distress Dr. Pearson holds to be not at all unusual in cases of injury similar in character and of like substantial ultimate results.

The development of this case discloses real basis for controversy. The most perplexing phase of the situation is the fact that more than two years should have intervened between the date of this injury and the discovery of loss of vision. There is ground for dissent on the part of the defendant from the claim that the loss of vision sustained by Greene is due to the injury of October 10, 1918.

The case of claimant has not been proven to absolute certainty. Such proof, however, is not necessary to establishment of a compensation claim.

If it shall appear from all facts submitted that the element of greater likelihood is in favor of this case, award should be made. Our supreme court effectively uses the term "inherent probability." Under such circumstances as are involved in this case, it is a comprehensive and satisfactory term.

The testimony of claimant appeals to judicial understanding and confidence. Manifestly, he is not trying anything like a "frame-up." When he discovers the waning vision of his left eye he does not at once recall any contributory circumstance. Deliberate deception makes no such admission. When his memory reverts to a contributing cause he definitely fixes an exact date and incident in which he is abundantly corroborated. In the interim between this injury and the discovery of loss of vision in the left eye he has another eye injury. In evidence he can't recall which eye sustained the second injury. It was quite important that it should not be the left eye as this would weaken this claim for compensation. Defendant's expert witness who treated the second injury removes this possible weakness by testifying that the right eye was the one later injured. Calculating deceit would have remembered it was the right eye, whether it was or not. This motive might also have alleged pain and knowledge of failing vision in the months subsequent to the injury relied upon for relief. Claimant frankly disclaims both, regardless of legal consequences.

Evidence of Greene is reassuring. Definite injury is established as a not unreasonable basis of claim. Loss of vision is evidently due to trauma. No suggestion as to cause other than the accident of October 10, 1918, is submitted. The fact that X-ray more than two years after the accident fails to disclose the presence of metal substance is shown to be not conclusive. All these developments in the record strongly point to the inherent probability that claimant's loss of vision is due to the accident of October 10, 1918; that the element of greater likelihood is in his favor.

WHEREFORE, the decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 26th day of January, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

AWARD FOR DEATH FROM INJURY ON RETURN OF DISCHARGED MINE FOR WORKING TOOLS.

Mrs. Carrie Mitchell, Claimant,

vs.

Consolidation Coal Company, Defendant.
Clarkson & Huebner, for Claimant.
Mabry & Mabry, for Defendants.

In Review Before the Iowa Industrial Commissioner

This case was arbitrated at Albia, November 2, 1921, before Ralph Young, Deputy Industrial Commissioner, additional arbitrators having

been waived by stipulation. An award was made in the sum of $15.00 per week for a period of 300 weeks.

This proceeding in review is based upon the allegation of defendant that the arbitrator erred in holding that injury which caused the death of William H. Mitchell, deceased husband of this claimant, arose out of and in course of his employment by defendant; that the decision in this case is not sustained by the facts involved and the law pertaining to such issues.

In the fall of 1920, William H. Mitchell was in the employ of this defendant as a coal miner, in what is known as its Mine Number 18.

For infraction of mine rules the deceased was discharged from the employ of the company November 1, 1920, and reinstated a day or two later. For continuing to offend against said mine rules, he was again given notice of final discharge November 10, 1921.

November 13, 1920, he sought and secured employment in the Sheriff mine several miles away. On November 15, 1920, Mitchell came to Mine 18 for the purpose of removing his tools preparatory to entering upon his new employment. In this proceeding while going down the manway into the mine, he had a fall which caused him to inflict a wound upon his hand by catching it upon the hook of his pit lamp.

The incident of injury in the manner alleged, would not seem to be questioned by defendant, and its connection with the death of the miner from infection some time later appears to be taken for granted. The only question at issue is as to whether or not at the time of the said injury this workman was under the protection of the compensation statute.

A great deal of testimony was submitted to develop incidents having more or less to do with the movements of Mitchell on the morning of the 15th, when he came to the mine to remove his tools. As will be seen, a number of days had elapsed since he had performed his last service of production in the mine of his employer.

Claimant's counsel is disposed to make a good deal of certain shreds of evidence tending to show, perhaps, that it was the purpose of the miner to square up his room and load a considerable quantity of loose coal before taking final leave. This was not done for the reason, as counsel contends, that since work was suspended in the room on the 10th, some two car loads of slate had fallen, which must have been removed before the loose coal could be loaded, which changed the intention of the miner, a fact which did not seem to meet any complaint on the part of the mine authorities.

At this time, an assistant foreman with the assistance of the workman, made certain measurements necessary to final settlement. This foreman then ordered that a car be placed at the disposal of Mitchell for the purpose of moving his tools toward the mine shaft. They were loaded by the workman, probably a little before nine o'clock, and delivered to a

junction point in the mine where a motor was to complete the work of delivery to the cage.

It is presumed that the deceased reached the top by walking up the manway. He there made final settlement with the mine foreman, receiving a slip as evidence of amount remaining due from the employer.

There is evidence in the record to support the claim that without much delay the tools were taken to the surface in the shaft cage. Foreman Bucknell, however, testifies that at 10 o'clock or 10:30, Mitchell asked about the tools coming up and was told that they would be up soon. It would appear that Mitchell for considerable time remained in the vicinity of this shaft, awaiting the delivery of the tools. It is in evidence that he manifested a good deal of anxiety about their appearance, as the time was approaching for him to take a train to Buxton which left the station, a mile to a mile and a half away, at 12:05.

Lee Carrett, a fellow miner, testifies that at from 11 o'clock to 11:30 in hurriedly coming up the manway to take the said train he met Mitchell going down. As the two were near each other he heard Mitchell fall, and asked him if he was hurt. He said he had caught his hand on his lamp hook, but thought he was not seriously hurt. He told Garrett he was going down to see about sending up his tools.

There would seem to be no escape from the conclusion that all movements of Mitchell down in the mine on the morning of the 15th was under coverage of compensation. In argument there seemed to be practical admission of this fact on the part of defendant. Counsel placed great emphasis upon the settlement on top, wherein Mitchell received evidence of final payment, which counsel contends finally terminated the engagement between this employer and employe. There would seem to be no serious resistance to assuming coverage up to this point.

Strenuous resistance is made, however, to the theory that from that moment forward the employer was in any degree responsible for any personal injury that might be sustained by Mitchell. So the issue would seem to be narrowed to the point as to whether or not this contention of defendant is good.

Defendant insists not only that the engagement had definitely terminated but that at the time of his injury the workman was performing no service for his employer, and therefore could not be considered in compensable relationship.

This conclusion is at variance with plain provisions of the statute as interpreted in all compensation jurisdiction. There are numerous incidents in the day's activity in which the workman is afforded coverage because of contingent relationship with his employment. When the workman is leaving the premises his coverage is generally recognized, though this involves no service to employment. In *Rish vs. Hawkeye Portland Cement Company*, 170 N. W. Rep. at 466, the Supreme Court of Iowa holds that a workman is entitled to compensation protection even in the

act of lighting a cigarette, and this is not incons'stent with holding elsewhere under circumstances more or less analogous.

If the workman was under protection at any stage of his activity upon the morning of the 15th, as he unquestionably was, this relationship would seem to be undisturbed while the purpose of his visit to the mine was incomplete—that is to say, until his tools were delivered to him on top, if, indeed he would not have been covered till he left the premises of the employer.

While it is alleged that these tools were delivered to the surface some time before Mitchell went down the manway at the time of his injury, it is definitely manifest that the workman had no notice or knowledge of this fact.

Honnold, on *Workmen's Compensation*, Volume 1 at page 373, declares:

"An employe is under the protection of the Compensation Act even after his discharge, providing he be injured upon the premises of the employer while remaining there for reasons connected with his former employment."

This statement is substantially bottomed upon a fundamental of workmen's compensation law and practice.

The incident of final settlement was not controlling so long as a reasonable service in severing his relations with his previous employment remained unperformed.

Mitchell's appearance at the mine the morning of the 15th was definitely due to an incident of his employment by this defendant. On his employer's premises he was protected when he took his tools to his place of employment, and the rule specifically applies when he was taking his tools from his previous working place. No incident of employment could sever compensable relationship until all reasonable activity in this connection was complete.

It is not in evidence that the workman failed to exercise due diligence in this proceeding. It does not appear that he was loitering or giving attention to anything except the mission he came to perform. His anxiety over the delay in getting hold of his tools at the mouth of the shaft is apparent. Eagerness to get away is manifest. Hence, the fateful trip down the manway was a performance by no means unnatural or unreasonable.

The facts and the law support the decision of the arbitration committee. While the circumstances are to a degree unique, analogous cases afford ample precedent in the authorities.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 3d day of January, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in District Court.

ESCAPED CONVICT KILLED IN SERVICE—AWARD GRANTED WIDOW.

Rosa Anna Benton, Claimant,

vs.

Rex Fuel Company, Employer,
Bituminous Casualty Exchange, Insurance Carrier.
Clarkson & Huebner, for Claimant.
D. W. Bates, for Defendants.

In Arbitration and Review Before the Iowa Industrial Commissioner

In this case it is stipulated that additional arbitrators be dispensed with and that the case be submitted to the Industrial Commissioner. It is further agreed that the hearing of September 30, 1921, shall be considered as covering both arbitration and review proceedings, all rights of appeal to the district court being reserved.

Jesse H. Benton, husband of this claimant, lost his life on the 24th day of December, 1920, in the employ of the defendant fuel company.

Stipulation on file admits all facts material to the establishment of a compensation claim. Controversy exists only as to a legal question involved.

The deceased husband was convicted of manslaughter in the state of Alabama and sentenced to four years imprisonment. Eluding custody on his way to the penitentiary he came to Iowa as a fugitive from justice and secured employment in the coal mine of the Rex Fuel Company under the name of Andy West.

Payment of compensation is resisted by the defendants on the ground that under sentence for felony the deceased was incompetent "to make valid and binding contract of employment" because he had been "deprived of his civil rights as a citizen of the United States and not entitled to any civil rights under the law."

The sole question is: Was Jesse Benton while under sentence in Alabama deprived of the right of contracting his services and denied the right to work and receive wages in the State of Iowa at the time of his accidental death?

Subject to all the conditions of the compensation statute, the deceased workman was in the service of this defendant at the time of his death under circumstances creating absolute liability in compensation payment to his dependents.

Section 2477-m7, Supplement to the Code of 1913, provides:

"No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided."

Under the exception noted, no bar affecting this case is created elsewhere in the act.

Bar to recovery is plead on the ground that fraud was practiced upon the defendant in that the deceased workman not only had no power to contract but that he secured employment under false representation as to identity.

Lockridge vs. Minneapolis & St. Louis Railway Company, 140 N. W. develops these facts:

Action was brought to recover damages arising from collision on the part of plaintiff with a train of defendant. On the grounds of resistance to recovery was that at the time of the injury plaintiff was driving an unregistered automobile, a fact constituting him a trespasser and voiding his claim.

At page 838 the court through Justice Gaynor declared:

"Whatever the law may be in other jurisdictions, this court is committed to the doctrine that there must be some causal connection between the act involved in the violation of a statute, and the injury resulting, before the violation of the statute will preclude recovery. The mere fact that the party, at the time of the injury complained of, was doing an illegal act, will not defeat his recovery, unless the illegal act charged has some causal connection with, and is in some way a concurrent cause of, the accident."

Since no representation of Benton, fraudulent or otherwise, nor no other incident of his standing before the law of Alabama in any degree contributed to his injury and death, this attitude of the court is disconcerting to the theory of defendant.

The following Iowa decisions distinctly discredit the contention of defendants:

Thompson vs. Niles & Watters, 115 Iowa, 67, 70;

Nichols & Shepard Co. vs. Marshall, 108 Iowa 518, 520;

Estes vs. Carter, 10 Iowa 400, 401;

Taylor, Farr & Co. vs. Telegraph Co., 95 Iowa 740, 744.

Numerous decisions from other states sustain opinions in the Iowa cases cited.

The tendency of text books is indicated in these clear statements:

Page on the Law of Contracts, Vol. 3, p. 2850:

"A convict who has escaped may make a valid contract for work and labor."

13 C. J. 248:

"A contract as to its validity and interpretation is governed by the law of the place where it is made."

Williston on Contracts, Vol. 1, Sec. 272:

"Under the early common law, one convicted of a felony was incapable of suing though liable to be sued on a contract; but no such rule prevails generally in America."

Elliott on Contracts, Vol. ——, p. 461:

"In the absence of a statute declaring him to be such, a convict is not civilly dead. He may enter into contracts and sue and be sued thereon."

13 C. J. 915:

"A statute suspending the civil rights of convicts confined in state prisons is highly penal and should not be extended by implication or construction."

As to the contention of the defendant, the Iowa statute is mercifully silent. The Iowa courts have laid no foundation and afford no justification for imposing hardships upon widows and orphans contrary to the general spirit and purpose of the Compensation statute. Counsel for the defendants submit no citation in support of his case.

Defendants would carry us back to the rigors of common law provisions for attainder under which a felon was not only deprived of liberty and ordinary rights of citizenship, but was permitted to retain no rights entitled to the respect of mankind, and his heirs were penalized for their very existence. The Constitution of the United States erected a sufficient barrier against such imposition. Statutes here and abroad have tended to ameliorate the severity of old English criminal law. Substantial rights are reserved to the felon as he pays the penalty of crime. More important is the fact that in law members of his family are not included in his sentence. The offended state satisfies itself with proceeding against him alone.

If Benton might not contract he could not collect for services rendered. If the insurer be not held in compensation payment, the employer might have taken, without consideration, the fruits of his toil in the bowels of the earth. His work was acceptable. His behavior above criticism. Who shall say that in digging coal at scale prices under agreement with the defendant employer he was not working under contract as all men are under like conditions? Who shall say after his life has been given to the task of his employer that his Alabama crime shall be invoked to make objects of charity of his family?

What Alabama might do with this widow and her babies we may not know and do not need to know. The question is, what will Iowa do with them? Jesse Benton committed no crime against the State of Iowa. He sought within our borders the fruits of honest toil and lost his life in an endeavor to provide for his family. His Alabama case is appealed to a higher court. Innocent of offense against any statute, this widow appeals for justice. Her bread winner has been sacrificed to industrial employment. In the humane provisions of the Compensation statute, she seeks shelter for her babies and herself. No Iowa statute has erected a barrier to her relief. No Iowa court has sounded doom to her hopes.

In the absence of actual statutory inhibition, no tribunal would incline to deny the support provided by the Compensation statute to this

widow and orphans. Such an act would be repugnant to a common sense of justice. It would be evidently against public policy to reduce these dependents to want where legal provision has been wisely and humanely provided for their care and support. Men are not disposed to look kindly upon a proposal to visit the sins of the father upon the widow and orphans.

The Rex Fuel Company is ordered to make compensation payment to Rosa Anna Benton, surviving widow of Jesse H. Benton, deceased, to the extent of $15.00 a week for a period of 300 weeks, together with the sum of $100.00 as burial obligation imposed by statute, and to pay costs of this action.

Dated at Des Moines, Iowa, this 6th day of October, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HURRYING TO LEAVE PREMISES NO BAR TO RECOVERY.

M. B. Warrington, Claimant,

vs.

Des Moines Saw Mill Company, Employer,
Integrity Mutual Casualty Company, Insurance Carrier.
James E. Goodwin, for Claimant.
H. W. Raymond, for Defendants.

In Review Before the Iowa Industrial Commissioner

This case was arbitrated August 4, 1922, upon stipulated facts, appearing in the record herein. The finding was for claimant in the sum of $15.00 a week for a period of nine weeks.

It appears in the stipulation that M. B. Warrington was injured upon the premises of the Des Moines Saw Mill Company on the evening of February 27, 1922.

For some time it had been the custom of this workman to ride from his work to his home with a co-employe who drove his own automobile. Just after working hours on the day of injury claimant left his work at one of the buildings of his employer and was hurrying to board the automobile, which was moving slowly upon the grounds of the employer, when he slipped upon a piece of ice, sustaining injury in the way of a broken knee cap.

It is the contention of the defendant that compensation coverage is not afforded in this case for the reason that Warrington was injured in performance of no importance to his employer, and at a time when he was without the scope of his employment.

It is well established in compensation jurisdiction that a workman has coverage on the premises of the employer while going to or returning

from his day's work. It would doubtless be nowhere denied that had this workman fallen on a stairway in getting out of the building of his employer, receiving injury, his claim would not be subject to contest. If it had occurred that the injured man had hurried in descending the stairway, his claim would hardly have been impaired by this fact. Counsel would probably admit that had this man been proceeding in the usual way from the building of his employment to catch a street car when this accident occurred he would have been under coverage. Observing a car approaching, an increase of speed on his part to make sure of connection would hardly afforded an excuse for denial of payment.

This line of reasoning would seem clearly to establish the claim of Warrington. He was leaving his work at the usual time and in the usual way, in fact by the only source of egress provided. In hurrying to board the automobile he may have been negligent in that he failed to exercise due prudence in the manner of his going, but there was no difference in a compensation sense in hurrying down stairs, or running to take a street car, or to join his friend in the automobile.

The cases cited in support of defense would not seem to be in point. They chiefly involve accidents inflicted by instrumentality foreign to the employment, or which had their origin in unauthorized conduct or unnecessary peril. There was no beam or trestle walking in this case. Had Warrington been injured by the actual use of the automobile after it was boarded, his case would have been comparable with engine jumping, resulting in accident, and he would, of course, have been denied relief.

Under all the circumstances of this case, no reasonable doubt can exist but that in the application of the compensation statute as commonly exercised in this and other states, M. B. Warrington is entitled to recovery for the injury he sustained as set out in the stipulation of facts.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 28th day of September, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INDEPENDENT EMPLOYMENT—PAYMENT DENIED.

Olga Kirkeby, Claimant,

vs.

Sanitary Plumbing & Heating Company, and New Amsterdam Casualty Company, Defendants.
A. E. Brown, for Claimant.
Brockett, Strauss & Blake, for Defendants.

In Review Before the Iowa Industrial Commissioner

On the 2nd day of September, 1921, Clarence Kirkeby lost his life while engaged in sewer work at Osage.

In arbitration May 3, 1922, it was held that the deceased workman was engaged at the time of his death in the capacity of an independent contractor, wherefore compensation was denied claimant herein.

Harry Johnson of Osage, known in this record as in fact the Sanitary Plumbing & Heating Company, the defendant herein, in the year 1921 contracted for a number of jobs of plumbing installation in connection with sewer work in course of construction by the City of Osage. It appears that he made an engagement with James Harper and Clarence Kirkeby to dig trenches for use in this connection. For this work of excavating these men were paid on the basis of thirty cents a running foot for digging and filling. Johnson kept no record of time employed and there was no understanding as to working hours, that is to say, when work should begin in the morning or how many hours a day was to be the rule of employment. The work was done in accordance with specifications furnished by the city. The workmen furnished their own tools and made their own measurements, reporting same to Johnson who made payment accordingly.

In this record, as Defendant's Exhibit "1," appears the affidavit of James Harper, above mentioned, dated October 4, 1921, about a month after the accident. The body of this affidavit follows:

"I James Harper, being first duly sworn on oath state that I was personally acquainted with Clarence Kirkeby who was killed by the caving in of a house connection ditch in Osage, Iowa, on the 2nd day of September, 1921; that Mr. Kirkeby and myself made an agreement with Harry Johnson, doing business under the name and style of Sanitary Plumbing & Heating Co., of Osage, Iowa; whereby Mr. Kirkeby and myself were to dig the ditches for such house connections as Mr. Johnson might want to make, connecting house plumbing with the sewers in the City of Osage, Iowa; that our agreement was to dig the trenches or ditches for these connections, and were to receive pay therefor from the Sanitary Plumbing & Heating Co., at 30 cents per linear foot of trench. We were to report our measurements each week and receive payment; this we did. Mr. Kirkeby and I worked under this agreement from the 8th day of August, 1921, to the date of his death. For four weeks we reported our work each week and received payment. The number of feet dug was multiplied by 30 cents and we were paid, one-half of the total amount earned, to each. There was an agreement between Mr. Kirkeby and myself that we would do this work for the Sanitary Plumbing & Heating Co. on the terms stated above. There was no definite time agreed as to how long the agreement with the Sanitary Plumbing & Heating Co. was to run, except that we agreed to dig what trenches they would have to dig for that purpose and at the price stated.

Mr. Kirkeby and myself were working together at the time of his death, under our agreement with the Sanitary Plumbing & Heating Co. Mr. Kirkeby was working in the ditch of a house connection, when the side of the ditch caved in covering him entirely and causing his death. Help was secured and excavation begun immediately, or within a very few minutes, but when the body was recovered he was found to be dead. A pulmotor was used in an effort to revive him but without result.

Mr. Johnson of the Sanitary Plumbing & Heating Co. supervised the work we were doing and directed where and when it should be done."

Before the committee James Harper testified that Kirkeby and himself had had fifteen or twenty jobs under their engagement with Johnson, only one of which, the Cleveland Hotel, being on an hour basis. All others were paid for by the foot, as hereinbefore stated. Mr. Johnson gave general directions as to where to dig. Asked: "D'd Mr. Johnson come around and tell you how to dig those ditches?" The answer was: "No, we knew ourselves. He told us where to go."

Harper testified that he signed, after reading same, the affidavit introduced as Defendant's Exhibit "1." Harper further testified there was no regularity as to hours worked a day; that as a matter of fact they worked from ten to fourteen hours and split even upon the money they received on the foot basis.

Defendant's Exhibit "2" is an affidavit of Harry Johnson, made October 4, 1921, the body of which is as follows:

"I, Harry Johnson, being first duly sworn on oath state that I am engaged in the heating and plumbing business in Osage, Iowa, and have been so engaged for a number of years; that on the 8th day of August, 1921, Clarence Kirkeby and James Harper made an agreement with me whereby they were to dig ditches for making house connections with sewers in the city of Osage; that under this agreement it was agreed to that said Kirkeby and Harper were to dig the trenches for these connections and I was to pay them 30 cents per linear foot for ditches dug. They were to work under my direction as to when and where to work, and were to be paid for such work as they had done at the end of each week. At the end of each week they brought to me the measurements of feet of ditch dug by both of them, the amount was computed and divided by two and each received payment from me of one-half; that said Kirkeby worked for me under this agreement until his death, Sept. 2nd, 1921; that I paid him for work done for me under this agreement as follows: The first week of such employment, $39.05, the second week $34.20, the third week $36.45, the fourth week $32.30. That he was engaged at work under this agreement when he was killed by the caving in of a ditch which they were digging. The agreement made was for no particular time, except that they agreed to dig ditches for the connections which I would make. I had quite a number of connections ahead. I was at the place where he was killed very soon after it occurred. He was killed by the ditch caving in while he was at work in the same. This occurred on Ash Street in Osage, Iowa, at about 10:20 A. M. of the 2nd day of Sept., 1921."

At the arbitration hearing Harry Johnson practically substantiated his statements contained in Exhibit No. 2.

Honnold, on "Workmen's Compensation," at Section 51, says:

"To constitute one an employe, it is essential that there be a contract of service, an implied consideration of which is usually provision for compensation for injury to him arising in the course of his employment. * * * The requisite 'contract of service' is not a 'contract for services.' The former relationship constitutes one an employe and brings him within the Act, while the latter relationship makes one an independent contractor—that is, a self-serving employe—and excludes him from the Act."

In *Pace vs. Appanoose County*, 916 (7), the Iowa Supreme Court declared, relative to the identification of independent employment:

"The test oftenest resorted to, in determining whether one is an employe or an independent contractor, is to ascertain whether the employee represents the master as to the result of the work or only as to the means. If only as to the result and himself selects the means, he must be regarded as an independent contractor.

"(8) The mere fact that the owner may have an overseer or architect to see that the work complies with the contract or that the work is to be to the owner's satisfaction does not change the character of the contract, if it meets the test stated.

"(10.11) Whatever the other conditions of the contract may be, if in its essential features it provides that the employer retains no control over the details of the work, but leaves to the other party the determination of the manner of doing it, without subjecting him to the control of the employer, the party undertaking to do the work is a contractor and not a mere employee."

The court abundantly justifies these declarations by reasoning and citation submitted in *Pace vs. Appanoose County.*

In *Norton vs. Day Coal Company*, 180 N. W. 905, the Supreme Court of Iowa submits further expression in the identification of independent employment:

"(6) VI. The relationship of master and servant does not exist unless there be the right to exercise control over methods and detail—to direct how the result is to be obtained. The power to direct must go beyond telling what is to be done—to telling 'how it is to be done.'

"6a. It is elementary doctrine, and it would fill many pages to cite the support it has, that one is not an employee if he may choose his own method of working—the mode and manner of doing the work.

"It is not enough that there be power to see to it that the work is done to the satisfaction of the one who gives it. The power is control over ultimate results and not over methods, means and details.

"The mere making of suggestions as to the methods of work to be pursued will not establish the relationship of master and servant, even though the suggestion be as to details or as to the co-operation necessary to bring about the larger general result."

All the reasoning upon this point, together with the citations submitted are of definite significance applied to the case at bar.

Counsel declared in argument that this employer could not have assumed a larger measure of control. The record justifies the statement that the employer could not have exercised a smaller measure of control and given any information at all as to when and where the work was to be performed. He had to show the men where to work. He had to know their work was properly done. This he did and nothing more in the way of supervision. No suggestions as to hours, no hints as to means for securing results appear in the record.

Clearly, such contract as existed between Harry Johnson and Kirkeby and Harper was a contract for services rather than a contract of service.

All material evidence submitted points in this direction. These men began when they pleased and quit when they pleased, being responsible to their employer only for the results of their activity.

Evidence relating to leaving open ditches over Sunday is merely significant of general policy of interest to employer and employe—to the employer because of his responsibility to the city in the matter of protecting it from personal injury obligation—to the employe because open ditches too long unfilled might result in cave-ins, particularly in case of heavy rains.

The fact that the employer interchanged his contracting sewer men between the harder to the easier jobs was in the interest of a square deal all around, and not to serve any interest of his own.

The fact that he made voluntary contributions in excess of his contract agreement in case of a hard run of luck as to the character of digging has no tendency to suggest any other relationship than independent employment.

Whether Johnson did or did not tell any interested party he had a policy covering employment of the deceased is not significant to the extent of avoiding the plainly established rule of defining compensable relationship.

Plaintiff emphasizes the fact these workmen did not take out license to make sewer connections under requirements of city ordinance. This fact in no degree tends to deny to these workmen the right of independent contracting under the general direction of Harry Johnson, who carried such license.

The record beyond all question classifies Clarence Kirkeby as an independent contractor at the time of his accidental death.

WHEREFORE, the decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 20th day of November, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

REOPENING

Except where lump sum settlement has been made, under the provisions of Section 2477-m14, Supplement to the Code of 1913, any compensation settlement may be reopened, and readjustment occurs if it may be shown that the full requirement of the law has not been met. Cases following were decided under this statutory provision:

TENDENCIES OF AGE NOT PERMITTED TO DEFEAT ACTUAL DISABILITY.

Louie Raymie, Claimant,

vs.

Rex Fuel Company, Employer,
Bituminous Casualty Exchange, Insurance Carrier.
Clarkson & Huebner, for Claimant.
D. W. Bates, for Defendants.

Reopening Proceedings Before the Iowa Industrial Commissioner

Arising out of and in course of his employment by this defendant, December 24, 1920, Louie Raymie sustained a personal injury in that his right leg was fractured below the knee by falling coal or slate.

January 18, 1921, temporary settlement was made between these parties on the basis of $15.00 per week, under which payment was made by the insurer for a period of seventeen weeks, whereupon further payment was denied.

September 30, 1921, a hearing was held before the Industrial Commissioner under the provisions of Section 2477-m34, Supplement to the Code of 1913.

The only question involved is as to the extent of disability actually and necessarily resulting from this injury of December 24, 1920. Substantial importance, therefore, attaches to depositions of Doctors John M. Griffin, T. E. Gutch and H. C. Eschbach, filed as exhibits in this proceeding. In these depositions there is uniform agreement as to excellent results from the operation performed in this case. From this evidence and from the appearance of the injured member at this hearing, there is basis for no claim for permanent disability. Evidently the union was perfect as a result of the surgical operation, and no complications would seem to have arisen and no circumstances ordinarily tending to extend the period of disability are disclosed.

The claimant resumed work in the coal mine September 10, 1921. His condition may have justified no earlier return, but the record indicates dereliction on the part of the workman in the matter of proper exercise urgingly and repeatedly advised by physicians. He would seem to have been afraid to use the injured member because of apprehension as to further injury, and it seems reasonable to assume that his return to usefulness might have been considerably hastened if he had not persisted in

ignoring the commonly recognized need for exercise of such injured members under such conditions. He seemed peculiarly susceptible to pain at the time of the hearing. He would appear to lack the courage and persistence so helpful at such times.

The claimant is sixty-six years old. Doubtless his period of disability would have been considerably shorter had he been years younger. Perhaps the law should afford relief to industry by making provision for graduated payment in cases of injured workmen advanced in years. Perhaps some time it will, but at the present time it does not do so. Since the employer in this state is assumed to take the workman as he finds him without any qualification as to efficiency impaired by age or as to probability of extended period of recovery, there is no escape from liability on this ground.

On the other hand, the claimant was not justified in ignoring the admonitions of his physicians as to exercise necessary to earlier restoration of usefulness. His employer must not be substantially penalized because of such negligence.

After several examinations where such advice was given, Doctors Eschbach and Griffin united in a report saying that Louie Raymie would be able to return to work on July 18th. The depositions referred to indicate that with proper and consistent self discipline, he would have been able for more substantial service at an earlier date. This report was made on July 13th, five days before the date definitely fixed for his return to work. There would seem to have been some reason for this considerable delay between the examination and the date so fixed.

The bearing of the workman at this hearing indicates good faith and conscientious purpose. While in justice to the employer he cannot be sustained in his neglect to exercise as advised, he is entitled to the benefit of doubt as to actual conditions.

This reasoning leads to the conclusion that compensation should be paid from the period when payment was suspended, April 25, 1921, not to September 10th when he returned to work, but to July 18, 1921, the latest date fixed by his physicians and it is accordingly so ordered.

Dated at Des Moines, Iowa, this 3rd day of October, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

TEMPORARY DISABILITY DUE TO NEUROSIS, AGE AND NEGLECT—AWARD.

Fred Sutter, Claimant,

vs.

Carter Lake Club, Employer,
Maryland Casualty Company, Insurance Carrier, Defendants.
C. G. Hammond, for Claimant.
J. Ralph Dykes, for Defendants.

Reopening Proceedings Before the Iowa Industrial Commissioner

In this case the claimant sustained injury arising out of and in course of his employment by defendant employer October 2, 1920.

Under settlement agreement entered into with the defendant's insurer the claimant received weekly compensation payment of $15.00 a week up to and including January 2, 1921, when the claimant was reported able to resume work. Later claimant did attempt to work and on February 2nd he suffered a recurrence of his injury and was then paid compensation up to and including March 8th and has been tendered compensation up to March 19th when he was again reported as recovered. Claimant did not return to work.

The question for determination in this proceeding is as to whether or not the claimant has suffered disability since March 19th as a result of his injury, and if he has, whether or not he is still disabled.

The hearing had July 5th was held in Omaha in compliance with request and stipulation of parties. The parties and their witnesses reside in Omaha and hearing was held at that place to expedite proceeding and curtail expense.

The claimant's injury has been diagnosed as Sacro-Illiac strain and was brought about by an unusually heavy lift. It was focalized as to incident, the claimant feeling a sudden snap in his back, following which he was unable to straighten up and when attempting to straighten up he experienced severe pain above the right hip. The effects of the injury grew more severe in a day or so and the claimant was forced to give up his employment. Upon returning to work weeks later he suffered a recurrence of his injury and has since been idle.

It seems unnecessary to go into the history of the case extensively. The record justifies the conclusion that due to his injury the claimant has been disabled during the entire period from March 19th and that he is still disabled. The healing process has been slow due to the claimant's age, and also to the fact that he was not treated surgically for a considerable period following the injury. The disability is not considered permanent and upon medical estimates the claimant should recover sufficiently to take up work within a period of from three to six months.

Since neurotic condition contributes to the disability it is thought advisable to fix the paying period definitely, and the claimant is awarded

compensation from March 8th to date and continuing until November 1, 1921.

Defendants are ordered to make payments in accordance with such award, and are also ordered to pay the costs of the hearing except the reporter's charge which parties are ordered to share equally.

Dated at Des Moines, Iowa, this 22nd day of July, 1921.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

NEUROSIS RESULTING FROM TRAUMA HELD COMPENSABLE.

Roy Hudson, Claimant,

vs.

Smoky Hollow Coal Company, Employer,
Bituminous Casualty Exchange, Insurance Carrier.
Clarkson & Huebner, for Claimant.
D. W. Bates, for Defendants.

Reopening Proceedings Before the Iowa Industrial Commissioner

Memorandum of Settlement between these parties, dated December 24, 1920, indicate indefinite adjustment of the compensation claim for injury sustained November 24, 1920. Some weeks later weekly payment was suspended in the belief on the part of the insurer that further disability as arising out of and in course of the employment did not exist.

History more or less involved in this action develops facts substantially as follows:

In November of 1918 Roy Hudson sustained an injury in mining coal which so affected h's back as to confine him to his bed for two months and to involve further disability wherein compensation obligation was fully discharged.

Almost a year later, in October of 1919, a fall of slate seriously injured his left foot from which recovery ensued in due time.

November 24, 1920, in the process of mining coal a mass of slate, estimated to weigh a ton, fell upon Hudson's back and jack-knifed him, bending his body forward with his neck against his knees, choking him almost to suffocation. For some time afterward he was in a state of semi-unconsciousness. While he was soon able to stand with help he was in bed for six weeks complaining of severe pain in his spine.

In January and again in February, 1921, Hudson worked a few days, alleging severe pain as a result, finally to such extent as to make further mine work on his part impossible. He has since complained of constant pain in his lower back and has made manifest a condition of extreme nervousness.

Hudson's weight at the time of the accident in November of 1920 was about 171 pounds. He recently weighed about thirty pounds less.

Examined by Dr. Fay, of Des Moines, February 21st and April 5th of the present year, reports of same in evidence developed the opinion of Dr. Fay that no evidence of traumatic injury was found, but that cla mant was suffering from neurosis. The doctor testified that in his opinion Hudson was able to perform manual labor. The examinations referred to were attended by Dr. E. J. Harnagel, of Des Moines, who practically coincided with the conclusions of Dr. Fay.

Called as a witness at this reopening hearing Dr. J. M. Griffin, of Albia, expressed opinions similar to those recorded by Doctors Fay and Harnagel.

Introduced by claimant, Dr. Clarence Van Epps testified substantially to this effect:

He is assistant professor of medicine at the State University. Since 1904 he has specialized in neurology and is the only member of the faculty pursuing that branch of medical science. Prior to that time he had important experience in eastern hospitals and had studied abroad in preparation for the special work he has pursued at the university.

Roy Hudson came to the University Hospital May 3, 1921, remaining several days under the scrutiny of Dr. Van Epps, who gave the case thorough examination. After reciting at length historical data pertaining to this case, Dr. Van Epps outlined symptoms developed and conclusions reached. Hudson's manner was decidedly nervous which the doctor thought "was very definitely neurotic, in a manner a man could not possibly simulate. It appeared to me to be the manner of a man decidedly abnormal." The lower spine "was very tender from the tenth down to the sacrum. There was stiffness in the lower spine. There was also considerable tenderness of the several tissues along the spine." Furthermore, "the sensory test revealed there was practically complete loss of sensation following a line drawn through the navel—the lower part of his body was completely anesthetic. I could not prove the existence of any form of sensory perception below the navel level. * * * * I thought we had a man with a history all formed, who had been nervous and troubled with pain in his back since November, 1920, who gave practically negative findings except for a very nervous manner; very marked tenderness over the back, and for the loss of sensation over the lower half of his body."

The doctor was positive the patient was acting in entire good faith, making no effort to deceive him by dissembling. He diagnosed the case as traumatic neurosis, or traumatic hysteria, caused, as he believed, by the fall of slate in November of 1920. He believed disability to be temporary in character with a probable duration of six months more.

In cross-examination Dr. Van Epps frankly admitted condition of claimant to be due to his mental state, making disability as real to him as "any other disease, pneumonia, or anything like that that is caused by injury."

The testimony of Dr. Van Epps, supporting a wide range of experience and opinion developed in compensation jurisdiction, inclines the Commissioner to the conclusion that the incapacity alleged by Roy Hudson is actual and definite, arising out of his employment and clearly entitling him to the benefits provided by the compensation statutes.

The testimony of other doctors is by no means ignored. Dr. O. J. Fay, medical counsel for this department, is relied upon most substantially in department endeavor to establish justice in case of industrial disability. Dr. Harnagel is recognized as a surgeon of character. Both are leaders in their lines of surgery, superior in skill and uncompromising in integrity. But this case in its present aspect is not one for surgical diagnosis. Herein trauma is merely incidental as a basis of incapacity. Developments resulting manifestly demand diagnosis on the part of men highly trained in nervous diseases, a specialty in which Doctors Fay and Harnagel make no pretentions. Such cases falling to their care are promptly referred to physicians skilled in neurology.

The equipment of Dr. Van Epps in this line of practice is unexcelled by that of any physician in the State of Iowa. His deep interest in this situation is manifest in thorough examination and diagnosis skillful and reasonable.

The bearing of the claimant on the witness stand was reassuring as to good faith and existing disability. His exceedingly nervous manifestation evidently was not simulated. He told his story with frankness and candor. Aside from traumatic affliction his experience on the 24th of November doubtless was a severe strain on his nerve forces. Under a great weight of slate he was face to face with death. By effort almost superhuman he wrenched his body from the crushing mass, saving himself from dire fate almost inevitable. It is easily assumable that this experience contributed materially to his shattered moral equipment. His two previous injuries may have made claimant more susceptible to neurotic impression.

Assuming that actual disability is established and that such disability is substantially due to neurosis, based upon traumatic injury and incidental experience, compensation, jurisdiction has afforded abundant justification for additional compensation payment in this case.

"A workman has been held to have suffered an accidental injury by witnessing the effects of an accident to a fellow workman whereby nervous shock resulted." *Yates vs. South Kirby Featherstone & Hemsworth Colliers*, reported in Bradbury's Workmen's Compensation, Third Edition, at page 410.

At page 411 of the same volume in the case of *Lata vs. American Mutual Liability Ins. Co.*, it is reinted:

"Neurosis following an injury entitles an employe to compensation when incapacity for work is due to the neurosis."

On the following page of the same volume in the case of *Eaves vs. Blaenclydach Colliery Co.*, we find:

"Where a personal injury is caused to a workman by accident, his right to claim compensation continues so long as the nervous effects remain, if they produce total or partial incapacity for work."

Attention is called to pages 414 and 415, Bradbury's Third Edition, where reference is made to a number of cases definitely supporting further compensation award in the case of Roy Hudson.

It is therein related that—

"Traumatic neurosis which follows a fall and injury to the spinal column is such an injury as warrants a claim for compensation;"

"Traumatic neurosis which arises from an accidental injury is a real ailment and is to be distinguished from malingering and during its persistence constitutes a disability for which compensation should be awarded;"

"Where after a severe burn from acid the employe suffered a nervous irritation from the scar compensation was allowed for a considerable period for disability thereby resulting;"

" A 'nervous upset and neurotic condition which is purely functional' causing 'a condition of hysterical blindness and neurosis,' following an injury to the workman's eye, after the physical injury had entirely healed, was held to be such an injury as entitled the workman to compensation while the condition continued."

In *Kingan & Co., Limited, vs. Ossam*, reported in Volume 3, Compensation Law Journal, in paragraph numbered 9, at page 281, the Appellate Court of Indiana pertinently observes:

"(9) The fact that appellee was suffering from a mental or nervous condition resulting from a physical injury, rather than from the physical injury itself, cannot have the effect of relieving appellant from liability. This court is committed to the doctrine that a 'personal injury' as that term is used in the Workmen's Compensation Act, has reference not merely to some break in some part of the body, or some wound thereon or the like, but also to the consequence or disability that results therefrom. In re McCaskey (1917) 117 N. E. 268; Indian Creed, etc., Co. vs. Calvert (1918) 119 N. E. 519. It is apparent that certain mental and nervous conditions may be effective in producing disability as a physical wound or the loss of a member."

Similar citations might be continued indefinitely.

In accordance with law and evidence involved and in line with compensation jurisprudence generally, it is hereby ordered that the Smoky Hollow Coal Company pay to Roy Hudson from the date of the suspension of compensation payment due to the injury of November 24, 1920, to January 1, 1922, at the rate of $15.00 per week as additional compensation for disability arising out of and in the course of employment of Roy Hudson by this defendant.

Dated at Des Moines, Iowa, this 21st day of July, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

REMARRIAGE OF WIDOW WITH CHILDREN NO BAR TO PAYMENT UNDER ORIGINAL ACT.

Flora Davidson, Claimant,

vs.

Bidwell Coal Company, Defendant,
Thomas Edward Davidson, by John T. Clarkson, Trustee under the Iowa Workmen's Compensation Law, Intervener.
Clarkson & Huebner, for Claimant.
H. H. Stipp, for Defendants.

In Reopening and Review Before the Iowa Industrial Commissioner

Ben Davidson was killed September 6th, 1916, while working in defendant's mine as shot-firer. He left surviving him Flora Davidson, his wife, claimant herein, and two minor children, Manetia, now deceased, and Thomas Edward, who appears as intervener in this action.

The Supreme Court of Iowa decreed liability under the Act on the part of the defendant as deceased's employer and awarded compensation to the widow. On December 10th, 1918, Flora Davidson married one Charles P. Bates, and the defendant seeks in this action to have compensation payments to her discontinued as from the date of her remarriage.

Defendant contends that the provisions of the Act quoted immediately following give the Commissioner authority to investigate the condition of the dependent within the paying period, at least in so far as to determine the dependent's status with respect to the development of a relationship creating a legal obligation to support the dependent:

Section 2477-m3¼ (a). "Any payment required to be made under this Act, which has not been commuted, may be reviewed by the Industrial Commissioner at the request of the employer or of the employe, and if on such review the Commissioner finds the condition of the employe warrants such action, he may end, diminish or increase the compensation, subject to the maximum or minimum amounts provided for in this Act. * * *"

Section 2477-m17 (b). * * * "Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, legal representatives or where the workman is a minor or incompetent to his guardian or next friend."

The Act defines a total dependent and names the surviving spouse of a deceased workman, among others, as being one conclusively presumed to be wholly dependent for support upon the deceased workman. Flora Davidson, the claimant herein, was the wife of Ben Davidson at the time of his fatal injury and she had not deserted him. By reason of this relationship, she became the surviving spouse of Ben Davidson, and as his surviving spouse is entitled to compensation as a total dependent under statutory conclusive presumption.

Section 2477-m10 (d) establishes dependency at the time of the injury of the workman and fixes the paying period to a total dependent at 300 weeks.

"If death results from the injury, the employer shall pay the dependents of the employe wholly dependent upon his earnings for support at *the time of the injury* a weekly payment equal to 50 per cent of his average weekly wages, but not more than $10.00 or less than $5.00 per week for a period of 300 weeks."

The law as it existed at the time of Davidson's fatal injury shortened this paying period of 300 weeks upon but one contingency.

Section 2477-m17 (4) provided: "If the deceased employe leaves dependent surviving spouse, the full compensation shall be paid to such spouse, *but if the dependent surviving spouse dies before payment is made in full, the balance remaining shall be paid to the person or persons wholly dependent.*"

Subsequent to Davidson's death, the Legislature enacted the following provision in *Section 2477-m16 (1)*:

"* * * Should the deceased employe leave no dependent children and should the surviving spouse remarry, then all compensation payable to her shall terminate on the date of such remarriage."

Counsel for defendant argue that if the law prior to this amendment was not such as to cut off the widow's compensation upon remarriage, situations would arise creating double dependency under the Act and double recovery. They cite as an example the instant case where, if compensation continued after the remarriage of the widow she would recover compensation for two husbands in the event of the death of her second husband under compensable circumstances. Counsel argue further that a person may be partially dependent on several, but can not be wholly dependent upon more than one, and this is true of dependency in fact, but not of dependency under conclusive presumption of law.

The Courts of other States have passed on similar questions under similar provisions of law.

In the Bots' case, 119 N. E., 755, the Supreme Court of Massachusetts held under the Massachusetts law "that so long as the widow lives, the Act provides that the stated payments shall be made to her. Whatever incongruity there may be in continuing payments to a person on the presumption that she is dependent on a deceased husband when, in fact, she is receiving ample support from a new support, is a matter for the Legislature and not for the Courts to determine."

In the case of *Adelman vs. Ocean Accident & Guarantee Corp.*, 101 Atl., 529, the Supreme Court of Maryland in construing the following provision of the Maryland law held that the dependent's right is fixed and vested to the weekly amount for the entire period, not vested in the sense that if the dependent should die it would pass to heirs of the dependent, but in the sense that the dependent is entitled to receive compensation for the entire period, regardless of remarriage or subsequent dependency of the dependent.

"If there are wholly dependent persons *at the time of the death*, the payment shall be 50 per cent of the average weekly wages and to continue for the remainder of the period between the date of the death and eight years after the date of the injury."

In the case of *Newton vs. Rhode Island Company*, 105 Atl., 363, the Supreme Court of Rhode Island held that the statute fixes the dependency at the time of the injury which results in death, and that it is the time of the injury alone that determines the period of payments, and not the subsequent remarriage nor other subsequent changes in the condition of the dependent widow.

In the case of *Hanson vs. Brann & Stewart Company*, 103 Atl., 696, the fatal injury suffered by the workman occurred prior to an amendment to the New Jersey law providing for discontinuation of compensation upon remarriage of the widow. In deciding the question as to whether or not the widow's compensation would be cut off on her remarriage, the Court said:

"This case must be dealt with under the provisions of the Act of 1911. (Prior to amendment.) If, under the Act, the petitioner upon the death of her husband was entitled to compensation during 300 weeks, she acquired a vested right which could not be legally abridged by subsequent legislation. The amendment of 1913, therefore, which cuts off the widow's right to compensation upon remarriage during the period covered by weekly payments can have no bearing upon the construction to be given to the Act of 1911, *except as evidencing a change of the legislative mind* in respect to what shall happen to an award of compensation made after the passing of an amendment to a widow, who subsequently remarried and pending the period of weeks for which compensation was to run."

The Supreme Court of Iowa has recognized the right of the Legislature to create a double dependency and observes that the Legislature has exercised this right in enacting certain provisions of the Compensation Law. In the case of *Hoover vs. Central Iowa Fuel Company*, recently decided, the Court said:

"We may so assume that in some circumstances our Compensation Act makes it possible that a claimant may have more than one recovery. We may so assume for the appellee that double dependencies should not be permitted. But after all we must be controlled by an interpretation of our own Statute. On the other hand, it may refrain from entitling any one to compensation for the death of an injured employe. The sole question is, what has the Legislature done?"

Counsel for defendant assume to find advantage in the fact that under the Iowa Statute the "surviving spouse" is conclusively presumed to be dependent, whereas in the laws of the majority of States only the widow is favored by this presumption. This is lacking in significance when it is understood that under the Iowa Statute both the widow and widower are presumed to be dependent. The words "surviving spouse" are used to designate both the widow and the widower, and not for the purpose of attempting to limit the duration of the relationship, as is contended by defendant's counsel.

The holding of the Supreme Court of New Jersey in the case of *Hanson vs. Brann & Stewart Company*, 103 atl., 696, is acceptable upon this question. In that case the Court said:

"The legal status of the widow upon remarriage would not change so as to effect any vested rights she has acquired before her remarriage.

and, moreover, in the general sense of mankind and in the legal sense, though the widow remarried, she did not cease thereby to be the widow of the deceased workman."

The interpretation by defendant of *Section 2477-m3¼ (a)* is held to be wholly at fault. This provision is common in compensation jurisdiction. "The condition of the employe" as warranting review or reopening of a case hitherto adjudicated is held to apply only to the physical condition of a living workman and never to the financial needs of a surviving dependent, except, of course, where specific legislation changes the rule. In many cases claimants held to be dependent in whole or in part, due to changing conditions in their personal fortunes, soon are amply provided for from other sources, but it has never been held that such changing conditions relieve the employer of the obligation under the law to continue payment to the limit provided, based upon conditions at the time such obligation is imposed.

Counsel for defendant assume that the attitude of this department in *Hoover vs. Central Iowa Fuel Company* consistently foreshadows a decision for the defendant in this case. The analogy is by no means established. In the former case the holding that upon remarriage a child of a former union became the dependent of the stepfather is based wholly upon the mandatory statute that "step-parents shall be regarded as parents—that a stepchild shall be regarded the same as if issue of the body." The legal effect of this changing condition is specifically fixed by law, as is always and everywhere the case where changing conditions on the part of dependents legally justify modification of an award hitherto made as of the status existing at the time the liability was established.

This tribunal refuses to admit that the amendment of the Thirty-seventh General Assembly declared that "should the surviving spouse remarry, then all compensation payable to her shall terminate upon the date of such remarriage" was an act of supererrogation. Such assumption would be extremely presumptuous, not to say disrespectful to constituted authority. As a matter of fact, authorities cited herein afford abundant suggestion as to the need of such amendment if remarriage was to bar a widow from further compensation.

Scrutiny of authorities abounding in compensation jurisdiction seems to afford no logical escape from the conclusion that compensation payment is unalterably established upon the basis of the status at the time of injury or death, except only in cases where statutory provision specifically provides for modification.

The contention of the defense is by no means repugnant to the general spirit and purpose of workmen's compensation. Legislative recognition of the principle contended for might be deemed consistent as well as logical. But as the Court well says in the Hover case: "The sole question is—what has the Legislature done?" It is not for us to assume legislative intent, unless ambiguity of statutory expression makes necessary a choice of theories. In the absence of such a situation, plausible

assumption as to abstract right or logical deduction can not be successfully exercised.

WHEREFORE, termination of compensation December 10th, 1918, is denied, and defendant is ordered to pay claimant compensation at the rate of $8.32 a week for three hundred (300) weeks, starting with the date of Ben Davidson's fatal injury. Defendant is also ordered to pay the costs of this hearing.

Having held for the claimant, intervener's petition is dismissed.

Signed at Des Moines this 13th day of April, 1920.

RALPH YOUNG,
Deputy Industrial Commissioner.

No appeal.

REMARRIAGE OF WIDOW WITH CHILDREN NO BAR TO PAYMENT UNDER ACT AS AMENDED.

Mrs. Vearl Davey (nee Nesbitt), Claimant,

vs.

Norwood-White Coal Company, Employer.
Bituminous Casualty Exchange, Insurance Carrier.
Clarkson & Huebner, for Claimant.
Bates & Dashiell, for Defendants.

Reopening Proceedings Before the Iowa Industrial Commissioner

This case is submitted by stipulation on file herein, wherein it is agreed that John Nesbitt, husband of this claimant, and father of her two dependent children, lost his life in the employ of this defendant under compensable circumstances.

On the part of defendants obligation was accepted and weekly payments made from April 14, 1920, until her remarriage to one John R. Davey, in October of 1921. Thereupon, further obligation was denied.

The only issue submitted is as to whether or not defendant is justified in such denial upon the basis of the remarriage of the widow of John Nesbitt.

On behalf of Gladys Eloise Nesbitt and Dorothy Allene Nesbitt, surviving children of John Nesbitt, a petition was filed by the Iowa Loan & Trust Company and made a part of this record January 17, 1922.

Prior to July 1, 1917, the statute gave to the surviving spouse of a workman losing his life under compensation coverage 300 weekly payments without any qualification whatsoever.

It pleased the Thirty-seventh General Assembly to so amend the law as to provide that:

"Should the deceased employe leave no dependent children, and should the surviving spouse remarry, then all compensation payable to her shall terminate on the date of such remarriage."

In enacting the workmen's Compensation statute legislators were exploring zones of jurisprudence new and strange. It was proposed to apply to the relations between employer and emp'oye terms and conditions hitherto unknown, to install a system subversive of age-old legal principles. The text in its construction was largely borrowed from statutes elsewhere in force adapted to needs and conditions of Iowa industry. Hence, it is not strange that incompatibility of expression is sometimes manifest.

But the provision upon which this defendant relies for relief from obligations to the widow of John Nesbitt was in the most deliberate manner engrafted upon the section pertaining to dependency in such cases. It would have been so easy to make the law say what counsel assumes it does say—that the remarriage of a widow shall terminate all payment of compensation awarded for the death of a husband. But the legislature in its careful action specifically qualified this rule, making it apply only to cases in which "the deceased employe should leave no dependent children."

While pleadings do not diagram the line of defense, it may be assumed that reliance is placed upon the terms of paragraphs 6 and 7 of subsection (c) of Section 2477-m16, Supplement to the Code of 1913, which reads:

"6. Step-parents shall be regarded in this act as parents.

"7. Adopted child or children or stepchild or children shall be regarded in this act the same as if issue of the body."

It would be violent to assume that the legislature was not familiar with this text while the amendment alluded to was under consideration. Plainly, this coverage afforded stepchildren was to apply in cases where the only source of support is in the head of a family killed in industrial employment.

Hoover vs. Central Iowa Fuel Company, 176 N. W. 945, may, in the minds of counsel, afford support to this defense. In this case the father and mother separated before the claimant was born and were subsequently divorced. Then the mother remarried and the claimant became an inmate of the stepfather's home and relied for support wholly upon him, and was so situated when the natural father was killed. The father was not supporting—had never for a day supported this child. Clearly, paragraphs 6 and 7 covered his case and our Supreme Court so found.

The children of John Nesbitt lost their only source of support in the death of their father. Through their mother they were shielded from want by the operation of the compensation law. While the law definitely says that in case of remarriage, if her support only is involved, the emp.oyer or insurer is relieved from further obligation, arising out of the death of her husband, it no less definitely says that if dependent children exist then this rule is not to apply.

In compensation jurisprudence the status at the time of death is substantially controlling, except in cases where statutory limitation intervenes to change the rule.

Since, in the Hoover case cited, our court recognized that "the legislature has power to permit a double dependency" and that "our compensation act makes it possible that the claimant may have more than one recovery," it would be idle to plead this possibility as to the dependents of John Nesbitt as a bar to further demand upon defendant.

Language could not more definitely express legislative intent than it does in defining in the Iowa statute limitation in case of the remarriage of a widow drawing compensation for the loss of a husband.

It is therefore held that the Norwood-White Coal Company is by statute bound to the full payment of 300 weeks of compensation for the use and benefit of the dependents of John Nesbitt, less payments already made.

Dated at Des Moines, Iowa, this 19th day of January, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

NERVE INVOLVEMENT AS DISABILITY FACTOR—AWARD.

Mack H. Gantt, Claimant,

vs.

Hunt & Schuetz Company, Employer,
Fidelity & Casualty Company of New York, Insurance Carrier, Defendants.
C. E. Gantt, for Claimant.
Vail E. Purdy, for Defendants.

Reopening Proceedings Before the Iowa Industrial Commissioner

On October 31, 1917, Mack H. Gantt, the claimant herein, fell forty-five feet from the roof of a school building upon which he was working in his capacity as a sheet metal worker for Hunt & Schuetz, defendant employer. Gantt was injured severely and was immediately taken to the hospital where he remained ten days. He was then confined to his bed at home for a month and was then up and down for the remainder of the year. About the first of February, 1918, his condition was thought sufficiently improved for him to attempt to engage himself and from that time until the first of June, 1918, he managed to get in about one hundred hours.

On May 25, 1918, Gantt entered into settlement agreement with the defendants and under this agreement he was to receive, and has received compensation for a period of 78 weeks. Memorandum of this agreement was duly filed and approved. The payment was for injury described as "permanent partial disability to left leg and nerves of right leg and impairment of motion of arms." The injury was evidently considered as constituting a permanent partial disability of approximately 20 per cent.

On April 24, 1920, Gantt petitioned for reopening of his case, alleging more extensive injury than was estimated at the time of the settlement and claiming additional compensation. Hearing on this petition was had at Sioux City, November 30, 1920, and it developed that from June 1, 1918, to December 21, 1918, claimant engaged himself fairly regularly at the sheet metal trade, taking only the lighter work in that employment. Along the latter part of December, 1918, he discontinued work on account of complete exhaustion and he remained idle until in February, 1919, when he again entered the sheet metal employment, taking only the lighter work. He continued until in November, 1919, when he again became incapacitated due to the effects of the injury. This time he remained idle until August, 1920, and during the winter months was part of the time under a nurse's care. In the spring of 1920 he went to a ranch in the Dakotas for the reason, as he says, that his doctor recommended that he be out of doors a great deal and that he take light exercise, mentioning the country as the better place. In August, 1920, he went to Casper, Wyoming, where he worked for about a month, and in October, 1920, he put in about four weeks at work in Denver. Since then he has done no work.

There seems to be no question but what claimant's injury was more extensive and more effective than was estimated at the time of the settlement. He has not and will not recover to the extent that was anticipated. The doctors who testified, some having treated the claimant and others having connection through examination only, gave estimates of permanent disability ranging from 20 per cent to 75 per cent. The doctors differ some in their diagnosis but all seem to agree that there is a hip and also a spine injury capable of producing some permanent functional disability and weakness. They also indicate nerve involvement painful and weakening in effect, especially upon strain and exertion. This latter ailment was evidently not taken into account at the time of the settlement as it was not easily elicited upon examination but it now bears evidence of existence in the history of the case. This nerve condition adds to the disability and must be taken into account. It handicaps the claimant in the work in which he is trained and will probably keep him from lighter employment as it will have a tendency to prohibit confinement.

Upon the record it would seem reasonable that claimant should be awarded compensation for a 40 per cent disability, and such award is made. Wherefore, defendants are ordered to pay claimant compensation at the rate of $12.42 a week for a period of 160 weeks, including payments previously made. Defendants are also ordered to pay the costs of this hearing.

Signed at Des Moines, Iowa, this 17th day of January, 1921.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

MEASURE OF DISABILITY AND LEG INJURY.

John O. Kridelbaugh, Claimant,

vs.

Bidwell Coal Company and Bituminous Casualty Exchange, Defendants.
Clarkson & Huebner, for Claimant.
Bates & Dashiel, for Defendants.

Reopening and Review of Settlement Before the Iowa Industrial Commissioner

March 3rd, 1920, claimant in this case sustained a fracture of the right femur in the fall of slate in the defendant employer's mine. Under Memorandum of Settlement agreement executed by the parties March 23rd, 1920, and approved by the Commissioner April 1st, 1920, claimant received compensation payment of $502.09 at the rate of $13.57 a week. No further payment was tendered and Reopening Hearing was had at Bidwell August 3rd, 1921.

The question for determination is as to whether or not the claimant has suffered a permanent partial disability of the right leg as a result of this injury, and if he has, the extent of the same.

The record discloses that the claimant had sustained injury to this leg previously. In December, 1916, the femur was broken at the juncture of the middle and third thirds. Reduction did not result in direct apposition of the fracture extremities and the overlapping shortened the leg two inches. Eighteen months later the claimant returned to work, and according to his testimony and the testimony of two sons and of others worked with him, he has managed to make a livelihood in the mine.

The injury of March 3rd, 1920, the one for which recovery is sought in this proceeding, resulted in a fracture three or four inches above the knee. Good results were obtained from the usual treatment although the shortening of the leg was increased an inch and there is some limitation of motion in the knee.

Three medical witnesses making recent examination of the claimant's leg testify that the general usefulness of the limb is impaired 75 per cent. Two of these doctors attribute 50 per cent of this impairment to the first fracture and 25 per cent to the injury under consideration. The other of these three doctors attributes 25 per cent to the earlier injury and 50 per cent to the second fracture. Other medical witnesses, two of them, do not find 75 per cent impairment and apparently are of the opinion that in any event not more than 25 per cent of the disability is attributable to the second injury.

The testimony given by the lay witnesses, including that of the claimant, does not so convincingly contradict the prevailing opinion of the medical witnesses as to warrant a finding that the impairment chargeable to the second injury exceeds 25 per cent, and finding of such disability is hereby made.

WHEREFORE, defendants are ordered to pay the claimant compensation at the rate of $15.00 a week (it being stipulated that this is the proper weekly rate) for a period of 50 weeks, deducting previous payment. Defendants are also ordered to pay the costs of this hearing.

Dated at Des Moines, Iowa, this 12th day of August, 1921.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

BURSITIS AS BASIS OF PERMANENT DISABILITY.

John Gierman, Claimant,

vs.

Peoples Gas & Electric Company, Defendant.
Marty & Butler, for Claimant.
Smith & Feeney, for Defendant.

Reopening Proceedings Before the Iowa Industrial Commissioner

On April 10, 1918, compensation recovery, other than the statutory medical attention, was denied the claimant in this case by an arbitration committee at Mason City, Iowa, the decision being in part as follows:

"First: That the claimant suffered a personal injury December 4, 1915, which arose out of and in course of his employment by the Peoples Gas & Electric Company. That by reason of this injury claimant was not incapacitated from earning full wages for a period of two weeks or longer, and is therefore not entitled to compensation for temporary disability.

"Second: That the claimant's injured arm has suffered, and is still suffering some ill effects as a result of the accident but that the record does not disclose that such condition is permanent, for which reason he is not, at this time at least, entitled to any compensation for a permanent injury."

On March 5, 1921, the claimant petitioned for a reopening of the case under Section 34 of the act, claiming that the condition of his arm as affected by his injury of December 4, 1915, had grown worse and that the usefulness was impaired and that the impairment was permanent. Hearing on this petition was had April 7, 1921, at Mason City before the Deputy Industrial Commissioner.

The preponderance of medical testimony introduced substantiates claim for a permanent partial disability of the arm as a result of the injury in question. The cause of the impairment is diagnosed as traumatic bursitis of the shoulder joint, and, according to the doctors such condition reduces the utility and general usefulness of the arm, as it is very painful upon certain movements and especially when the forearm is raised above the level of the shoulder. The condition of the arm partially disqualifies the claimant in certain lines of work and has a tendency to reduce his earning capacity.

For the purposes of an award the permanent impairment is estimated at 15 per cent, entitling the claimant to 15 per cent of the loss of the arm, or a compensation payment of 30 weeks at the rate of $10.00 a week, all of which is now due. Defendants are ordered to make such payment and also to pay the costs of this hearing.

Signed at Des Moines, Iowa, this 13th day of April, 1921.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

BOARD AS FACTOR IN COMPENSATION BASIS.

George Walker, Claimant,

vs.

Clarke Construction Company, Employer.
Employers Mutual Casualty Association, Insurer.
Wolfe, Wolfe & Claussen, for Claimant.
John F. Hynes, for Defendants.

In Review Before the Iowa Industrial Commissioner

In the employ of this defendant George Walker lost an eye on the 10th day of July, 1919, under compensable circumstances. This issue was settled by stipulation.

In arbitration February 18, 1920, the defendant company was held in compensation payment to said claimant in the sum of $15.00 per week for a period of 100 weeks. Defendant was also obligated to pay medical, surgical and hospital charges within the statutory limits.

From this decision defendant appealed, alleging error on the part of the committee in that

"1. Board furnished this workman by the employer should not have been made any part of the basis of compensation;

"2. That medical, surgical and hospital charge should not have been levied against defendant because the record does not contain any reference to such charge."

It is clearly in evidence and undisputed that the contract of employment between George Walker and the defendant company was upon the basis of $100.00 a month, with a back pay bonus of $25.00 a month, if the workman remained in service until the close of the season, together with board and expenses while so engaged.

The employer testified the board of this workman to have been reasonably worth $1.50 a day. Furthermore, that some of his help were furnished board while others were not. Where board was not furnished men were paid additional wages as an offset.

It is clearly in evidence that this workman's wages were fixed at no more than $100.00 a month because his board was considered as a substantial factor in wage payment.

In reaching a decision the arbitration committee estimated the weekly earnings of Walker to be $25.07. Strict construction of the contract

might have secured for the workman a showing of larger earnings and consequently more weekly compensation but for the maximum statutory limitation of $15.00 a week.

Error charged against the arbitration committee in the matter of assessing medical, surgical and hospital charges is merely technical and not entitled to serious consideration. On the part of the defendant compensable injury is admitted. By the operation of statute it automatically devolved upon the defendant to meet these charges within legal limits. All such expenditure in this case was within such limitation.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 21st day of May, 1921.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

PERMANENT INJURY FROM CUT HANDLING MILK BOTTLES—AWARD.

Louella England, Claimant,

vs.

Y. W. C. A., Employer,
London Guarantee & Accident Co., Insurer, Defendants.
Robert Roy Cerney, for Claimant.
Chandler Woodbridge, for Defendants.

Reopening Proceedings Before the Iowa Industrial Commissioner

On April 25, 1921, the claimant in this case cut her left hand severely upon a broken milk bottle while engaged in her duties for the defendant employer. In settlement agreement entered into by the parties May 27, 1921, the defendants conceded liability and the weekly compensation rate was fixed at $13.69. Under this agreement which was approved by the Commissioner June 2, 1921, payments were made to the claimant up to and including July 11, 1921.

Hearing, which was petitioned for by the claimant, was had at Mason City, May 9, 1922, and upon the record in such proceeding, it is held that as a result of the injury the general usefulness of the claimant's left hand will be permanently impaired one-third. Wherefore defendants are ordered to pay the claimant compensation at the rate of $13.69 a week for fifty (50) weeks, payments to start as of the date of the injury and to include all payments already made. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 13th day of May, 1922.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

DEATH FROM ALLEGED DISOBEDIENCE OF ORDERS—AWARD.

Mrs Charles F. Longwell, Claimant,

vs.

Linwood Stone & Cement Company, Employer,
Employers Mutual Casualty Association of Iowa, Insurance Carrier.
A. G. Bush, for Claimant.
John F. Hynes, for Defendants.

In Review Before the Iowa Industrial Commissioner

This case was submitted at Davenport, April 27, 1922, to the Deputy Industrial Commissioner, arbitrators having been waived by stipulation of counsel. The finding was for claimant in the sum of $12.20 per week for a period of 300 weeks, together with statutory burial benefit, costs being assessed to defendant.

Charles F. Longwell, the husband of this claimant, was killed in the employment of this defendant December 5, 1921. His occupation was that of oiler on the third floor of employer's cement and stone plant. He was alone at the time of the accident, and when found in the gears he was so badly crushed that he died within a few hours in a hospital.

The arbitration decision was resisted by the defendant on the ground that the injury resulting in the death of Charles Longwell did not arise out of his employment because at the time of the accident he was oiling machinery while in motion in disobedience of orders.

In the argument of counsel, it is alleged that the superintendent of the plant, J. A. Thiessen, "actually forbade this operation, apparently being performed by Mr. Longwell at the time he received his injuries."

It appears in the evidence this workman was paid for an extra half hour in the morning and an additional half hour at noon for the general purpose of oiling on the third floor. This fact is emphasized to prove that oiling between these regular oiling periods was not necessary. It is further alleged by the defense that when oiling at danger points was necessary, it was the rule to require the stopping of machinery.

The evidence of Superintendent Thiessen as to explicit order alleged is somwhat equivocal. Asked:

"Q. Did you, Mr. Thiessen, warn Mr. Longwell at any time not to oil these large grease cups while the machinery was running?

"A. They all get the same instructions.

"Q. Did you ever know of Mr. Longwell oiling those grease cups where he was then while the machinery was running?

"A. No such knowledge ever came to me."

Called by the defendant, Roy Guy was asked:

"Q. What were the instructions that you know given to Mr. Longwell about oiling the machinery while it was running?

"A. Well, I heard Mr. Thiessen tell him to be careful with the machinery around the gears.

"Q. Did you hear Mr. Thiessen tell Mr. Longwell not to oil those gears while they were running?

"A. Well, almost similar to that.

"Q. Did you hear Mr. Thiessen warn other men on oiling there?

"A. There are not many oil, except him and I.

"Q. Have you been warned not to oil while it is running?

"A. Certain parts, if I could not handle them."

In cross-examination this witness was asked:

"Q. The only warning that you heard Thiessen give Mr. Longwell was that you heard him tell Longwell to be careful around the machinery and around the gears, and you heard him give that same warning at a number of other times?

"A. Yes, sir.

"Q. That is the same warning he gave you?

"A. Just about.

"Q. When was it you say that he told you not to oil certain parts of the machinery when it was running?

"A. When I took the job he told me to be careful about the machinery.

"Q. Did he say anything specifically about not oiling when it was running?

"A. There are certain things that could not be oiled while it was running. He told us not to oil the crushers when it was running."

Oiling the crushers was no part of the duties of the deceased.

Andy Richlen, called by defendant, testified that he heard the superintendent tell Mr. Longwell "not to do any oiling while the machinery was running, and to be careful around the gears." But in cross-examination when asked:

"Q. You say you heard Mr. Thiessen tell Mr. Longwell not to do any oiling while the machinery was running?" His answer was: "Similar to that," and that "He just as good as told him not to oil the machinery while it was running."

J. H. Armentrout, assistant superintendent, testified for defendant.

He had heard Mr Thiessen, the superintendent, give instructions or a warning to Mr. Longwell not to oil the machinery while it was running. But he admitted that it was the duty of Longwell "if the bearing was only a little warm so they thought it needed a little grease, if he could get at it handily, it was his duty to oil it." Further, that he never knew of anyone shutting down the machinery for oiling where Longwell was.

John Engelson, who was an employe of the defendant at the time of the accident, and is still in the same employment, was called by claimant.

The record shows that he was on frequent occasions given the work of oiling on the third floor in the absence of Mr. Longwell. He testifies that when he was oiling it was his custom to make a trip twice in the forenoon and twice in the afternoon to see if anything was hot, and if the bearings were hot he would oil them. He never stopped the machinery to do any of this oiling, but oiled it when it was running. He says he never had any instructions to stop the machinery for oiling and never knew of any employe being so instructed.

Charles Rogers has been in the employ of this defendant for a number of years. He testified that he did the work of oiling performed by Mr. Longwell for a period of about two months and that during this entire time the machinery was never shut down for the purpose of oiling the gears, and that he never had any instructions to shut down, and never heard any such instructions given to anyone. He says that the particular bearing at which Mr. Longwell was killed he had oiled while the machinery was running "about a dozen times, or something like that."

Counsel for claimant asserts the rule of compensation to be that disobedience of orders in the performance of work never constitutes a departure from his scope of employment. This is true in cases where such disobedience charged is part of a general program of disobedience as to orders general or specific wherein such orders are not enforced.

In the case under consideration the defendant fails to establish its contention that the superintendent or anyone in authority had made a hard and fast rule as to oiling machinery while in motion. It rather appears that the extent of these orders was that men should be careful as to the dangers involved. If, however, it were established that such orders were given, the fact would not be controlling in this case for the reason that the practice of oiling the machinery on the third floor while in motion was common, persistent and continual, a fact which in itself destroys all force and effect if any such order had been given.

The deceased workman was evidently in the dicharge of his duties at the time of his death. In his mangled condition he could not explain his accident further than to say he "slipped." He may not have been oiling at all. In any event, it is reasonable to assume that he was about the business of his employer, being where he had a right to be, and doing what he was expected to do.

In arbitration it was found that the claimant herein was entitled to compensation at the rate of $12.20 a week for a period of 300 weeks. Upon closer scrutiny of the evidence, it would appear that upon the basis of wages received at the time of the accident, weekly payment should be made in the sum of $12.98 instead of $12.20.

The arbitration decision is so amended, and as amended it is duly affirmed.

Dated at Des Moines, Iowa, this 3d day of October, 1922.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

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