State of Iowa

1924

REPORT OF THE

Workmen's Compensation Service

For the Biennial Period Ending June 30, 1924

AND

REPORT OF DECISIONS

By the Department and State Courts

A. B. FUNK
Industrial Commissioner

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STATE OF IOWA

WORKMEN'S COMPENSATION SERVICE

Des Moines, September 30, 1924.

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 sixth 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	Stenographer and Chief Clerk
Kathryne Miller	Stenographer
Marie M. Grinstead	File Clerk
Grace Doege	Settlement Clerk
Katherine Melcher	Report Clerk
O. J. Fay, M. D.	Medical Counsel

WORKMEN'S COMPENSATION SERVICE

GENERAL REVIEW

Workmen's compensation came into full force and effect in Iowa just ten years ago. At the second legislative session after its first introduction the measure received the sanction of a doubting legislature and the law began its career without enthusiasm and, perhaps, with little satisfaction, on the part either of workmen or employers. After ten years of experience, however, the system is so well fortified in public confidence and private approval as to insure absolute permanency. It will not do to say that all, or nearly all parties in intimate relationship are enthusiastic in its approval, but that those most concerned in the operation of the industries of the state have substantially benefited by its provisions is a fact generally recognized.

In cases of controversy the compensation service lends itself through simple proceeding to settlement as prompt as practicable. It affords a clearing house for dilemma on the part of employment and for perplexity on the part of workmen and dependents. It smooths the way to settlement just and inexpensive where litigation would otherwise occur.

After scanning our 1922 report, a man widely known in Iowa writes: "I have been comparatively ignorant heretofore concerning this service, but it strikes me as one of the noble undertakings of our state." The more the writer actually knows about this system the firmer he will hold this opinion. A great deal of so-called welfare legislation and experiment is disappointing that in its application to actual situations it fails to bring results. It may have a demoralizing tendency. It may hinder rather than help the ends sought.

In Europe and this continent compensation has abundantly justified its existence in the minimizing of waste in permanent and more adequate relief to the victims of industrial misfortune and in promoting better relationship between workmen and employment.

In its beginning the system was well adapted to conspicuous needs of society, and in actual experience it becomes better adjusted to the situation it seeks to serve. The development of the service and the opportunity for usefulness is so inspiring as continually to tend to growth of interest and efficiency in administration. While a sense of justice will not permit of undue charge against employer and

insurer, the sympathetic consideration of industrial misfortune tends not only carefully to guard the workman and his dependents from imposition, but to lend the full influence of administration to the helpful consideration of individual circumstances. This may mean relief from distressing obligation, the saving of a home or better methods of self-support.

Administration proceeds more smoothly and satisfactorily with accumulating experience on the part of all concerned. Employment tends to better working conditions and safety provision which promote harmony and better co-operation. The self-insurer is the best factor in this class because of more intimate contact with the misfortunes of the workman and the operation of the service. Evidence accumulates as to the very narrow margin upon which compensation insurance operates, and still there is no manifest tendency toward evading obligations in injury cases. While in some instances there has been cause for complaint because of tardy consideration, the general record is commendable except in cases where insurance carriers practice long range adjustment from points without the state. Iowa employers should place their risks only with insurers who maintain adjustment agencies in Iowa.

Compensation does not do all that might be done, or will be done, for the victims of industrial employment. Its introduction registered wonderful recognition of social obligation and its development exemplifies important social progress. While its growth in benefits is disappointing to the impatient, the friends of labor are usually friendly to the compensation system, and they afford valuable support and encouragement to the work of administration. It is clearly the duty of this department to deal justly with employers and insurers, but it would be blind to official obligation and high privilege if it failed to deserve and to win the confidence and respect of the unfortunates for whom statutory provision is made in workmen's compensation.

SERVICE SUGGESTIONS

Workmen and dependents are especially urged to come directly to the department for counsel in all matters pertaining to compensation settlement. When submitted in person or by letter their inquiry shall have the most careful attention. Legal advice is not needed unless and until claims are actually denied by employer or insurer, and even then, we may be able to so advise as to avoid litigation. When a lawyer is employed he must be paid, and when litigation is unavoidable his services may be not only valuable but indispensable, but in many cases expense of this kind is incurred where the services rendered are wholly unnecessary to settlement.

While it is no longer necessary to apply for additional medical, surgical and hospital relief, notice is given to all concerned that claims for such service shall have the closest scrutiny to the end that no worthy case shall be denied or unduly limited, and that industry shall not be unduly burdened by unnecessary service or overcharge.

No department obligation is more seriously regarded than the matter of lump sum settlement. In some cases this departure from the weekly rule of payment may afford substantial relief and enduring benefit, but in most cases commutation would be actually unfortunate, hence it must be made clear that such settlement is for the best interest of the workman or dependent before department approval can be given.

Copies of the compensation law may be secured without charge at the department.

Employers must not fail to send in accident reports in all cases where disability exceeds the limit of a single day.

A memorandum of settlement should be filed here as soon as obligation is accepted and payments are assumed. Information is thereby conveyed that the workman is receiving statutory consideration. This memorandum is regarded merely as tentative and subject to change if error occurs, or if disability has not been fully or definitely considered. Final settlement is a later obligation.

Arbitration is never denied any claimant who has confidence in his disputed claim, or any attorney who has a theory of law to carry to the courts, whether or not department information seems to justify such proceeding. Good administration demands that we respond to requests for informal opinion upon facts developed in informal investigation, though litigation may later occur. Occasionally a lawyer volunteers criticism of this method as unjudicial and extraordinary, but this department is chiefly administrative with incidental judicial function, and in order to do our best for all concerned, and particularly for the workman who most needs our counsel, it is necessary to exercise this extraordinary statutory latitude.

It seems necessary to interpret the law relating to the furnishing of medical, surgical and hospital services as leaving the choice of physicians to the employer or insurer, but this fact by no means implies that this duty may be discharged in an arbitrary manner without due regard to the care and convenience of the injured work-

man. Insurers have been repeatedly admonished to exercise reasonable and considerate rules, and they will not have department support for unreasonable measures.

The four hernia cases which have gone to the Supreme Court have been decided against the workmen, and in all these decisions the department has been affirmed. This report shows that four out of five cases submitted to the department during the biennium have been lost by the claimant. It should be understood, however, that this showing by no means indicates the degree of failure in the adjustment of hernia cases. Hundreds of such cases are amicably settled every year under department rules and counsel. When such injury clearly arises out of employment claims are settled. The litigated cases are those in which proof of this vital element are wanting.

Amendments relating to procedure such as those applied to commutation, to limiting time for bringing arbitration action, to appeals from arbitration, to evidence in review, are held to be retroactive in effect applying to cases under consideration without regard to date of injury.

Again, employers are advised and urged to place their compensation coverage with insurers having adjustment agencies within the state. It means much in the way of prompt and adequate service and good administration.

THE REVISED COMPENSATION LAW

In its work of code revision the Fortieth General Assembly gave the compensation statute important consideration. Many interests were involved and none were entirely satisfied with the results, but few will deny that in its new form the law is more just and equitable to all interests most concerned. While this department might say that more in the way of amendment was desired, most of our recommendations which were so rudely ditched at the regular session were finally adopted and other worth-while amendments were made.

The outstanding amendments, of course, relate chiefly to more liberal provisions for the workman, but a number of changed or new sections less conspicuous are important to fair and helpful administration. When the compensation measure first came before our legislature it was proposed to create a system in use a few years in Europe but of which little was known in a practical sense as to details and definite construction in this country. It naturally followed that the statute enacted was in indefinite terms inadequate to the best possible administration. In directing the work of arbitration and review and, indeed, in many matters of detail, it became necessary to arbitrarily provide rules supplementing the terms of law in order to provide a workable system. Consistent with the spirit and purpose of the new service, the department proceeded to bridge over the lapses and to discard the impracticable with general consent and apparent approval. The new law in a number of places incorporates department rules not definitely authorized, and supplied still further provisions important in administration. Considering the great pressure of other important business and the limitations of time, the legislative bodies did wonderfully well by the compensation statute in the work of code revision.

The more important amendments are herein considered.

EMPLOYMENTS EXCLUDED

As to exemptions from the terms of the statute: There has been considerable sentiment in favor of including farm operations in an elective sense. There has been a good deal of agitation as to the coverage of threshing and some other farm activities similar in character. In dealing with these questions, however, the General Assembly under considerable pressure indicating agricultural sentiment made exclusion still more extensive and definite.

CASUAL EMPLOYMENT

A few sessions ago was practically taken out of the exempt class under the influence of employment. Experience has given employers and insurers to see that they had made a mistake, so casual employment again goes under coverage by apparently common consent.

MEDICAL, SURGICAL AND HOSPITAL SERVICE

The amendment giving the Commissioner authority to order additional medical, surgical and hospital service to the limit of $100.00 without previous application will afford important relief where most needed. Under the old law it has occurred that a large proportion of workmen of the most needy class have received only the original one hundred dollars, even though their requirement was several times this amount. In opposing this amendment employers and insurers insisted its effect would be to encourage padded bills and unnecessary service. It was adopted by the committee under a pledge on the part of this department that such abuses should be prevented. Wherefore, notice is given that searching scrutiny of medical bills will be exercised where additional allowance is authorized for such services.

COMMUTATION BY COMMISSIONER

The amendment authorizing the Industrial Commissioner to complete the work of commutation with the consent of both parties will afford substantial saving to injured workmen and their dependents. Except in cases where the insurer has generously appeared in court for the claimant without expense a charge of from fifteen dollars up for attorney fee has been imposed in each case. In a recent settlement a charge of $150.00 was made for this merely nominal service. Furthermore, in many cases a great deal of delay and inconvenience has resulted. Judging from our experience the courts will be almost wholly relieved of duty in connection with lump sum settlement. Papers will be drawn by the department without expense and no attorney fee is necessary.

LIMITATION

Legislative action in limiting the bringing of arbitration action to a period of two years is worthy of approval. Hitherto there has been no statutory limitation and applications have been filed as much as three or four years after alleged injury. Such delay has been unjust and embarrassing to employers because of difficulty in securing evidence as to what happened and how, while casting suspicion upon representations made by claimant. This amendment is assumed to be retroactive in character.

LEGAL FEES

The amended statute provides that legal fees for services rendered within department jurisdiction shall be subject wholly to the approval of the Industrial Commissioner. There can be no reasonable objection to this change since no other official is so well advised as to the extent and value of such services. It may be candidly stated that most lawyers deal reasonably, even generously, with workmen needing their services in compensation cases, but occasional overcharge is made. The department files show that in one case a fee of $500.00 was demanded where the dependent needed no legal services whatever since no controversy existed, and settlement was made on the maximum basis as soon as the law permitted.

COMPENSATION OR DAMAGES

The provision that non-insuring employers who have failed to reject compensation requirements shall be subject to suit for damages, or claim for compensation, as workmen or dependents may elect, is in the nature of radical departure, but ought to lead the way

to more adequate protection to all workmen over the state engaged by non-employing insurers. In departmental experience evidence abounds as to hardship endured by workmen and dependents who are not afforded coverage by employers, ruthless or indifferent to the claims of industrial misfortune.

SUBROGATION

The new law as to subrogation does not change the liability of an offending third party, nor the claim of the employer or insurer against amounts recovered from such party. It does, however, materially change the line of procedure in case of controversy more definitely outlining the rights of compensation relationship in such cases. The amended statute may be regarded as in the line of improvement.

SPEEDING UP LITIGATION

This new provision appears in the amended law as

Section 1451. The first term after the appeal is taken shall be the trial term, and if the appeal is taken during a term, it shall be triable at that term at any time after ten (10) days from the date of filing the transcript by the commissioner and ten (10) days' notice in writing by either party upon the other. Such appeal shall have precedence on the docket and for trial over all other civil business except appeals of the same kind which shall be tried in the order in which they are filed, except as otherwise agreed in writing by all parties in interest and filed.

When controversy leads to litigation the chief concern is procedure speedy as practicable. One of the more important advantages plead for the enactment of this system was the promise to mitigate the law's delay that had wrought so much hardship upon injured workmen. Arbitration occurs with as little delay as practicable. Review decision is filed within a very few days from the completion of the record. It ought not require from one to two years to take a case through arbitration, review and the courts.

BURIAL

The increase of burial allowance to $150.00 is well justified and consistent with this provision in most other states. This may fall very far short of actual expenditure. Information occasionally comes to the department suggesting gross imposition. In one instance it cost $620.00 to bury a workman who had been earning $3.00 a day. The items of expense indicate overcharge and excessive service. The undertaker in such a case may shift the blame upon the family or friends, but the situation is more presumably due

to a tendency of cupidity to prey upon pride and affection where a real sense of obligation to distress and straightened circumstances should afford inspiration to helpful counsel and moderate charges.

NON-RESIDENT ALIEN DEPENDENTS

Payment is reduced to fifty per cent of the awards provided for residents, the remaining fifty per cent to be paid into the state treasury.

ARBITRATION AND REVIEW

The new law supplies definite provisions for reporting, for developing transcripts of evidence and for taking depositions.

The time limit for filing petitions for review is increased to ten days.

New evidence cannot be received in review actions unless the parties introducing same shall give the opposite party five days' notice in writing as to the particular phase of the contesting claim to which such evidence will apply.

MINOR DEPENDENCY

It is now provided that parents of a minor losing his life in employment shall take dependency on the basis of "wages received" instead of "wages to which they are entitled," as heretofore. This change in most cases in department experience, would seem to mean that contribution rather than conclusive presumption will be the rule to be applied in settlement.

"SAFETY FIRST"

Compensation affords very substantial relief, and its development into greater usefulness is to be continually encouraged. To come to the workman or his family with support when earning capacity is destroyed or impaired is of value immeasurable.

But how much more important than financial relief when industrial accident shall have done its cruel work is industrial consideration which prevents the compensable injury. It is gratifying to observe the splendid results which many of the larger industries are reporting from the development of measures which substantially reduce the number of deaths and disabling injuries. They study and adopt new safety devices. Schools of instruction are held among workmen to promote interest in measures of precaution. In these large plants workmen are organizing to co-operate with such movements and make every possible contribution to safety endeavors. Competition in the several departments tend to reduce the number of injuries.

The Joliet plant of the United States Steel Corporation, with about 4,000 employes operated ninety-five days without a single "lost time" accident, the results of years of safety educational work. In the past eleven years fatal and disabling accidents were reduced by the several plants of the corporation to 70.21 per cent.

The Illinois Steel Company reports that during the entire month of March, 1924, no man lost a minute's time on account of accident. The report covers 11,989 employes.

In the great cement works of the country, perhaps the most progressive record has been made on the part of the employers and employes and with results exceedingly conspicuous.

The Lehigh Portland Cement Company operating many plants in various states, including one at Mason City, has kept us advised as to methods employed and results obtained. In a report before us figures denoting wonderful evidence along safety lines appear. It is shown that in days lost per 100,000 man hours, the record for four years is as follows:

1919	82.3
1920	55.4
1921	43.7
1922	25.7

As this report is developing comes a statement showing that during the month of June, 1924, at nineteen Lehigh plants only a single accident occurred and only three days of time were lost.

Some months ago this striking statement of experience on the part of another great cement company was reported in "Safety Engineering:"

"The Alpha Portland Cement Company operated eight plants in 1922, working a total of almost five million man hours, without a fatal accident. The record of 87 cement plants in the United States and Canada shows that in 1921, one fatality for every 1.4 million man hours occurred. The Alpha record for 1921 was five deaths and one permanent total disability.

"In 1914, when the safety committee was first organized, at the five plants belonging to the organization, ten men were fatally injured in nine separate accidents. From 1911 to 1916 thirty-one men were killed, while from 1917 to 1922, inclusive, only nine men were killed. This improvement is principally due to the workmen giving more thought to their personal safety, and to the good work of the Plant Safety Committees."

In the "World's Work" Floyd W. Parsons submits wonderful figures and interesting conclusions. "The average person" he says, "holds the idea that war is the largest destroyer of human life. As a matter of fact, our participation in the world war resulted in snuffing out the lives of only 50,150 soldiers. During the same period 126,000 men, women and children engaged in normal pursuits met their deaths from accidents, most of which could have been prevented." He finds that nine persons meet death through accident in America every hour of the day and night, and workers to the number of 900,000 are each year maimed for life, or lose more than a month of time.

Mr. Floyd refers to an industry employing 50,000 men and women in which endeavor along the line of safety provisions reduced the number of fatal accidents to a single workman during an entire year of operation. The writer makes the further statement that fatal accidents have been reduced fifty-five per cent; accidents resulting in loss of eyes, seventy per cent; accidents resulting in loss of legs, fifty per cent; accident causing loss of feet, fifty per cent; accidents causing loss of hands, one hundred per cent, or a general reduction of all cases, seventy-one per cent. The company's compensation costs have shown a reduction of nearly twenty-five per cent, and the production records indicate plainly that safety materially speeds up industrial output.

It is conclusively shown that these safety campaigns are not only humane and profitable to the workman, but that they bring big financial returns to the employer. Compensation payment is substantially reduced. The increase in efficiency and production is substantially increased. The work record is much improved, not only as to number of hours saved to service, but through the increased interest and efficiency on the part of the employe. A great industrial leader has well said: "Accident prevention is not only good morals and good ethics, but also good business."

It is well to inquire if Iowa employers of labor are sufficiently interested and enlisted in this safety program. It may well be wondered if too many of them do not meet the obligation of insurance or self-coverage with a sigh as to the burden discharged, but with undue regard as to means of reducing this burden while contributing immeasurably to the comfort and happiness of men, women and children involved in their business activity. It is well said in this connection that "you cannot compel a conscience, that success and safety depends more upon education than upon legislation." It may well be assumed that such of our employers as have given much

consideration and support to safety enterprise, and who have sought the co-operation of their employees in such important endeavor are more than satisfied with results moral and financial.

The General Assembly is urged to afford more adequate support to the Department of Labor Statistics in its endeavor to meet all possible obligation of the state as to safety inspection and regulation. This service is of great importance in the reduction of fatal and disabling accidents, but employers should supplement this work of the state with effectual endeavors of their own beyond the range of possible state regulation.

AMENDMENTS

Under the statute it is the duty of the Industrial Commissioner to recommend such amendments to the compensation law as the interests of the service may require. In view of the experience at the recent code session, however, where this law was thoroughly reviewed and agreement reached on so many points by all parties in interest, not much of such recommendation will be expected in this report. A few suggestions are submitted.

The inclusion of occupational disease in compensation coverage has been recommended several times, by this department and this change ought to be made. Employers everywhere have opposed such change in the belief that it would greatly increase insurance cost and afford invitation to imposition. In states like Ohio and Wisconsin, however, where occupational disease is now compensable, experience has shown this fear to be unfounded. The increase in insurance burden is found to be almost negligible and abuse no more to be apprehended than in other lines of coverage. Occupational cases are comparatively rare, but when they occur grievous hardship is endured. There is no more justice in denying payment to the victims of occupational disease than in cases of disability resulting from trauma where both distinctly arise out of employment.

The department is more and more frequently informed of death or disabling accidents in cases of workmen in the employ of township trustees. Our Supreme Court definitely holds that a civil township is not a municipal corporation nor political entity of the character than can sue or be sued, hence such unfortunate workmen and their dependents have no compensation coverage. If legislation may be successfully applied to this unfortunate situation, no time should be spared in affording legal remedy.

FINANCIAL

Herewith is submitted a report covering expenditures for the biennium. In creating the Workmen's Compensation system in

Iowa due regard was given to organization of economical character, and consistent with this program the cost of administration has been held within economical limits, as appears in the fact that in no year of experience has expenditure for all purposes reached twenty thousand dollars. The most thrifty citizen might find satisfaction in comparing these figures with the cost of like service in most other states.

Estimates of department needs for the two years ensuing are also submitted. They suggest a slightly enlarged appropriation to cover increase of two salaries only. The Deputy Commissioner, Mr. Ralph Young, has been with the department almost from the beginning and under the law and needs of the situation he is charged with a very important work of arbitration and other very responsible employment. The Secretary, Mr. Ray M. Spangler, takes the laboring oar in routine correspondence and in much other detail administration. To these men is due much of the credit for department efficiency. They are not adequately paid. The suggested raise of $700.00 annually for these two positions means more than the recognition of faithful service. It is necessary for the reason that if either shall retire the present salary will not tempt other men of suitable equipment to take the place vacated.

Besides contributing substantially to the industrial interests of Iowa and all concerned therewith, this service saves to the state in its relief to the courts many times its appropriations for support. These facts do not justify any tendency to extravagance in administration, but they do plead for just recognition of services rendered.

ADMINISTRATIVE EXPENDITURES

July 1, 1922—June 30, 1924

	First Year	Second Year
Salaries	$ 15,379.99	$ 15,308.66
Traveling expense	626.49	693.22
Medical expense	852.50	710.00
Postage	397.59	325.00
*Printing and binding	1,366.84	950.80
Office supplies	348.04	597.86
Office furniture	.....	160.20
Library	31.75	12.50
Telegraph, telephone and express	18.11	14.88
Miscellaneous	74.80	53.65
Total	$ 19,096.11	$ 18,826.77

*This item not chargeable to appropriation.

ADMINISTRATIVE ESTIMATES

July 1, 1924—June 30, 1926

	First Year	Second Year
Salaries	$ 15,750.00	$ 16,250.00
Traveling expense	700.00	800.00
Medical expense	960.00	960.00
Postage	500.00	500.00
Printing and binding	1,200.00	1,000.00
Office supplies	400.00	400.00
Office furniture	200.00	200.00
Library	50.00	50.00
Telegraph, telephone and express	50.00	50.00
Miscellaneous	70.00	70.00
Total	$ 19,880.00	$ 20,280.00

Annual appropriation for salaries $15,700.00.
Annual appropriation for administrative expense $5,000.00.

STATISTICAL

REPORT OF ACCIDENTS AND SETTLEMENTS APPROVED

July 1, 1922—June 30, 1923

Accidents reported	13,946
Fatal cases	112
Settlements reported	5,598
Compensation paid in reported settlements	$323,159.12
Reported paid for medical, surgical and hospital	$52,726.31

July 1, 1923—June 30, 1924

Accidents reported	13,729
Fatal cases	119
Settlements reported	5,946
Compensation paid in reported settlements	$343,567.99
Reported paid for medical, surgical and hospital	$129,260.54

HEARINGS

	July 1, 1922 to June 30, 1923	July 1, 1923 to June 30, 1924
Total number of applications filed	132	164
Total number of cases arbitrated	47	60
Total number of cases settled without hearing	62	49
Total number of cases dismissed	18	15
Total number of cases reopened	8	8
Total number of cases decided on review by Commissioner	16	18
Total number of cases appealed to courts	8	9

CASES ARBITRATED DURING BIENNIUM
FIRST YEAR

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Warrington vs. Des Moines Saw Mill	T. T.	Out of Emp.	$135.00	Affirmed	No appeal	
Neuman vs. Disbraw Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Checkavala vs. United States Gypsum Co.	Fatal	Dependency	2,344.00	No appeal		
Essex vs. Liberty Coal Co.	T. T.	Out of Emp.	124.76	No appeal		
Brugioni vs. Saylor Coal Co.	P. P.	Ext. of injury	750.00 (Re-opening)		Reversed	Affirmed
Pickles vs. Sheriff Coal Co.	P. P.	Ext. of injury	1,200.00 (Re-opening)		No appeal	
Martinic vs. Dallas Coal Co.	P. P.	Ext. of injury	1,500.00 (Re-opening)		No appeal	
O'Brien vs. Monarch Manufacturing Co.	P. P.	Ext. of injury	1,800.00	No appeal		
Saldana vs. C. G. W. Ry. Co.	P. P.	Coverage	Disallowed	No appeal		
LaPour vs. Western Grocer Co.	T. P.	Ext. of injury	1,869.60	Affirmed $3,116.00	No appeal	
Beard vs. C., R. I. & P. R. R. Co.	Fatal	Coverage	Disallowed	No appeal		
Loan vs. City of Davenport	T. T.	Ext. of injury	15.00 Wkly.	No appeal		
Seibert vs. American Railway Express Co.	T. T.	Notice	Disallowed	No appeal		
Johnson vs. Cudahy Packing Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Sorrick vs. Levin	T. T.	Employer	Disallowed	No appeal		
Ricketts vs. Globe Machinery & Supply Co.	Fatal	Cause of death	3,753.00	No appeal		
Dimitroff vs. C. G. W. Ry. Co.	P. P.	Coverage	Disallowed	No appeal		
Lawrence vs. Flynn Dairy Co.	Fatal	Out of Emp.	Disallowed	No appeal		
Lowry vs. Sioux City Brick & Tile Co.	T. T.	Ext. of injury	8.23 Wkly. (Re-opening)		No appeal	
Baldwin vs. Sullivan	Fatal	Dependency	3,114.00	Affirmed	Affirmed	Pending
Greycus vs. Cedar Rapids & Marion Ry. Co.	P. P.	Ext. of injury	2,000.00	No appeal		

Hausserman vs. Hausserman Packing Co.	Fatal	Coverage	4,500.00	Reversed	No appeal	
Kramer vs. Tone Bros.	Fatal	Dependency	Disallowed		Reversed	Affirmed
Severino vs. Capital City Clay Co.	P. P.	Out of Emp.	367.85	No appeal		
Marten vs. Des Moines Gas Co.	Fatal	Cause of death	Disallowed	No appeal		
Law vs. Waukonsa Hotel	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Hope vs. C., R. I. & P. Ry. Co.	Fatal	Coverage	4,500.00	Affirmed	Pending	
Brasch vs. Tenebom	T. P.	Out of Emp.	Disallowed	Pending		
Stephens vs. Bettendorf Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Woody vs. Davenport Iron & Machinery Co.	T. T.	Out of Emp.	25.00	No appeal		
Morrison vs. Morrell & Co.	T. T.	Hernia	127.60	Reversed	No appeal	
Steidley vs. DuPont Powder Co.	Fatal	Dependency	4,500.00	No appeal		
Victor vs. Egnall	T. T.	Out of Emp.	27.68	No appeal		
Huffman vs. Schuyler	T. T.	Out of Emp.	Disallowed	Reversed	No appeal	
Daab vs. National Roofing Co.	T. T.	Hernia	Disallowed	No appeal		
Jansen vs. International Milling Co.	T. T.	Ext. of injury	2,000.00 (Re-opening)		No appeal	
Sheahan vs. Standard Biscuit Co.	P. P.	Ext. of injury	1,142.00 (Re-opening)		Pending	
Wiley vs. Grace M. E. Church	P. P.	Out of Emp.	Disallowed	No appeal		
Wilson vs. Consumers Twine & Machinery Co.	T. T.	Occu. Disease	Disallowed	Affirmed	No appeal	
Sample vs. Consumers Twine & Machinery Co.	T. T.	Occu. Disease	Disallowed	Affirmed	Pending	
Smithart vs. Ottumwa Ry. & Light Co.	T. T.	Ext. of injury	435.96	No appeal		
Pitman vs. Decatur County	P. P.	Ext. of injury	1,472.08	No appeal		
Marich vs. Hawkeye Portland Cement Co.	Fatal	Dependency	500.00	No appeal		
Rasovich vs. Mason City Sewer Pipe Co.	Fatal	Dependency	750.00	No appeal		
Barac vs. Hawkeye Portland Cement Co.	Fatal	Dependency	2,007.00	No appeal		
Turner vs. C. G. W. Ry. Co.	P. P.	Ext. of injury	432.00 (Re-opening)		No appeal	
Cooper vs. Pittsburgh-Des Moines Steel Co.	T. T.	Out of Emp.	Disallowed	Pending		

CASES ARBITRATED DURING BIENNIUM
SECOND YEAR

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Pfister vs. Doon Electric Co.	Fatal	Employment	$1,800.00	Affirmed	Pending	
Parks vs. Quaker Oats Co.	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Mike vs. Quaker Oats Co.	Fatal	Dependency	4,500.00	Affirmed	Affirmed	No appeal
Young vs. Leon & Lineville Telephone Co.	T. T.	Out of Emp.	11.08 Wkly.	No appeal		
Zulske vs. Moser Lumber Co.	T. T.	Hernia	325.00	No appeal		
DeMoss vs. Ankeny Linseed Manufacturing Co.	T. T.	Ext. of injury	447.02	No appeal		
Guthrie vs. Iowa Gas & Electric Co.	T. T.	Out of Emp.	7.00 Wkly.	Affirmed	Pending	
Manning vs. T. M. Sinclair & Co.	Fatal	Out of Emp.	Disallowed	Pending		
Mitchell vs. Emmetsburg Ind. School District	T. T.	Coverage	255.00	Affirmed	No appeal	
Musenberg vs. Noesges Bros.	T. T.	Out of Emp.	Disallowed	No appeal		
Williams vs. Willbee	T. T.	Hernia	100.00	No appeal		
Double vs. Iowa-Nebraska Coal Co.	Fatal	Dependency	780.00	Affirmed	Affirmed	Reversed.
Webb vs. Iowa-Nebraska Coal Co.	Fatal	Cause of death	4,500.00	Affirmed	Affirmed	Affirmed.
Weise vs. Hawkeye Oil Co.	T. T.	Hernia	175.00	No appeal		
Mengonigie vs. Waterloo Gasoline Engine Co.	T. T.	Hernia	Disallowed	Affirmed	No appeal	
McNeil vs. Commercial Building Co.	T. T.	Hernia	Disallowed	No appeal		
Sturgeon vs. Hubinger Bros. Co.	T. T.	Hernia	Disallowed	No appeal		
Lawson vs. Davies Oil Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Van Ness vs. Standard Clay Products Co.	P. P.	Ext. of injury	2,493.60 (Re-opening)		No appeal	
Hatter vs. Booth & Olson	Fatal	Dependency	520.00	No appeal		
Dossena vs. Western Asphalt Co.	T. T.	Ext. of injury	195.00	No appeal		
Shuck vs. Armour Co.	T. T.	Hernia	Disallowed	No appeal		
Hanza vs. Sioux City Gas & Elec. Co.	T. T.	Hernia	Disallowed	No appeal		
Hoshaw vs. Sioux City Service Co.	T. T.	Out of Emp.	Disallowed	No appeal		

Zimmerman vs. Martens & Kettells Milling Co.	P. P.	Ext. of injury	Disallowed (Re-opening)		No appeal	
Rogers vs. Des Moines Ice & Fuel Co.	T. T.	Out of Emp.	Disallowed	Pending		
Hernandez vs. Northwestern States Port. Cement Co.	T. T.	Ext. of injury	74.76 (Re-opening)		No appeal	
Sanchez vs. Northwestern States Port. Cement Co.	T. T.	Ext. of injury	Disallowed (Re-opening)		No appeal	
Carey vs. Fort Dodge Serum Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Bryton vs. Central Engineering Co.	Fatal	Out of Emp.	2,667.00	No appeal		
Kurtz vs. Davenport Locomotive Works	T. T.	Out of Emp.	281.25	No appeal		
Sayers vs. Martha Washington Doughnut Shop	T. T.	Out of Emp.	67.20	Affirmed	No appeal	
Patterson vs. Vinton Engineering & Const. Co.	P. P.	Employer	Disallowed	No appeal		
Elder vs. C., R. I. & P. R. R. Co.	T. T.	Coverage	15.00 Wkly.	Affirmed	Pending	
Jansen vs. Joyce Lumber Co.	Fatal	Hernia	Disallowed	No appeal		
Munson vs. Western Asphalt Paving Co.	T. T.	Out of Emp.	6.00 Wkly.	Affirmed	Pending	
Newcomb vs. Majestic Theatre	T. T.	Out of Emp.	Disallowed	Pending		
Atkins vs. Massey & Son	P. P.	Ext. of injury	500.00	No appeal		
Smith vs. Smith Motor Car Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Deamer vs. Ind. School Dis. of Cedar Rapids	T. T.	Coverage	Disallowed	No appeal		
Tyler vs. International Correspondence School	P. P.	Coverage	450.00	Affirmed	No appeal	
Hollingshead vs. Heggins	Fatal	Cause of death	3,894.00	No appeal		
Grangenett vs. Darling	P. P.	Employer	Disallowed	No appeal		
Scurlock vs. Potato Growers Exchange	Fatal	Cause of death	Disallowed	No appeal		
Carlson vs. Booth & Olson	T. T.	Employer	Disallowed	No appeal		
Filer vs. Davidson Bros. Co.	T. T.	Hernia	220.00	No appeal		
Zimmerman vs. Johnson Biscuit Co.	T. T.	Notice	Disallowed	No appeal		

CASES ARBITRATED DURING BIENNIUM—Continued

SECOND YEAR

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Linn vs. Lytle Const. Co.	Fatal	Dependency	1,030.00	No appeal		
Lack vs. Des Moines Coal Co.	P. P.	Ext. of injury	465.00 (Re-opening)		No appeal	
Wickey vs. Cudahy Packing Co.	P. P.	Out of Emp.	1,011.70	Pending		
Weinhart vs. C. N. W. R. R. Co.	P. P.	Ext. of injury	1,155.00 (Re-opening)		No appeal	
Uhlman vs. Northern States Contracting Co.	T. T.	Hernia	Disallowed	No appeal		
Sortor vs. Ray Coal Co.	P. P.	Ext. of injury	177.76 (Re-opening		No appeal	
Paul vs. Frank Foundries	P. P.	Hernia	220.00	Reversed	No appeal	
Frase vs. McClelland Co.	T. T.	Ext. of injury	15.00 Wkly.	Affirmed	Pending	
Robinson vs. Paddock Broom Co.	P. P.	Out of Emp.	Disallowed	Affirmed	Pending	
Pickett vs. Iowa Ry. & Light Co.	T. T.	Hernia	Disallowed	No appeal		
Riggs vs. C., B. & Q. Ry. Co.	T. T.	Hernia	Disallowed	Pending		
Romanski vs. Bennett Bros. Coal Co.	P. P.	Ext. of injury	300.00 (Re-opening)		No appeal	
Linzotti vs. Saylor Coal Co.	T. T.	Ext. of injury	Disallowed	Pending		

CASES REVIEWED AND APPEALED DURING BIENNIUM

FIRST YEAR

Rhoades vs. Consolidation Coal Co.	T. T.	Out of Emp.	$205.84	Affirmed	No appeal	
Helia vs. Quaker Oats Co.	Fatal	Cause of death	4,362.00	Affirmed	Pending	
Warrington vs. Des Moines Saw Mill Co.	T. T.	Out of Emp.	135.00	Affirmed	No appeal	
Longwell vs. Linwood Stone & Cement Co.	Fatal	Out of Emp.	3,894.00	Affirmed	No appeal	
Upton vs. Independent School Dis. of Ogden	T. T.	Employer	410.00	Affirmed	No appeal	
Wilke vs. Kohrs Packing Co.	P. P.	Out of Emp.	Disallowed	Affirmed	No appeal	
LaPour vs. Western Grocer Co.	T. P.	Ext. of injury	1,869.60	Affirmed	No appeal	

Kirkeby vs. Sanitary Plumbing & Heating Co.	Fatal	Ind. Emp.	Disallowed	Affirmed	No appeal	
Malone vs. Barnes Cafeteria Co.	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Farrow vs. What Cheer Clay Products Co.	Fatal	Cause ofdeath	4,500.00	Affirmed	Affirmed	Affirmed
Baldwin vs. Sullivan	Fatal	Dependency	3,114.00	Affirmed	Affirmed	Pending
Newman vs. Decker & Sons	T. T.	Out of Emp.	155.10	Affirmed	No appeal	
Ritter vs. Poole-Clark Lumber Co.	T. T.	Hernia	Disallowed	Affirmed	No appeal	
Law vs. Waukonsa Hotel	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Hausserman vs. Hausserman Packing Co.	Fatal	Coverage	4,500.00	Reversed	No appeal	
Hope vs. C., R. I. & P. R. R. Co.	Fatal	Coverage	4,500.00	Affirmed	Pending	

SECOND YEAR

Huffman vs. Schuyler	T. T.	Out of Emp.	Disallowed	Reversed	No appeal	
Pfister vs. Doon Electric Co.	Fatal	Casual Emp.	$1,800.00	Affirmed	Pending	
Sample vs. Consumers Twine & Machinery Co.	T. T.	Occu. Disease	Disallowed	Affirmed	Pending	
Wilson vs. Consumers Twine & Machinery Co.	T. T.	Occu. Disease	Disallowed	Affirmed	No appeal	
Parks vs. Quaker Oats Co.	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Guthrie vs. Iowa Gas & Electric Co.	T. T.	Out of Emp.	7.00 Wkly.	Affirmed	Pending	
Quenrud vs. Ingvolstad Lumber Co.	P. P.	Ext. of injury	1,375.00	Affirmed	No appeal	
McMasters vs. Morrell & Co.	T. T.	Hernia	Disallowed	Reversed	No appeal	
Mike vs. Quaker Oats Co.	Fatal	Dependency	4,500.00	Affirmed	Affirmed	No appeal
Morrison vs. Morrell & Co.	T. T.	Hernia	127.60	Reversed	No appeal	
Mitchell vs. Emmetsburg Ind. School District	T. T.	Coverage	225.00	Affirmed	No appeal	
Webb vs. Iowa-Nebraska Coal Co.	Fatal	Cause of death	4,500.00	Affirmed	Affirmed	Affirmed
Double vs. Iowa-Nebraska Coal Co.	Fatal	Dependency	780.00	Affirmed	Affirmed	Reversed
Sayers vs. Martha Washington Doughnut Shop	T. T.	Out of Emp.	67.20	Affirmed	No appeal	

CASES RECEIVED AND APPEALED DURING BIENNIUM—Continued
SECOND YEAR

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Joiner vs. Cudahy Packing Co.	P. P.	Out of Emp.	Disallowed	Affirmed	Pending	
Megonigle vs. Waterloo Gasoline Engine Co.	T. T.	Hernia	Disallowed	Affirmed	Pending	
Elder vs. C., R. I. & P. R. R. Co.	T. T.	Coverage	15.00 Wkly.	Affirmed	Pending	
Robinson vs. Paddock Broom Co.	P. P.	Out of Emp.	Disallowed	Affirmed	Pending	

FATAL CASES REPORTED DURING BIENNIUM

FIRST YEAR

Employer	Employe	Cause	Amount	Dependent	Adjusted
Adel Clay Producers Co.	H. L. Celly	Fall	3,237.00	Widow	By agreement
American Brick & Tile Co.	H. Geldmeister	Fall of clay	3,114.00	Widow	By agreement
Akron, Town of	A. J. Wallin	Fall	4,500.00	Widow	By agreement
Brownell Constr. Co.	D. A. Murrow	Struck by train	100.00	No dependents	No claim filed
Brownell Constr. Co.	B. E. Durham	Struck by train	4,152.00	Widow	By agreement
Benis & Schlick	M. D. Brouchard	Fall of skip	3,114.00	Widow	By agreement
Bettendorf Co.	J. R. Kirby	Struck by cable crane	4,500.00	Widow	By agreement
Bettendorf Co.	L. C. Hourigan	Fall	4,137.00	Widow	By agreement
Bryant Paving Co.	F. Frank	Struck by skip	Pending	Not known	Pending
Bovee Furnace Works	M. Bates	Tetanus	2,317.50	Widow	By agreement
Carter, W. B.	D. Blair	Cave in	270.00	Parents	By agreement
Carter, W. B.	P. L. Spillers	Cave in	100.00	No dependents	No claim filed
Carter, W. B.	T. J. Donohue	Cave in	140.00	No dependents	No claim filed
C. & N. W. Ry. Co.	D. Dickey	Thrombosis	2,031.00	Father	By agreement
C. & N. W. Ry. Co.	L. W. Johnson	Run over by car	685.00	Parents	By agreement
Cedar Rapids, City of	H. W. Dice	Struck by cable	3,986.49	Widow	By agreement
Cedar Rapids, City of	Wm. Diver	Cave in	4,374.00	Widow	By agreement

Clear Lake Sand & Gravel Co.	N. J. England	Fall	3,510.00	Widow	By agreement
Canfield, Wm.	J. Ryan	Shot	1,500.00	Sister (Partial)	Arbitration
Cardio, C. S. & J.	Abe Hedges	Struck by bus	4,500.00	Widow	By agreement
Colfax Consolidated Coal Co.	Ed. Owens	Fall of slate	4,500.00	Widow	By agreement
Century Lumber Co.	R. A. Masters	Struck by train	4,500.00	Widow	By agreement
Christensen Engineering Co.	J. F. Puckett	Electrocuted	4,500.00	Widow	By agreement
Carr Ryder & Adams	F. Rowe	Fall		Widow	Pending
Consolidated Coal Co.	W. H. Mitchell	Infection	4,500.00	Widow	Arbitration
C. R. I. & P. Ry. Co.	J. Johnson	Struck by train			No liability
C. R. I. & P. Ry. Co.	C. Glasgow	Fall	4,100.00	Widow	By agreement
C. R. I. & P. Ry. Co.	R. F. Rehwinkel	Poisoning	4,100.00	Widow	By agreement
C. R. I. & P. Ry. Co.	F. Small	Fell from crane		No dependents	No claim filed
C. B. & Q. Ry. Co.	C. H. Sewing	Struck by crane	4,100.00	Widow	By agreement
C. G. W. Ry. Co.	G. D. Miller	Fall	5,000.00	Widow	By agreement
C. G. W. Ry. Co.	L. A. Brown	Not given			No liability
Continental Furniture & Carpet Co.	Chas. Cramer	Fell down shaft		Widow	Pending
Curtis Brother & Co.	Geo. Shirk	Fall	909.40	Father	By agreement
Dougherty, J. C.	Clifford Dougherty	Drowned	996.00	Parents	By agreement
Department Stores Co.	H. F. Miller	Not known	494.50	Widow	Compromise
Douglas Co.	Geo. Castelos	Explosion	650.00	Not given	By agreement
Des Moines Coal Co.	R. Silio	Fall of slate	4,500.00	Widow	By agreement
Dunreath Coal Co.	R. Wright	Crushed	4,500.00	Widow	By agreement
Des Moines Clay Co.	J. A. Peterson	Cave in	3,270.00	Widow	By agreement
Du Pont-DeNemours Co.	D. Steidley	Electrocuted	4,500.00	Widow	Arbitration
Edwards Brothers	G. McCain	Fall of slate	750.00	Mother (Partial)	By agreement
Ft. Dodge Serum Co.	J. E. Shartle	Car Skidded	400.00	Widow	Compromise
Farmers Elevator Co.	A. Rasmus	Fell down shaft		Not given	Pending
Ft. Dodge, Des Moines & S. Ry. Co.	Fred Buck	Fall	4,535.00	Widow	By agreement
Guarantee Oil Co.	C. Werkhoven	Fall	4,500.00	Widow	By agreement
Griswold, Inc. Town of	C. C. Scott	Fall	3,114.00	Widow	By agreement
Globe Machinery Co.	Wm. Ricketts	Fall of gate	4,274.78	Widow	Arbitration
Gardner Nursery	M. Thrams	Not given	1,831.00	Widow	By agreement
Hubinger, J. C. Bros. Co.	H. Myers	Strain	3,342.00	Widow	By agreement
Hecker, A. S. Co.	A. M. Post	Motor car derailed	2,534.31	Widow	By agreement

FATAL CASES REPORTED DURING BIENNIUM—Continued

FIRST YEAR

Employer	Employe	Cause	Amount	Adjusted	Dependent
Huttig Mfg. Co.	Adolf Schare	Fall	1,200.00	Widow	By agreement
Higley, E. B. & Co.	Chas. Jump	Explosion	4,500.00	Widow	By agreement
Iowa Mining Co.	C. E. Wilson	Fall of slate	4,287.94	Widow	By agreement
Iowa Ry & Light Co.	E. E. Whiting	Electrocuted	4,500.00	Widow	By agreement
Ill. Cent. Ry. Co.	R. J. Shepherd	Struck by header	4,156.23	Widow	By agreement
Ill. Cent. Ry. Co.	Peter Johnson	Not given		No dependents	No claim filed
Ill. Cent. Ry. Co.	W. H. Calhoun	Auto accident			No liability
Iowa Nebr. Coal Co.	Andy Green	Fall of slate	4,500.00	Widow	By agreement
Ia. Light, Heat & Power Co.	Lafe Lloyd	Electrocuted	621.80	Mother	By agreement
Johnson County	Herman Holscher	Fall from wagon	2,268.00	Widow	By agreement
Knudson, Wm. & Son	Hobert Hughes	Fall of iron column	4,500.00	Widow	By agreement
Kemper & Dimbleby	James McManus	Crushed	3,780.00	Widow	By agreement
Lovejoy, J. E.	P. Cansler	Fall	3,114.00	Widow	By agreement
Lamoni Electric Co.	Clyde Newcomer	Electrocuted	4,500.00	Children	By agreement
Lamoreaux & Pickett	Frank Dicus	Fall of tree	Pending	Not given	Pending
Laploe, H. R.	Clyde Monroe	Fall	2,835.00	Widow	By agreement
Linwood Stone & Cement Co.	C. F. Longwell	Caught in machinery	3,804.00	Widow	Arbitration
Lehigh Portland Cement Co.	H. B. Edmundson	Struck by lever	1,465.79	Parents	Arbitration
McCarthy Improvement Co.	J. T. Quinn	Suicide			No liability
Myers Cox Co.	H. C. Wilbur	Struck by train	4,500.00	Widow	By agreement
Monticello Electric Light Co.	D. E. Hanawalt	Fall	4,500.00	Widow	By agreement
Mauser & Fell	Will Beistle	Fall	4,500.00	Widow	By agreement
Miller, J. G. Constr. Co.	O. Anderson	Fall	3,633.00	Widow	By agreement
McConville Coal Co.	Nels Murphy	Electrocuted	4,500.00	Widow	By agreement
Missouri Valley, City of	F. M. Purcell	Electrocuted	4,500.00	Widow	By agreement
Mitchell, C. O.	Mike Cavin	Crushed		No dependents	No claim filed
Norwood White Coal Co.	A. H. Cole	Fall of slate	4,500.00	Widow	By agreement
Norwood White Coal Co.	Wm. Workcuff	Fall	4,500.00	Widow	By agreement
Omaha Elevator Co.	A. Jensen	Crushed		Not given	Pending

Orschell Building Materials	Wm. Lewis	Overturned auto	3,000.00	Widow	By agreement
Orange, City of	J. H. Kraai	Fall in tank	4,500.00	Children	By agreement
Peoples Light Co.	R. E. Maxfield	Electrocuted	3,880.00	Widow	By agreement
Pershing Coal Co.	David Loring	Fall of slate	4,500.00	Widow	By agreement
Pershing Coal Co.	Fred Holesworth	Fall of slate	4,500.00	Widow	By agreement
Pitts.-Des Moines Steel Co.	D. O'Brien	Crushed	338.35	No dependents	By agreement
Pederson, C. W.	O. R. Marrice	Struck by train	3,600.00	Widow	By agreement
Pederson, C. W.	F. Richardson	Struck by train	3,600.00	Widow	By agreement
Royer Craig Constr. Co.	Samuel Boyer	Dynamite	4,500.00	Widow	By agreement
Rex Fuel Co.	Frank Gelles	Fall of slate	4,500.00	Widow by	By agreement
Republican Printing Co.	Henry Prentiss	Fall	4,500.00	Widow	By agreement
Roseman Brothers	J. Kirby	Not given			No liability
Swaney Motor Co.	B. J. Daley	Struck by train	827.72	Mother (Partial)	By agreement
Smoky Hollow Coal Co.	I. Thompson	Fall of slate	4,500.00	Widow	By agreement
Silvers Mfg. Co.	H. Sullivan	Blood poisoning			No liability
Schall's Inc.	W. B. Cox	Crushed	3,117.00	Widow	By agreement
Swift & Co.	Lucille Van Pelt	Blood poisoning	Pending		Pending
Standard Oil Co.	F. J. Butler	Struck by train	4,449.00	Children	By agreement
Sioux City Brick & Tile Co.	A. G. Powell	Fall of dirt	1,254.92	Parents	By agreement
Shirley Constr. Co.	J. J. Meehan	Crushed	3,780.00	Widow	By agreement
Shuler Coal Co.	Wm. Waznick	Crushed	350.00	Parents (Partial)	By agreement
Stacey Mfg. Co.	Wm. Fitzgerald	Fall of steel	4,483.59	Widow	By agreement
Union Hotel Co.	F. E. Lindsay	Asphyxiated		No dependents	No claim filed
Urbandale Coal Co.	J. Welch	Fall of slate	4,366.02	Widow	By agreement
What Cheer, City of	E. S. Crowe	Revolver exploded	2,895.00	Widow	By agreement
Welden Brothers	John McCarron	Blood poisoning	4,155.00	Widow	By agreement
Warnock, Wm. & Co.	Wm. W. Burke	Crushed	4,500.00	Widow	By agreement
Wright Constr. Co.	E. E. Bentley	Fall	400.00	Father (Partial)	By agreement
World Bros. Circus	T. Davis	Not given		Not shown	Pending
Wright Coal Co.	David Savage	Fall of slate	4,500.00	Widow	By agreement
What Cheer Clay Products Co.	John Boland	Steel in eye	4,500.00	Widow	By agreement
Wickes Engineering Constr. Co.	Wm. Fish	Machinery	400.00	Mother (partial)	By agreement

FATAL CASES REPORTED DURING BIENNIUM—Continued

SECOND YEAR

Employer	Employe	Cause	Amount	Dependent	Adjusted
Amer. Ry. Express Co.	J. J. McKinney	Crushed	$ 100.00	No dependents	No claim filed
Atlantic, City of	R. L. Worley	Scalded	4,500.00	Widow	By agreement
Atlantic, City of	M. B. Parmley	Scalded	4,500.00	Widow	By agreement
Armour & Co.	Clyde Ferguson	Burned	4,053.37	Widow	By agreement
Beaver Products Co.	F. S. Wheeler	Electrocuted	1,200.00	Parents	By agreement
Boeck, Howard	E. Hadenfeldt	Thrown from car			No liability
Ben Hur Erection Co.	Bert Werner	Fall	100.00	No dependents	No claim filed
Cent. Ia. Fuel Co.	David Lancey	Fall of slate	4,500.00	Widow	By agreement
Cent. Ia. Fuel Co.	G. Blasovich	Fall of slate	4,500.00	Widow	By agreement
Corno Mills Co.	J. Kerr	Crushed	4,500.00	Widow	By agreement
Crawford County	W. H. Chapman	Struck by flying wood	4,500.00	Widow	By agreement
Cole, B. J.	James M. Stoops	Struck by plank	650.00	Children	By agreement
Council Bluffs, City of	Stephen Sullivan	Struck by auto	1,000.00	Daughter	By agreement
Clinton Advertiser Pub. Co.	Frank Allison	Struck by auto	1,200.00	Father	By agreement
Campbell Baking Co.	G. D. Vasbuider	Crushed	3,633.00	Widow	By agreement
Central Engineering Co.	Nelson Brayton	Struck by auto	2,667.00	Widow	Arbitration
Consolidation Coal Co.	James Fox	Fall of slate	Pending	Not given	Pending
C. & N. W. Ry. Co.	M. E. Collum	Crushed	4,310.80	Widow	By agreement
C. & N. W. Ry. Co.	G. Rodgers	Not given	500.00	No dependents	By agreement
C., R. I. & P. Ry. Co.	T. P. Griffin	Shot	Pending		Pending
C., R. I. & P. Ry. Co.	John Nicopolis	Fall	Pending		Pending
C. G. W. Ry. Co.	Nick Jaramillo	Scalded	Pending	Not known	Pending
C., B. & Q. Ry. Co.	C. O. Eggleston	Fall	3,953.37	Daughter	By agreement
Dallas Coal Co.	G. Cianciotte		Pending		Pending
Des Moines Clay Products	Fred Sutheralnd	Crushed	3,741.00	Widow	By agreement
Des Moines Electric Co.	L. C. Quaintance	Electrocuted	4,500.00	Widow	By agreement
Des Moines Asphalt Pav. Co.	Floyd Page	Struck by machinery	4,500.00	Widow	By agreement
Dunreath Coal Mining Co.	Ed. Shilling	Fall of slate	1,599.09	Parents	By agreement
Des Moines Ice & Fuel Co.	Adolph Dhainin	Caught by cage	4,500.00	Widow	By agreement
Decker, J. E. & Sons	Wm. J. Young	Struck by crank	4,500.00	Widow	By agreement
Empire Constr. Co.	Donald Murphy	Suffocated	1,177.90	Parents	By agreement
Farm Crops Sec. Ia. State Col.	A. A. Schmidt	Struck by train			No liability
Fleming, J. E.	A. Fulton	Fall	4,500.00	Widow	By agreement
Ferro Constr. Co.	T. P. Ison	Electrocuted	235.00	Widow	By agreement
Ford Motor Co.	Paul C. Milner	Thrown from auto	4,212.22	Widow	By agreement
Ft. D., D. M. & So. Ry. Co.	Fred Buck	Burned	4,535.00	Widow	By agreement
Gregory, J. A.	Earl Gregory	Septicemia	Pending	Not shown	Pending
Great Western Coal Co.	Eric Johnson	Fall	2,800.00	Widow	Arbitration
Groves, S. J. & Sons	Tom Hird	Crushed	1,500.00	Daughter	Arbitration
Hawkeye Portland Cement Co.	B. Flores	Asphyxiation	4,139.07	Widow	By agreement
Hamiel & Russell	J. C. Eacret	Caught in fly wheel	4,500.00	Widow	By agreement
Hann, J. M.	W. E. Teausaw	Electrocuted	2,595.00	Widow	By agreement
Hoggson Brothers	J. P. Manion	Struck by hoist	3,994.00	Widow	By agreement
Heinz, H. J. & Co.	John Schmitt	Fall		Widow	Pending
Houx, F. T. & Son	S. Forsberg	Flying steel	4,500.00	Widow	By agreement
Huttig Mfg. Co.	C. A. Judisch	Focal infection	3,747.00	Widow	By agreement
Ill. Cent. Ry. Co.	D. A. Kibler	Scalded	4,086.50	Widow	By agreement
Iowa Methodist Hospital	Mrs. Jessie Ludwig	Caught in elevator	2,140.31	Husband	By agreement
Iowa Electric Co.	Glen Davis	Electrocuted	4,155.00	Widow	By agreement
Iowa Lutheran Hospital	Henrietta Danielson	Burned	1,125.00	Parents	By agreement
Iowa Electric Co.	H. M. Schmidt	Electrocuted	3,117.00	Widow	By agreement
Iowa Ry & Light Co.	Roy Spencer	Electrocuted	4,278.00	Widow	By agreement
Iowa Ry & Light Co.	Clark McCreery	Electrocuted	4,500.00	Sister	By agreement
Iowa State Highway Com.	D. E. Layman	Crushed	1,670.00	Widow	By agreement
Iowa State Highway Com.	W. H. Douglas	Crushed	1,670.00	Widow	By agreement
Iowa Falls Electric Co.	R. D. Triplie	Burned	3,993.00	Widow	By agreement
Jones, Jason D.	Chas. Jones	Crushed	4,152.00	Sister	By agreement
Keokuk Steel Casting Co.	E. E. Frazier	Auto struck by train	Pending		Pending
Keokuk Steel Casting Co.	E. R. Swanson	Auto struck by train	Pending		Pending
Louden Machinery Co.	E. Crawford	Crushed		Not shown	Pending
Littig Constr. Co.	James Ryder	Cave in	3,459.00	Widow	By agreement

SECOND YEAR

Employer	Employe	Cause	Amount	Dependent	Adjusted
Leon & Lineville Tele. Co.	Guy Young	Fall	3,324.00	Widow	Arbitration
Lytle, C. F., Constr. Co.	C. S. Moorehead	Not given	4,152.00	Widow	By agreement
Lytle, C. F., Constr. Co.	Harry Houchins	Cave in	4,152.00	Widow	By agreement
Logan Lumber Co.	Geo. Haszard	Struck by auto	2,700.00	Widow	By agreement
Lytle Constr. Co.	Vernon Linn	Cave in	1,040.02	Parents	By agreement
Lundgren, C. A.	Homer Meyer	Fall		Not shown	Pending
Moline Consumers Co.	I. Ewart	Not known			No liability
Mason City Brick & Tile Co.	Harvey Nelson	Struck by windlass	1,328.35	Mother (partial)	By agreement
McDonald Mfg. Co.	Cecil Garner	Crushed	4,068.00	Widow	By agreement
Muscatine, City of	John Snyder	Struck by auto	1,310.32	Widow	By agreement
Mt. Vernon Bridge Co.	Frank Williams	Drowned	3,860.36	Widow	By agreement
Mason City Brick & Tile Co.	Carl Jordan	Electrocuted	4,500.00	Widow	By agreement
Maytag Co.	F. G. Bain	Fall	4,500.00	Widow	By agreement
N. W. States Port. Cement Co.	Geo. Trichionis	Struck by pulley	4,362.00	Widow	By agreement
N. Eastern Ia. Power Co.	P. L. Johnson	Not given	4,500.00	Widow	By agreement
N. W. Mfg. Co.	R. M. Reeves	Electrocuted		Widow	Pending
Ochlerking, C. A.	Joe Brunskill	Fall of beam	500.00	Mother (partial)	By agreement
O'Rourke Engineering Co.	Logan Ryun	Fall	2,890.00	Widow	By agreement
Omaha & Co. Bluffs St. Ry. Co.	G. W. Edenburn	Struck by auto	4,410.00	Widow	By agreement
Pitts.-D. M. Steel Co.	Ed. Isham	Not given	Pending		Pending
Pitts.-D. M. Steel Co.	I. Lawson	Fall	600.00	Father	By agreement
Pershing Coal Co.	A. Bloom	Not given	Pending	Not given	Pending
Pershing Coal Co.	S. Patterson	Fall of slate	4,500.00	Widow	By agreement
Pershing Coal Co.	S. Piagentine	Fall of slate	Pending	Not given	Pending
Pershing Coal Co.	C. J. Erickson	Fall of slate	4,500.00	Widow	By agreement
Pershing Coal Co.	Jas. Stevenson	Fall of slate	Pending	Father	Pending
Rex Fuel Co.	Frank Hartshorn	Fall of slate	4,500.00	Widow	By agreement
Radiant Coal Co.	Frank Jures	Caught by cable	4,500.00	Widow	By agreement
Redfield Brick & Tile Co.	Harry Evans	Fall of slate	2,715.00	Widow	By agreement

Red Rock Coal Co.	Howard McKinnon	Run over by coal cars	1,826.67	Parents	By agreement
Red Cross Decorating Co.	R. H. Hardy	Electrocuted	4,500.00	Widow	By agreement
Randolph Hotel Co.	Clifton Perry	Fall of elevator	1,868.40	Widow	By agreement
Robinson, F.	A. W. Rider	Auto collision	4,500.00	Widow	By agreement
Shuler Coal Co.	Joe Charrington	Suffocated	4,500.00	Widow	By agreement
Smoky Hollow Coal Co.	T. M. Neighbor	Fall of slate	4,500.00	Widow	By agreement
Smith, A. E.	Dave Adain	Heart trouble	Pending		Pending
Saylor Coal Co.	T. Bianichi	Run over by car	4,500.00	Widow	By agreement
Success Linotype Comp. Co.	W. F. Tew	Infection	4,500.00	Widow	By agreement
Saunders, C. F.	C. E. Saunders	Burned		No dependents	No claim filed
Sherman Nursery	Gust Nickel	Fall	3,114.00	Widow	By agreement
Sheriff Coal Co.	James Smith	Fall	1,008.26	Parents	By agreement
Smith, G. P. Co.	H. C. Cramer	Sliver in hand	Pending		Pending
Sioux, City of	Lester Wasson	Struck by train	4,500.00	Widow	By agreement
Schooler Rubber Co.	Roy VanSkike	Struck by metal ring	4,600.00	Widow	By agreement
Schmoller & Mueller	J. D. Bruggen	Struck by train	4,071.09	Widow	By agreement
Spaulding Co-op. Co.	V. R. Clark	Caught in shaft	500.00	Father	By agreement
Swanwood Coal Co.	A. Anderson	Not given	3,000.00	Widow	By agreement
Saunders, C. F.	A. G. Holland	Scalded	832.00	Father	By agreement
Tipton, City of	J. R. Smith	Asphyxiated	4,500.00	Widow	By agreement
Uhlrich-Paley Co.	F. Weidner	Struck by handle	3,935.05	Widow	By agreement
United States Gypsum Co.	R. Hallock	Caught in pulley	4,500.00	Widow	By agreement
Viola Consol. School Dist.	Bert Smeltzer	Crushed	2,751.00	Widow	By agreement
Wilson, F. J.	Ed. Rochatzke	Cave in	2,016.00	Widow	By agreement
Weitz, C. & Sons	Gerald Brown	Fall	4,500.00	Widow	By agreement
Wickham, E. A. & Co.	Wm. F. Walsh	Fall	4,500.00	Widow	By agreement
West, C. J.	Henry Meeuwenberg	Struck by train	4,152.00	Children	By agreement
Western Constr. Co.	Lester Lininger	Not given	4,500.00	Widow	By agreement
Weaver, M. O.	Wm. Giles	Auto collision		Widow	No liability

PRIVATE EMPLOYERS AUTHORIZED TO CARRY OWN RISKS

Adel Clay Products Company
Amana Society
American Bridge Company
American Life Insurance Company
American Railway Express Co.
American Telephone & Telegraph Company
Atlantic Northern R. R. Company
Bettendorf Company
Boone County Telephone Company
Brunswick Balke Collender Company
Burlington Gas Light Company
Carr Ryder Adams and Company
J. I. Case Threshing Machine Company
Cedar Rapids Gas Company
Cedar Rapids & Marion City Ry. Company
Citizens Gas & Electric Co. Division Cedar Valley Electric Co.
Chicago Bridge & Iron Works
Chandler Pump Company
Chicago, Burlington & Quincy Ry. Company
Chicago Great Western Ry. Company
Chicago & Northwestern Ry. Company
Chicago Rock Island & Pacific Ry. Company
Chicago, St. Paul, Minneapolis & Omaha Ry. Co.
Citizens Gas & Electric Company
Consolidation Coal Company
Clinton, Davenport & Muscatine Ry. Company
Clear Lake Independent Telephone Company
Colfax Consolidated Coal Company
Colfax Electric Company
Dain Manufacturing Company
Davenport Water Company
Denniston & Partridge Company
Des Moines City Ry. Company
Des Moines & Central Iowa Railroad
Des Moines Electric Company
Des Moines Gas Company
Des Moines Photo Materials Company
Des Moines Union Ry. Company
Dolese Brothers Company
E. I. Dupont De Nemours Company
Firestone Tire & Rubber Company
Ford Motor Company
Ford Paving Company
Fort Dodge Gas & Electric Company
Fort Dodge, Des Moines & Southern Ry. Co.
Ft. Madison Electric Company
Garden City Feeder Company
General Electric Company
B. F. Goodrich Rubber Company
Griffin Wheel Company
Guardian Life Insurance Company
Hocking Coal Company
Home Lumber Company
Illinois Central Railroad Company
Independent Telephone Company
International Harvester Company
Iowa Bridge Company
Iowa City Light & Power Company
Iowa Gate Company
Iowa National Fire Insurance Company
Iowa Transfer Ry. Company
Jackson Township School Corporation
Jake Lampert Yards, Inc.
Jasper County
Keokuk Electric Company
Lane Moore Lumber Company
Lehigh Portland Cement Company
Louden Machinery Company
Mason City & Clear Lake Ry. Company
Minneapolis & St. Louis Ry. Company
Mississippi River Power Company
Montezuma Electric Power & Heating Company
Murray Iron Works Company
Muscatine Lighting Company
National Biscuit Company
New Valley Jct. Water & Light Company
Noelke-Lyon Manufacturing Company
Northwestern Bell Telephone Company
Northwestern Manufacturing Company
Omaha & Council Bluffs Street Ry. Company
Oskaloosa Light & Fuel Company
Oskaloosa Traction & Light Company
Ottumwa Gas Company
Pacific Fruit Express Company
Peoples Gas & Electric Company
Peoples Light Company
The Pintsch Compressing Company
Pittsburgh-Des Moines Steel Company
Prudential Insurance Company of America
Riverside Power Manufacturing Company
Jas. W. Reed
Shricker Marble & Granite Company
Simmons Company
T. M. Sinclair & Company
Sinclair Refining Company
Sioux City Gas & Electric Company
Sioux City Service Company
Standard Oil Company
Stoner's Incorporated
Stoner-McCray System
Sweet, Wallach Company
Transcontinental Oil Company
The Travelers Insurance Company
Tri-City Ry. Company
The U. G. I. Contracting Company
Union Pacific Company
United Iron Works, Inc.
U. S. Gypsum Company
U. S. Rubber Company
Vacuum Oil Company
Waterloo Gasoline Engine Company
Western Electric Company
Western Electric Telephone System
Western Union Telegraph Company
Wickham & Company, E. A.
Wisconsin Bridge & Iron Company
Zimmerman Brothers

SUPREME COURT DECISIONS

Case	Citation
American Bridge Co. vs. Funk	173 N. W. 119
Bidwell Coal Co. vs. Davidson	174 N. W. 592
Black Dry Goods Co. vs. Iowa Industrial Commissioner	173 N. W. 23
Brugoni vs. Saylor Coal Co.	197 N. W. 470
Buncle vs. Sioux City Stock Yards	185 N. W. 139
Christenson vs. Hauff Bros.	188 N. W. 851
Davey vs. Norwood White Coal Co.	192 N. W. 304
Des Moines Union Railway Co. vs. Funk et al.	170 N. W. 529
Double vs. Iowa Nebraska Coal Co.	200 N. W.
Farrow vs. What Cheer Clay Products Co.	200 N. W.
Fischer vs. Priebe Co.	160 N. W. 48
Flint vs. City of Eldon	183 N. W. 344
Franks vs. Carpenter	186 N. W. 647
Grant et al vs. Fleming Bros.	176 N. W. 640
Griffith vs. Cole, et al.	165 N. W. 577
Hanoon (Royal, Administrator)vs. Cudahy Packing Co.	195 Ia. 759
Hanson vs. Dickinson (Rec. of C. R. I. & P. R. R. Co.)	176 N. W. 823
Herbig vs. Walton Auto Co.	171 N. W. 154 and 182 N. W. 204
Hoover vs. Central Iowa Fuel Co.	176 N. W. 945
Hughes vs. Cudahy Packing Co.	185 N. W. 614
Hunter vs. Colfax Consolidated Coal Co.	154 N. W. 1037 and 157 N. W. 145
Jackson vs. Iowa Telephone Co.	179 N. W. 849
Jennings vs. Mason City Sewer Pipe Co.	174 N. W. 785
Joslin (Slack, Administrator) vs. C. L. Percival Co.	199 N. W. 323
Keys et al. vs. American Brick & Tile Co.	170 N. W. 295
Knudson et al. vs. Jackson	183 N. W. 391
Kolar (Royal, Administrator) vs. Hawkeye Portland Cement Company	195 Ia. 534
Kraft vs. West Hotel Co.	185 N. W. 895 and 188 N. W. 870
Kramer vs. Tone Bros. Co.	199 N. W. 985
Miller vs. Gardner & Lindberg et al.	180 N. W. 742
Mitchell vs. Consolidation Coal Co.	192 N. W. 145
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Nester vs. Korn Baking Co. ..... 194 Ia. 1270
Norton vs. Day Coal Co. ..... 180 N. W. 905
O'Callahan vs. Dermedy (Grand Hotel) .... 196 N. W. 10 and 197 N. W. 456
Oliphant vs. Hawkinson ..... 183 N. W. 805
O'Neil vs. Sioux City Terminal Co. ..... 186 N. W. 633
Pace vs. Appanoose County ..... 168 N. W. 916
Parkinson vs. Brown Camp Hardware Co. ..... 192 N. W. 420
Pierce vs. Bekins Van & Storage Co. ..... 172 N. W. 191
Reid vs. Automatic Electric Washer Co. ..... 179 N. W. 323
Renner Adm. (Bodine) vs. Model Laundry ..... 184 N. W. 611
Richards vs. Central Iowa Fuel Co. ..... 166 N. W. 1059
Rish vs. Iowa Portland Cement Co. ..... 170 N. W. 532
Roessler vs. Chain Grocery Co. ..... 196 N. W. 1020
Root vs. Shadbolt & Middleton ..... 193 N. W. 634
Serrano vs. Cudahy Packing Co. ..... 190 N. W. 132
Slycord vs. Horne ..... 162 N. W. 249
Smith vs. Inter Urban R. R. Co. ..... 171 N. W. 134
Sparks vs. Consolidated Indiana Coal Co. ..... 190 N. W. 593
Springsteel vs. Hanford Produce Co. ..... 191 N. W. 851
Spurgeon vs. Iowa & Missouri Grain Co. ..... 194 N. W. 286
Storm vs. Thompson ..... 170 N. W. 403
Webb vs. Iowa-Nebraska Coal Co. ..... 200 N. W. 225
Young vs. Mississippi River Power Co. ..... 180 N. W. 986
Zenni vs. South Des Moines Coal Co. ..... 182 N. W. 210

DEPARTMENT DECISIONS

Opinions in the more important cases litigated during the biennium appear herewith. Much evidence has developed as to the value of such publication in the adjustment of claims. With some measure of pride, it is stated that out of the first fifty cases decided by the Supreme Court the department was affirmed forty-one times. With a greater degree of pride, however, it is stated that litigation occurs only in rare cases, considerably less than one to the hundred disposed of. The department lends its best equipment and endeavor to the work of amicable settlement, and much may be done to avoid the expense and delay of legal proceeding.

NOT LEGALLY MARRIED—AWARD BASED ON ACTUAL CONTRIBUTION

Mary Baldwin, Claimant,

vs.

E. J. Sullivan, Employer.
Aetna Life Insurance Company, Insurance Carrier, Defendants.
J. J. Hess and J. A. Williams, for Claimant;
Gurley, Fitch & West and Kimball, Peterson, Smith & Peterson, for Defendants.

In Arbitration and Review Before the Iowa Industrial Commissioner

Evidence was submitted in this case at a hearing in Council Bluffs, June 12, 1922. Thereupon it was stipulated between the parties to this action that upon this record the Industrial Commissioner should combine a decision in arbitration and review, giving due consideration to briefs and arguments subsequently to be filed.

There is no dispute as to the facts in this case. It is admitted that Walter L. Baldwin was an employe of E. J. Sullivan, who had a contract to carry mail from the depots in Council Bluffs to the post office.

It is also admitted that while driving a mail wagon on the 15th day of July, 1921, Baldwin was shot by an unknown assailant and died as a result thereof. No denial is made that the death of this workman arose out of and in course of his employment.

Resistance to this claim for dependency is based upon the allegation that Mary Baldwin is not by lawful tie or common law marriage a dependent of the deceased.

Claimant testified that in 1883, as she thinks, she was married to one Francis Heisel. Sometime later, she was informed the marriage was never recorded. In 1908, after several children were born, she and Heisel

separated and she went to live with Walter Baldwin. She says their relation was based upon a pledge each to the other that they should live together as man and wife until death should separate them. This relation was maintained from 1908 until the death of Walter Baldwin in 1921.

It is the contention of counsel that no legal marriage existed between Heisel and this claimant. It would appear from the record that the marriage was never registered, as required by law.

Upon this contention counsel alleges that this claimant and Walter Baldwin maintained a home under common law marriage relation.

Counsel further contend that should this theory be held untenable this claimant is entitled to relief as one wholly dependent upon the deceased on the basis of actual contribution to the support of Mary Baldwin during the thirteen years she lived with him.

The relation of common law marriage would seem difficult to establish in this case because the record hardly affords justification for the assumption that this claimant was qualified to enter into marriage relations of any character recognized by the statute.

The record is convincing as to the fact that during the period of thirteen years Mary Baldwin was wholly dependent for support upon the deceased workman.

With evident sincerity the woman testifies that Heisel sent her to Baldwin to borrow money until they owed him $30.00. She had borne numerous children and worked far beyond her strength. Suffering from conditions of squalor and the abuse of a recreant husband, she accepted the proposal of Baldwin that they should live as man and wife until death should separate them. The record indicates that they were true to each other in word and deed until death came to this man in the performance of duty to the woman and to society.

All that Walter Baldwin had in strength and service and loyalty he gave to this woman and her three children of tender years. Because of his fidelity to this trust, these children evidently regarded him with affection such as their own father had never inspired nor deserved. All through the thirteen years this relationship existed, and until broken by death this man and this woman were openly recognized as man and wife, and there is nothing to indicate that they in any way lived unworthy insofar as their consistency of daily conduct was concerned. The good faith of this relationship seems established in the record.

The Iowa statute provides that a wife is wholly dependent upon a deceased husband on the basis of conclusive presumption. It further provides that "no surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury."

Defendants contend this last provision bars Mary Baldwin from consideration as a dependent of Walter Baldwin under the compensation statute.

This contention is subject to definite denial on the ground that Mary Baldwin does not classify as a surviving spouse and that this bar exists only in case recovery is sought under the rule of conclusive presumption.

Following the various provisions for dependency on the basis of conclusive presumption, our compensation law declares:

"In all other cases questions of dependency in whole or in part, shall be determined in accordance with the fact as the fact may be at the time of the injury."

Under this provision the claim of Mary Baldwin is definitely established. "Determined in accordance with the fact as the fact may be at the time of injury," the "question of dependency" in this case is settled, in that Walter Baldwin was the sole reliance of this claimant for support for a period of thirteen years. In such cases law is presumed to mitigate the material loss of support by levying tribute upon industry in partial contribution toward such misfortune.

Not because these twain lived as man and wife does the statute demand a measure of restitution. Where the rule of conclusive presumption does not apply under our law, it is only necessary to know that regular contribution for support has been terminated through industrial misfortune. Iowa does not base actual dependency in any degree upon ties of affinity or of consanguinity. We determine "questions of dependency in whole or in part in accordance with the fact as the fact may be at the time of the injury."

Denial of the claim of Mary Baldwin would be in definite defeat of the spirit and purpose of workmen's compensation. Industry has deprived her of support, and industry must meet its obligation to her and to society.

Since the fact is developed that for thirteen years Mary Baldwin had relied for support exclusively upon the contributions of Walter Baldwin, she is entitled to award upon the basis of total dependency.

Based upon the report of the employer as to earnings of Walter Baldwin, defendants are ordered to pay as compensation in this case the sum of $10.38 a week for a period of 300 weeks, together with statutory burial charges and the costs of this action.

Dated at Des Moines, Iowa, this 24th day of January, 1923.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court, pending in supreme court.

HORSEPLAY—INJURY NOT COMPENSABLE

Lauren Law, Claimant,

vs.

Wahkonsa Hotel Company, Employer, and Employers Liability Assurance Corporation, Ltd., Insurance Carrier.

Kelleher & Mitchell, and John Mulroney, for Claimant;
Healy, Thomas & Healy, for Defendants.

In Review Before the Iowa Industrial Commissioner

On the 14th day of October, 1922, and prior thereto, Lauren Law was

in the employ of the Wahkonsa Hotel Company operating a passenger elevator.

On the date in question while scuffling in the elevator, the claimant got his foot caught between the car and the side of the elevator shaft, sustaining serious injury to his right lower limb.

In arbitration at Fort Dodge March 14, 1923, it was held that "the claimant temporarily abandoned his employment to engage in horseplay or friendly altercation with a friend, and the injury he received arose from such horseplay or friendly altercation."

The version of claimant relative to circumstances attending the injury is substantially as follows:

A bellboy named Carroll Johnson asked to be taken to an upper floor. At this time, one Burl Mills, a former employe of the hotel and acquaintance of both Johnson and Law, was standing near the elevator door. Law says "Johnson called Mills over to ride with us." He further says, referring to Mills: "He was attracting my attention so I couldn't run the elevator. I stopped and turned around and he shoved me, and just as I turned around Mr. Johnson pulled the lever and got my leg in there." (Transcript p. 11).

This case is submitted upon the theory of counsel that while running the elevator he was so badgered by Mills, that it became necessary for him to stop the elevator and resist proceeding on the part of the visitor.

Mills story before the committee is to this effect: As the elevator was about to start up, Mills says: "Mr. Law motioned to me to come over and get on the elevator." Mills further says that between the first and second floor Law stopped the elevator and said to him: " 'Now I will get you,' or something such as that." He then "turned around and kind of struck at me and I raised up my arm and stopped him from hitting me and his foot slipped, and just as his foot slipped between the elevator and the floor Mr. Johnson started the elevator." (Transcript p. 52).

Carroll Johnson, the bellboy in question, in evidence tells the story this way: At about 4:30 o'clock he had a call to room 354, occupied by Mr. Griffith, a manager having immediate charge of the working force of the hotel. Johnson says Law "called Mr. Mills into the elevator." (Transcript p. 74). About half way between the first and second floors Law stopped the elevator, saying: " 'I will get you now,' speaking to Mills, and they started the scuffle." (Transcript p. 68). Asked, "Why, Mr. Johnson, did you start the elevator on the afternoon of October 14th," the answer was: "I wanted to go to the third floor so I could answer the call." Q. "Why didn't you let Law operate the elevator?" A. "Well, they was scuffling, and I thought as I knew how to run it, I might as well take it up." (Transcript pp. 70-71).

It is apparent from the record that all these young men were on the best of terms personally. There is not the slightest basis for assuming any spirit of hostility in connection with the circumstances attending this accident.

Lauren Law was at that time under sixteen years of age. The most reasonable theory to be developed out of the situation would seem to be that the scuffling was merely an eruption of "pep" on the part of this boy. Operating an elevator is decidedly monotonous business. He had been in service since seven o'clock in the morning. The tedium of the situation was so repressive of boyish exuberance that he stopped the elevator and turned upon Mills merely in an overflow of animal spirits such as is apt to occur in boyish proceeding.

Mills had been an elevator operator. He was past twenty-one. He knew how important it was to keep hands off of an elevator attendant. As a visitor, it can hardly be assumed he would so abuse the courtesies of the situation as to harass the operator to the point of desperation requiring him to stop the elevator in sheer resistance.

Johnson may or may not be subject to censure for starting the elevator. He naturally chaffed under the delay, as it may be assumed he was anxious to meet promptly as possible the call of Griffith, the man who had the hiring and firing of help. Be this as it may, however, the conduct of Johnson is not in the least controlling as to the obligation of the employer to a workman injured in serving a personal impulse in no degree consistent with his employment.

There is no manifest reason why these boys, or either of them, should so shade the facts attending this painful situation as to defeat the claim of their friend and to aid an insurance company to such defeat. Such conduct is utterly inconceivable. They had no leading to falsehood for self crimination was not involved. So it must be assumed that their testimony, in substantial agreement as to what actually happened—that Law stopped the elevator for the purpose of "rough-housing" in a friendly way young Mills rather than that he left the lever in resistance of assault —is substantially accurate.

Upon this unavoidable conclusion, it must be held that Lauren Law in stopping the elevator for the purpose of indulging in horseplay abandoned the scope of his employment, and that the injury did not arise out of his employment. He was making no contribution to the service of his employer. No reasonable basis is afforded for the belief that it was his purpose to in any degree serve his employer.

It is the policy of this department to make compensation coverage ample as the law will allow and the integrity of administration will justify. It is generally understood, and without disapproval, that the misfortunes of the injured workmen are regarded with sympathy and concern within the limitations prescribed by the plain rules of equity. These conditions, however, are subject to the fundamental elements of compensation coverage. Compensable injury must arise out of employment as well as in the course of employment. Negligence is condoned and foolhardiness excused if a workman is injured in the purpose of contributing to the interest of his employer, but this is not to hold that anything that may occur during working hours is afforded coverage. Industry must contribute to injury reasonably incident to employment, but it is not to be burdened with misfortune for which it is in no degree responsible.

This holding is abundantly sustained by judicial opinion. Distinctly in point is the decision

In Re Moore, 114 N. E. 204, Supreme Judicial Court of Massachusetts, which follows:

"The employee operated an elevator, which was controlled by means of a rope at the side of the car. Two other employees, Bourne and Patrowsky, were being carried on the elevator; and it was ascending from the first to the second floor at the time of the accident.

On conflicting testimony the committee of arbitration, and, later, the Industrial Accident Board, found in substance that Moore left his position at the elevator rope, and took hold of the colored boy Bourne by the chest; that Bourne pushed him back and he (Moore) fell down; and that in the scuffle or 'fooling' Moore's heel was caught and injured. The finding of the board that the injury 'occurred as the result of fooling between Moore and Bourne' is as conclusive on the employee as the verdict of a jury. It must stand if there was any evidence to warrant it. An examination of the record shows that the finding was amply supported by the testimony of Patrowsky, corroborated by that of the foreman Graff.

On the facts as found the board rightly ruled that the employee's injury 'did not arise out of his employment.' His foot got beyond the edge of the elevator floor, in consequence of a scuffle in which he himself was the aggressor, and after he had abandoned his post of duty at the elevator rope. The injury thereby suffered did not originate in any risk connected with and caused by his employment."

The arbitration committee is justified in its finding and its decision is affirmed.

Dated at Des Moines, Iowa, this 13th day of April, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

PRESIDENT OF PACKING COMPANY NOT AN EMPLOYE

Clara Hausserman, Claimant,

vs.

Hausserman Packing Company, Defendant, and The Fidenity & Casualty Co. of New York, Insurance Carrier.

William H. Winegar, and Miller, Kelly, Shuttleworth & McManus, for Claimant,

Sampson & Dillon, for Defendants.

In Review Before the Iowa Industrial Commissioner

While driving a delivery truck on the 8th day of September, 1921, Charles Hausserman, husband of this claimant, was fatally injured at a railway crossing.

In arbitration at Perry, February 8, 1923, it was found that Clara Hausserman, as the dependent widow of Charles Hausserman was entitled to statutory compensation benefits.

At the time of his injury the deceased was returning to the plant after making a delivery of meats to a meat market in the town of Perry, owned by himself and a regular customer of the Hausserman Packing Company.

It is the contention of claimant that the task in which Hausserman was engaged at the time of his injury was consistent with his general activity in connection with his relations with the defendant company.

It appears that he was the first man on the job in the morning, working longer days than anybody else in connection with the business. He gave close attention to the feeding of stock belonging to the company, to all the details of the operating departments of the packing plant, at various times killing stock with his own hands, and performing all kinds of service common to subordinate employment.

It is the contention of defendants that in view of the official and managerial relations of Hausserman to the Hausserman Packing Company, and of the authority vested in him and exercised by him in the direction and control of the business, he was specifically excluded under the terms of the Iowa statute from compensable relationship at the time of his death.

The most important witness appearing in this record is R. E. Zerwekh, who was secretary of the Hausserman packing plant for some time prior to the death of Charles Hausserman, and who exercised substantial authority in connection with the management. He testifies to the range of activity and employment involved in the relations of Charles Hausserman with the defendant company, including all details as to his daily service. He also testifies as to the extent to which Charles Hausserman was recognized in the management, control and direction of the employment which carried his name.

He says: (Abstract p. 16) "We built the plant around Charles Hausserman and he was always the central figure of interest."

Asked: "Who actually had charge of the plant?"

Witness replied: "That was a matter, I presume you might say, Mr. Hausserman and myself were in actual charge of the plant. The business management was placed almost entirely with me, but Mr. Hausserman and I constantly consulted about matters pertaining to the plant."

Q. "What I want to learn is, who administered the business of this corporation?"

A. "Direct business management came over my desk."

Q. "Do I understand that in the matter of rank you outranked Mr. Hausserman?"

A. "No sir. Mr. Hausserman out-ranked me, only we had rather divided the work, and the supervision, you might say, of the office and sales and of the employes were my duties, but in that we shared the responsibility together."

Q. "Who hired the help for the company?"

A. "I hired most of them and I don't suppose there were very many that Mr. Hausserman and I did not talk over."

Q. "State who discharged the employes?"

A. "I presume Mr. Hausserman discharged more men than I did." (Abstract pp. 12-13).

Witness testified that no officer of the corporation supervised working hours of Hausserman, and that he had no requirement to put in certain hours at the plant.

Norman Wang, corporation cashier, testified that nobody gave Hausserman orders—that he worked under his own direction. (Review Abstract p. 32).

Much other testimony tends to emphasize the activities and the degree of supervision and management exercised by the deceased. On the one hand it may be summed up in this statement of witness Zerwekh: "I do not think there was a single operation that he had not performed at one time or another." (Review transcript p. 23). Also the statements by the same important witness that Mr. Hausserman as vice-president, as general manager, as director, as member of the executive committee, had exceedingly important part in the direction, management and control of the business of Hausserman Packing Company.

Exhibits submitted at the review hearing show that Hausserman from the time of the organization of the packing company to the day of his death acted under election of the directors as vice-president, as general manager, as chairman of the purchasing committee and as member of the executive committee of five.

The record in this case would seem to justify these conclusions: The Hausserman Packing Company was organized in the fall of 1919. It is a matter of common knowledge that during the years immediately following the meat packing business fell upon hard lines. It became necessary to exercise every resource in the endeavor to avoid financial catastrophe. After twenty-six years in the business of meat production, Mr. Hausserman was thoroughly familiar with all lines of activity necessarily exercised in this enterprise. While Mr. Zerwekh, who was elected secretary and given substantial authority, could attend to the work of business details even better than Mr. Hausserman, vice-president, manager and chief owner. The latter was the only man familiar with the meat producing industry and he could better serve the stressing situation by the exercise of his practical knowledge in all departments of the comprehensive business. His fortune was involved. His friends who relied upon him were in serious financial peril and in throwing himself and all the efficiency he had acquired in practical meat producing relationship into the endeavor to pull the business through the hard times upon which it had fallen, he was doing the very things that a man sensitive to obligation and business peril would do.

The claimant emphasizes the fact that Zerwekh received a few dollars a week more in salary than Mr. Hausserman. This is of no controlling significance. It frequently occurs that men clothed with large responsibility in business management and control are serving with men of lower rank and authority, receiving higher pay for technical services of value to the business.

Counsel would have it appear significant that in his strenuous endeavor to serve the serious business situation, Mr. Hausserman wore overalls and other garb suitable to such employment. It frequently occurs that an employer of large responsibility and authority is outdressed by a $15.00 a week clerk, and it is only natural that Mr. Hausserman should adopt such apparel as would best serve him in his work of taking a hand as occasion required in any of the service important to the production of results.

The Iowa statute defining the term "workman" as one entitled to the coverage of the compensation statute, differs from any compensation law in the country. Its exclusions and limitations are decidedly significant. Among those definitely excluded from compensation benefits is "one holding an official position" in a business or employment.

The mere fact that a man is an official of a corporation is not controlling. This department has always held that when such relation is merely nominal, that the official so-called is simply a figurehead or without the investment of substantial authority and management and direction and is making a hand, as it were, as a laborer, such official is in compensable relationship with employment.

Counsel insists that the provision excluding "one holding an official position" should be construed as though it were followed by the words "when acting as such." A statutory exclusion so concise and comprehensive is not subject to interpretation by counsel. When the legislature has spoken in terms definite and conclusive and not open to misunderstanding, it is not within the province of this tribunal to expand or to contract its expression. When the legislature meant to qualify clerical employment, it left nothing to strained imagination. It said specifically, "that clerical work shall not include one who may be subjected to the hazards of the business." If in the legislative mind its language as to "one holding an official position" was subject to qualification, it could so easily have made its intention clear.

In its qualification as to compensable relationship, the Iowa statute not only excludes one "holding an official position," but further defines exclusion with the phrase "or one standing in a representative capacity of the employer." If the strained construction of counsel could be made to afford a bar to the specific limitation applied to "one holding an official position," the further qualification just quoted must specifically apply to the relationship of Hausserman to the Hausserman Packing Company.

Under this limitation it must be held that one need not be a proprietor nor "one holding an official position" in the corporation in order to be barred from compensation. If he is a superintendent, exercising substantial authority in the management and direction of affairs, in the hiring and firing of help, in the part he plays in the work of management, he is not an employe within the meaning of the law because he "stands in a representative capacity of the employer."

Can it be doubted that Charles Hausserman was not only "holding an official position" in which he substantially functioned daily but that he definitely and specifically in every important transaction of the business of his corporation stood "in a representative capacity of the employer."

Counsel submit decisions rendered in the high courts of Indiana, Massachusetts, Michigan, New York, Oklahoma, Pennsylvania and Texas wherein claimants "holding an official position" or "standing in a representative capacity of the employer" are given awards. All these are recognized as perfectly good opinions, based upon statutes construed. They are, however, of no value whatever in this case because of definite

exclusion in our law not found in the statutes in any of the states named.

The Indiana statute provides that "employe shall include every person * * * lawfully in the service of another under control of hire—written or implied" with the exception as to casual employment only.

In Massachusetts practically the same definition exists.

The Michigan statute is still broader in the coverage of workman.

The New York statute says: " 'Workman' means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, except whose employment is purely casual and not for the purpose of the employer's trade or business."

In Oklahoma " 'employe' means any person engaged in manual or mechanical work in the employment of any person, firm, or corporation carrying on a business covered by this act."

The Pennsylvania statute says: "The term 'employe' as used in this act is declared to be synonymous with servant and includes all natural persons who perform services for another for a valuable consideration."

Texas defines "employe" practically in terms employed in the New York statute. It otherwise provides the "president, vice-president or vice-presidents, secretary, or other officers thereof provided in this chapter or by-laws and the directors of any corporation which is a subscriber to this act shall not be deemed to be held to be an employe within the meaning of that term as defines in the preceding chapter." With the exception of this latter provision, there is in no state within our knowledge any provision barring from coverage "one holding an official position."

But even in Texas there is no such comprehensive exclusion as the expression of our state—"standing in a representative capacity of the employer."

The Hausserman case would have been much stronger, indeed, it might easily have been established under a law in Iowa such as existed in most states, and in all states from which these decisions came. In order to apply these various holdings to the case at bar, we must utterly ignore the plain terms of our law—"one holding an official position," or "standing in a representative capacity of the employer."

In *Knutson et al. vs. Jackson*, 183 N. W. 391, our Supreme Court definitely recognizes the importance of fidelity to express terms in construing our compensation law. Quoting:

"The statute creates right and liabilities not recognized at common law. It must be construed for the purpose of effectuating legislative intent. We can not by judicial construction enlarge upon the express provisions of the statute. The legislature has seen fit to define who is an employe within the meaning of this act, and one who seeks to avail himself as an employe of its provisions must come within the terms of the statute."

Again: "Definitions recognized by the common law cannot be invoked where the Legislature has by express enactment defined the terms employed in the statute."

No citations bearing directly on the vital issues in this case are available. Our Supreme Court has never construed the phrases in our law—"one holding an official position" or one "standing in a representative capacity of the employer" and in no other state exist any such qualification upon which construction might be based.

The defendants' case is made by witnesses exceedingly friendly to claimant. Their sympathy is apparent throughout. They are evidently careful not to volunteer any evidence damaging to her case, though they candidly reply to direct questions.

It is accordingly held by the Industrial Commissioner in review:

1. That as "one holding an official position" in the Hausserman Packing Company, Charles Hausserman was not an employe within the meaning of the Workmen's Compensation statute.

2. That as one "standing in a representative capacity of the employer," Charles Hausserman was without compensation coverage and his widow must be denied compensation benefits.

WHEREFORE, the decision of the arbitration committee is reversed.

Dated at Des Moines, Iowa, this 25th day of April, 1923.

Seal (Signed) A. B. FUNK,

Iowa Industrial Commissioner.

Appeal abandoned.

INFECTION NOT ARISING OUT OF EMPLOYMENT

Frank Wilke, Claimant,

vs.

Kohrs Packing Company, Defendant, and Ocean Accident & Guarantee Corporation, Insurance Carrier.

Kaufmann & Willis, for Claimant,

Lane & Waterman, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Davenport, November 10, 1921, the committee found "that the claimant has failed to discharge the burden of proving that the disability for which he seeks recovery results from an injury arising out of and in the course of his employment by defendants. Wherefore, recovery is denied."

It would appear that for nearly two years prior to the arbitration hearing Frank Wilke had been suffering from disability occasioned by infection which had caused the amputation of one of his toes and seriously impaired the entire foot.

The claimant states in evidence that on January 2, 1919, while sticking hogs in the plant of the defendant employer, a shackle broke from the weight of a hog and falling upon his foot, the said shackle caused an injury which was the inception of the disability in question.

The workman was boarding with Mrs. Minnie Evans, his divorced wife, at the time of the alleged injury. She testifies that on the night of the 2nd of January, 1919, claimant came to her house complaining of the injury, as related by claimant. She insists she can not be mistaken as to the date, and a calendar which she alleges to have marked at the time showing this fact is in evidence as Claimant's Exhibit "B."

There is no question as to serious disability on the part of Frank Wilke. The only question is as to whether or not such disability is due to any injury arising out of employment by this defendant.

Defendant's Exhibit "1" is part of the record in this case. It is a statement taken by J. J. Lamb, representative of the insurer of this defendant, February 17, 1919, some six weeks after the accident as alleged. In this statement Wilke alleges injury explained in a manner similar to the statement in evidence. This injury, however, is alleged to have occurred on December 26, 1918. He further states that two days later, December 28th, while sticking hogs a "great big red hog came along, shackled and jerked itself so that it struck my left foot with its front legs." He claims these two incidents of the 26th and 28th of December, 1918, to have been the basis of his disability. Wilke admits signing this statement, but alleges misrepresentation on the part of Mr. Lamb, and indefinite knowledge at the time of signing as to what the statement contained.

Before the arbitration committee J. J. Lamb stated under oath the circumstances under which the said exhibit was written down by him, insisting that he made no misrepresentation as to his relationship or as to any relevant fact; that he handed the statement page by page to Wilke to read. After it was finished he read the entire statement to Wilke himself, and that Wilke acknowledged the same to be correct and signed the same.

Counsel for claimant discredits the conduct of this witness in connection with the exhibit in question. Several years of relationship between J. J. Lamb and this department entitles his statement to credence on the basis of such relationship.

Defendant's Exhibit "2" is a statement of Henry Hanson. At the time of the alleged injury he was foreman at the Kohrs Packing plant. His statement was taken by Mr. Lamb February 17, 1919, as to circumstances attending the alleged injury of claimant. In this statement Hanson says Wilke did not work for the defendant employer December 25th, 26th or 27th, 1918, as claimant alleges. He says Wilke worked on December 28th for ten hours. Did not work the 29th, but did work the 30th. That he reported no injury. He said in this exhibit that in August of 1917 and again in January of 1918 Wilke was injured and on those two occasions he reported the accident and was given an order for medical treatment.

This statement further relates that "one day during the last part of January, 1919, I was walking along Third Street in Davenport when I met Wilke near Meisner's Drug Store, and he told me that he was having trouble with one of his toes. It hurt him. Wilke did not state to me then that he was hurt while in the employ of the Kohrs Company. I think he also told me that the toe trouble was caused by an ingrown toenail."

Counsel objected to the introduction of this exhibit as being self-serving. Since the employer of Henry Hanson was relieved from all financial obligation by his insurer, this objection would seem to be irrelevant.

Dr. Neufeldt, called by claimant in the course of his evidence made the following statement:

"The first time I saw him (Wilke) was January 16, 1919, and at that time he had an infected little toe of the left foot, and he claimed he got it by being kicked by a hog. I also got another history that he trimmed a corn previous, that is, that he had a corn on the little toe of the left foot and trimmed that."

William C. Gehrmann, introduced by defendant, testified that in December of 1918 and in January of 1919, he handled the accident reports for the Kohr Packing Company. He says no accident was reported to him by claimant, but that sometime afterward a lady called, stating that Wilke had been injured. He said without investigating as to the accident he sent Dr. Neufeldt to see him.

William Malone, called by defendant, testified that he was a laborer at the Kohrs plant at the time Wilke was in service. Had known him for a long time. He says claimant never told him of any injury at or near the time in question. He testified he lived about two hundred feet west from the home of a daughter of claimant and that while Wilke was confined there with disability the daughter, Mrs. Bean, told him that her father had an ingrown toenail and "that was practically what was the matter with the foot." This witness is foggy as to dates but he insists that he is not mistaken as to maters affirmed.

It is the practice everywhere for compensation authorities to deal indulgently with disabled workmen. Where evidence is reasonably substantial the workman usually gets the benefit of the doubt. It must be understood as elemental, however, that the burden is upon the claimant in cases of controversy, and that he is required to establish his case by a preponderance of the evidence.

In *Griffith vs. Colc Brothers, et al.*, 165 N. W. 577, our Supreme Court declares:

The burden is on the claimant. It is not discharged by creating an equipoise. It requires a preponderance.

Honnold, on Workmen's Compensation, at page 471, says:

The claimant fails if an inference favorable to him can only be arrived at by guess; likewise, when two or more conflicting inferences equally consistent with the facts arise from them.

Schneider, on Workmen's Compensation, at page 737, says:

The applicant must sustain his contention by preponderance of the evidence, and a finding based upon mere guess, conjecture or possibility will not be allowed to stand.

Counsel for claimant avers that since there is some evidence that claimant was injured as he alleges, the fact that no witness appears to testify that he was not so injured makes claimant's case.

In the first place it is difficult to discover in the record any substantial evidence in support of the story of Wilke as to his accident except his own statement and that of other interested parties. Under such circumstances, at least, the defendant could not be required to prove a negative. The discrepancy between the evidence given by Wilke at the arbitration hearing and the statement he made to J. J. Lamb, within six weeks of

the alleged accident, is so serious as to strongly suggest the incredible.

The arbitration committee was justified in assuming that the workman "failed to discharge the burden of proving that the disability for which claimant seeks recovery results from an injury arising out of and in course of his employment."

The decision of the arbitration committee is affirmed.

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

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

Mrs. C. Y. Hope, Claimant,

vs.

Chicago, Rock Island & Pacific Railway Company, Defendant.

In Review Before the Iowa Industrial Commissioner

Arbitration in this case was instituted by the Chicago, Rock Island & Pacific Railway Company for the purpose of determining whether or not the same is subject to adjustment under the Iowa Workmen's Compensation statute.

Application for arbitration was filed with this department March 2, 1923.

A copy of this application was mailed to Mrs. C. Y. Hope at Chariton March 2, 1923.

March 16, 1923, a letter was received at this department from Davis & Michel, of Minneapolis, Minnesota, attorneys for this claimant, acknowledging receipt of a copy of said application.

March 9, 1923, there was filed with the department by Davis & Michel an answer to the petition for arbitration.

Arbitration proceeding was by the Commissioner scheduled to occur at Chariton March 20, 1923, of which due notice was given to all concerned.

Hearing was held in accordance with this notice. Failing to appear and to appoint a member of the arbitration committee, the vacancy was filled by the Deputy Commissioner as provided by Section 2477-m23, Supplement to the Code of 1913. Whereupon, the committee proceeded to arbitrate issues involved, as appears in the transcript of evidence included in this report.

The finding of the arbitration committee is as follows:

1. That on February 4th, 1923, C. Y. Hope was in the employ of the Chicago, Rock Island and Pacific Railway Co. as a freight conductor.

2. That on February 4th, 1923, while C. Y. Hope was engaged in taking his train from Pershing, Ia., to Chariton, Ia., which train at the time consisted of engine and caboose only, such train was struck by a passenger train and in resulting wreck the said C. Y. Hope suffered fatal injuries.

3. That such fatal injuries suffered by the said C. Y. Hope arose out of and in the course of his employment by the Chicago, Rock Island and Pacific Railway Co.

4. That at the time of his fatal injuries the deceased was not engaged in interstate commerce.

5. That by reason of the findings set out in Paragraph 4, the case is governed by the provisions of the Iowa Workmen's Compensation Law.

6. That by reason of the findings set out in Paragraph 3, the widow of the deceased is entitled to recovery under the Iowa Workmen's Compensation Law.

7. Wherefore the Chicago, Rock Island and Pacific Railway Co. is hereby ordered to pay Mrs. C. Y. Hope compensation under the Iowa Workmen's Compensation Law at the rate of $15.00 a week for 300 weeks, starting as of the date of death. The Chicago, Rock Island and Pacific Railway Co. is also ordered to pay the statutory medical, surgical and hospital and burial benefits and to pay the costs of this hearing.

Following is a copy of a communication received from Davis & Michel, attorneys for Mrs. C. Y. Hope, dated March 26, 1923:

Minneapolis, Minn.
March 26th, 1923.

Mr. Ralph Young,
Deputy Industrial Commissioner,
Des Moines, Iowa.

Dear Sir:

In Re: Hope v. C., R. I. & P.

We were unable to appear at the above matter when it was held that decedent was not engaged in interstate commerce. Is it possible, under your practice, to have a rehearing of this matter to give us an opportunity to be present.

Please let us hear from you regarding this.

Very truly yours,

Davis & Michel.

In our record also appears as of same date a second letter from claimant's counsel, the body of which is as follows:

Will you kindly have copy of the evidence in the case of Hope Estate v. C., R. I. & P. Ry. Co., sent to us, upon which the decision in this matter was based.

We wish to appeal from the award made by your board and will have proper papers filed with you.

Upon receipt of your bill, we will mail your check.

March 27, 1923, counsel for claimant was advised by the Industrial Commissioner of the receipt of the letter just quoted, together with the information that this letter would be accepted as notice of claimant's appeal from the decision of the arbitration committee, and that the transcript had been duly ordered for them as directed in correspondence.

April 24, 1923, notice was given by the Commissioner to all parties concerned that review proceeding under the notice of appeal by claimant would occur at the department May 4, 1923, at 9 A. M.

Under date of April 27, 1923, Davis & Michel advised the Industrial Commissioner of receipt of notice of review proceeding.

The only issue involved in this case is as to whether or not at the time of his accidental death February 4, 1923, C. Y. Hope, husband of this claimant, was engaged in inter-state commerce.

Facts developed at the arbitration hearing are substantially as follows:

On the day of his accidental death and for some time previously the deceased was in the employ of the Chicago, Rock Island & Pacific Rail-

way Company as conductor on what is known as a mine-run train, the principal business of which is to haul coal cars to and from what is known as Pershing Siding on its main line along a spur track leading off of the main line to mines owned and operated by the defendant company.

From the record it would appear that early in the forenoon of February 4th, a train was made up and delivered at Pershing consisting of cars consigned to inter-state and intra-state points. Later in the forenoon a second train was delivered at Pershing consisting wholly of cars consigned to Valley Junction and Allerton, both points intra-state in character.

February 4th fell on Sunday. It would appear to have been the custom of the company to take the engine and caboose under the direction of Conductor Hope to the town of Chariton in order that the train crew might have Sunday dinner with their families living at Chariton, and incidentally to take water for the engine. While proceeding under this arrangement on Sunday, February 4th, a collision with a train on the main line resulted in the death of the conductor.

The last haul by this crew and equipment before the accident was intra-state—cars billed to Allerton and Valley Junction. According to the record the freight transportation next to follow in afternoon was not within the knowledge of the trainmen as orders for further service were to be received. While not absolutely controlling, these facts are significant in that they further remove the situation at the time of the accident from the range of inter-state commerce. But the vital fact is as to whether or not at the time of this collision the deceased conductor was engaged in intra-state employment within the meaning of the statute.

At this time the equipment in charge of Mr. Hope was in service incidental to employment, but was not specifically related to transportation inter or intra-state in character. It had no direct contact with its regular employment of coal hauling. Its mission as that particular time was simply and solely to deliver the train crew to Chariton in accordance with the Sunday custom.

These facts distinctly separate the deceased from inter-state relationship and logically and legally link him with intra-state service. The fact that the engine was to take water at Chariton is merely incidental and by no means serves to establish the character of employment.

In *Smith vs. Interurban Railway Company*, 171 N. W. 134, the Supreme Court of Iowa, speaking through Justice Stevens, delivers opinion bearing upon this situation in reversing the district court and sustaining this department in holding for the widow. In that case an interurban conductor was accidentally killed in the terminal yards at Des Moines while settling his motor and caboose into quarters for the night, immediately following distinct contact with inter-state transportation.

This opinion states that "Unless there was some intervening service not directly or immediately connected with inter-state commerce so as substantially to form a part or necessary incident thereof, plaintiff cannot recover." The court held from the facts submitted that "there was some intervening service not directly or immediately connected with

inter-state commerce" though but a few minutes previously there was distinct contact with inter-state traffic.

The court seems to give some weight to the fact that the lines of the defendant company are wholly within the state and that "primarily its business was intra-state." It will be observed, however, that in the case at bar employment at the time of the accident was much more definitely removed from the range of inter-state commerce.

In this opinion Justice Stevens quotes approvingly from the decision of the Supreme Court of the State of Illinois in *Illinois C. R. Co. v. Behrens*, 233 U. S. 473, 34 Sup. Ct. 646, 58 L. Ed. 1051, Ann. Cas. 1914C, 163, as follows:

"Here at the time of the fatal injury the intestate was engaged in moving several cars, all loaded with intrastate freight, from one part of the city to another. That was not a service in interstate commerce, and so the injury and resulting death were not within the statute. That he was expected, upon the completion of that task, to engage in another which would have been a part of interstate commerce is immaterial under the statute; for by its terms the true test is the nature of the work being done at the time of the injury."

This reasoning distinctly classifies the case at bar in intra-state relationship.

The court also quotes from a decision of the Supreme Court of the United States in *Erie R. R. Co. vs. Welsh*, 242 U. S. 303, 37 Sup. Ct. 116, 61 L. Ed. 319:

"It was in evidence also that the orders plaintiff would have received, had he not been injured on his way to the yardmaster's office, would have required him immediately to make up an interstate train. Upon the strength of this it is urged that this act at the moment of his injury partook of the nature of the work * * * he would have been called upon to perform. In our opinion, this view is untenable. By the terms of the Employers' Liability Act the true test is the nature of the work being done at the time of the injury, and the mere expectation that plaintiff would presently be called upon to perform a task in interstate commerce is not sufficient to bring the case within the act. * * * And this depends upon whether the series of acts that he had last performed was properly to be regarded as a succession of separate tasks or as a single and indivisible task. It turns upon no interpretation of the act of Congress, but involves simply an appreciation of the testimony and admissible inferences therefrom in order to determine whether there was a question to be submitted to the jury as to the fact of employment in interstate commerce. The state courts held there was no such question, and we cannot say that in so concluding they committed manifest error. It results that, in the proper exercise of the jurisdiction of this court in cases of this character, the decision ought not to be disturbed."

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 9th day of May, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

NOT A LOANED EMPLOYE

Mrs. Grace Murphy, Claimant,

vs.

James R. Shipley, Employer,
Southern Surety Company, Insurance Carrier.

Carl P. Knox, Miller, Kelly, Shuttleworth & McManus, for Claimant;

Paul Risner, Jennings Adams, for Defendants.

In Review Before the Iowa Industrial Commissioner

James R. Murphy, husband of this claimant, lost his life in employment as teamster, October 13, 1923.

In arbitration it was found that his employer was James R. Shipley, and that this widow is entitled to $10.38 a week for a period of three hundred weeks.

The record discloses that the circumstances of this employment and accidental death are substantially as follows:

The county of Guthrie entered into contract with this claimant for the grading of several miles of highway under the supervision of the Iowa State Highway Commission. At the letting of this contract W. J. Benethum was a rival bidder. While James R. Shipley was the sole contractor with whom the county dealt of record, it was understood between all parties concerned that Benethum was to do a portion of this grading in order that the county might be assured of sufficient equipment and working force to guarantee the completion of the grading contract within the time limits. It was accordingly agreed between Shipley and Benethum that for such work as was performed for the latter he should receive the full payment per yard which the county contracted to pay Shipley.

All of the relations of the county and of Shipley with the subcontractor were made wholly by oral agreement. But there is no dispute as to facts stated. A certain section of the contract was by Shipley assigned to Benethum for grading. As the time limit was approaching, this subcontractor was behind on his part of the job while that part understood to be graded by Shipley was completed. As Shipley was proposing to move to another job the county insisted upon the completion of the contract before such removal. Therefore, the contractor sent men and equipment to the Benethum section for the purpose of hastening completion.

One of the teamsters so transferred was the deceased, James R. Murphy. The grade upon which he was driving team had been elevated some twelve feet above the natural surface. A loose telephone wire interfering with his driving, he grasped the loose end, gave it a fling, bringing it in contact with a high tension wire and receiving an electric shock which killed him instantly.

The queston involved in this proceeding is as to the relations of James R. Murphy to this contractor and subcontractor. The defendants contend at the time of his death Murphy was an employe loaned to subcontractor Benethum. Claimant contends that nothing had occurred to disturb the relations of employer and employe between deceased and James R. Shipley.

James R. Murphy entered into the employ of the defendant Shipley in May of 1923, and so continued until the date of his death, October 13, 1923. Saturday morning, October 13th, it was rainy. It would appear from the evidence that Murphy assumed that work would not proceed owing to weather conditions, so he was not making preparations for the same. About seven o'clock, however, J. R. Shipley called at his home and urged him to get the team ready and proceed with the work as usual, which was accordingly done.

The team and other equipment used by Murphy belonged to the defendant Shipley. Some days after his death this employer paid Mrs. Murphy $12.00 for services the last three days of the life of her husband.

The testimony relating to the circumstances of the transfer of these men from the Shipley section to the Benethum work are much involved because of a mass of evidence very contradictory and in which falsehood is charged and admitted, and if not so charged and admitted quite manifest.

The conclusion is reached, however, that the defendant Shipley had not intended, and had not reached any understanding for the transfer of his men to the control of the subcontractor, and Benethum would not appear to have completed or intended any such arrangement. There would seem to be no basis for the conclusion that the workman had any reason to believe he was working for any other than Jamse R. Shipley. Nothing in the nature of a contract of employment, express or implied, between him and the contractor, W. J. Benethum, appears in the record, and without such contract the statutory relation of employer and employe cannot be established.

Knudson v. Jackson, 183 N. W. 391, would seem to be distinctly in point.

One C. M. Knight, having teams for hire, engaged with one Knudson, a contractor and builder, to put a team on his work. Jackson was the teamster in this deal. When injured he was in his round of service under the direction of Knudson and being paid by Knight. He had no knowledge as to the arrangement between Knight and Knudson. The identification of the employer was contested. The court affirmed the decision of the Industrial Commissioner in holding that Knight was the employer.

From the opinion by Justice Faville, we quote:

"Our Legislature has expressly said that an employee within the meaning of this act, in order to come under this statute, must have a contract of service, express or implied, with the employer who is sought to be charged with liability. This language is clear and explicit. Applying it to the facts of the instant case, there was no contract of service, express or implied, between the claimant, Jackson, and the so-called 'special employer,' Knudson. There was a contract of service between the claimant and his 'general employer,' Knight. He had no other contract of service, express or implied, with any other person than Knight. He had no such contract or service whatever with Knudson. In a sense, Knudson was no more than an agent for Knight, directing Jackson as to the particular work he was to do, but there was no pretense of a contract express or implied, between Jackson and Knudson."

Decisions submitted from other jurisdictions upon statutes differing from ours would seem to be substantially outweighed by this opinion so directly in point from the Iowa Supreme Court.

It is therefore ordered that the defendant, Southern Surety Company, make weekly payments to this dependent widow for a period of 300 weeks, together with statutory burial allowance.

In finding for claimant the arbitration committee assumed with apparent discrimination that the earnings of the deceased would be modified by the provisions of paragraph 6, section 1397, which is as follows:

"For employees in a business or enterprise which customarily shuts down and ceases operation during a season of each year, the number of working days which it is the custom of such business or enterprise to operate each year instead of three hundred shall be the basis for computing the annual earnings; but the minimum number of days which shall be used as a basis for the year's work shall not be less than two hundred."

Counsel for claimant contend for the three hundred day rule. The rigor of the Iowa winter is a matter of common knowledge, and this department has information tending to show that road grading is rarely performed in the winter months.

Since nothing appears in this record, however definitely affording information as to the year's work in this employment, decision as to this phase of the award is reserved in the hope that the parties may stipulate as to the general rule and reach agreement as to the amount of weekly payment. Failing so to do, this case will be reopened for the introduction of evidence and a supplemental opinion will be filed as to the amount of weekly payment due the claimant, Mrs. Grace Murphy.

Dated at Des Moines, Iowa, this 20th day of November, 1924.

Seal

A. B. FUNK.
Iowa Industrial Commissioner.

Appealed.

ORDER FOR REMOVAL TO FEDERAL COURT DENIED

C. D. Royal, Greek Consular Representative of the Dependents of Bill Penlos, Deceased, Claimant,

vs.

Cudahy Packing Company, Defendants.

Royal & Royal, for Claimant;

Snyder, Gleysteen, Purdy & Harper, for Defendants.

In the Matter of Removal to Federal Court Before the Iowa Industrial Commissioner

On the 3rd day of January, 1922, Bill Penlos lost his life in an elevator shaft in the employ of the defendant company.

The record shows that on the basis of circumstances connected with this accidental death it is contended by defendant that it did not arise out of and in the course of employment.

On the 21st day of May, 1924, Application for Arbitration was filed by claimant.

July 30, 1924, defendant filed Petition to Remove to Federal Court. The record contains a duly executed bond in the sum of Five Hundred Dollars as by statute required.

This petition for removal has its basis in diversity of citizenship, it being shown that the Cudahy Packing Company is a corporation created and organized under and by virtue of the laws of the State of Maine, while the claimant at the time of his accidental death was a resident of Sioux City, Iowa.

Defendant's brief submits in support of its petition Section 1010, U. S. Comp. Statutes, which provides for removal on certain, definite grounds:

1. Any suit of a civil nature arising under the constitution or laws of the United States, or treaties made under their authority.

The case under consideration could not, of course, find support in this mandate.

2. Any other suit of a civil nature of which the district courts of the United States are given jurisdiction by this title.

This provision affords no support to the petition under consideration.

3. "And where a suit is now pending, or may hereafter be brought, in any state court, in which there is a controversy between a citizen of the state in which the suit is brought and a citizen of another state, any defendant, being such citizen of another state, may remove such suit into the district court of the United States for the proper district at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such state court, or in any other state court to which the said defendant may, under the laws of the state, have the right, on account of such prejudice or local influence to remove said cause."

This would seem to be the only provision in which the petition for removal in this case might find any support whatever.

The facts submitted are by no means conclusive as basis for removal. It must furthermore "be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such state court, or in any other state court." This factor, vital to removal, is omitted in defendant's petition. And there is no escape from the definite conclusion that prejudice or local influence is not in any degree involved in this situation. The arbitration proceeding from which removal is sought is in the hands of three arbitrators, one of whom is selected by each party, the third being a representative of this department. The defendants will not say their relations with this department suggests prejudice here, and they should be able to select an arbitrator in Sioux City, or elsewhere, who is free both from local influence or prejudice.

Furthermore, conspicuous incongruity of jurisdiction and general relationship would seem to afford a substantial bar to this petition for removal.

The Workmen's Compensation system consists of an administrative process new and strange to jurisprudence. The rights of the parties are fixed by statute, it only remaining for the Industrial Commissioner to determine whether or not the facts bring it within the provisions of the law. A special tribunal is created to pass upon and determine these

facts. This department is not a court, and in its very nature it has relations exceedingly limited with any court. Such relations are confined strictly to review proceeding in which the courts of the state may inquire only if the Industrial Commissioner has acted in excess of his powers, or that his order or decree was procured by fraud, or if the facts found by him support the order or decree, or that there is not sufficient competent evidence in the record to warrant the Industrial Commissioner in making the order or decree complained of. It is specifically provided by statute that no order or decree of the Industrial Commissioner shall be set aside by the court upon other than the grounds just stated.

Evidence is admitted only in arbitration, and possibly in review. The court may not take testimony upon any point involved. Neither the Commissioner nor the arbitration committee are bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. It is humanely provided that arbitration is taken to the injured workman for his accommodation. The compensation system provides for election or rejection on the part of both workman and employer, a provision unique in jurisprudence. When an employer contracts with an insurer, or employer qualifies to carry his own insurance, it is definitely understood that liability shall be determined wholly and solely by the specific provisions of the state compensation statute, which is distinctly incompatible with the rules and regulations of the federal courts.

In the construction of the Workmen's Compensation statute the intent is plainly manifest on the part of the lawmaking bodies to erect a system in which no court should exercise original jurisdiction. The erection of this system, fairly revolutionary in the realm of jurisprudence, was inspired by a demand for methods more simple, direct, speedy and effective than the courts may afford, applied in more intimate relationship than the courts may establish in dealing with the victims of industrial misfortune. The courts of the state are empowered in no case and in no possible situation to adjust terms between the employer and employe in case of controversy. They may affirm, reverse or remand, but may not apply any schedule or any rule of law under which adjustment may be completed. No proceeding under the compensation statute can qualify as a unit of a civil nature.

When the Federal statute provides for removal of an action pending "in any state" it cannot have reference to this administrative department of state which is not in any legal, proper or practical sense a state court.

This statement has been abundantly justified by the higher courts of a number of states, including the state of Iowa.

The case of *Industrial Commission of Utah vs. Evans, District Judge*, 174 Pacific Rep. 825, is a case involving the powers of the State Industrial Commission. In this case the Supreme Court of Utah has held that the industrial commission exercises only administrative and ministerial functions and has no judicial power.

In re *Silvies River* (D. C. Oreg. 1912) 199 Fed. 495, is an important Federal case dealing with this question. It is therein declared that a

proceeding carried on by or before executive or administrative officers in exercise of the proper functions cannot be regarded as a suit or action. It is further therein provided that it may become such on appeal to a court having power to determine questions of law, fact, etc., but this is not an appeal from a decision of an administrative officer but a move to deprive an administrative officer of jurisdiction.

In the case of *Brunette vs. Brunette*, 177 N. W. Rep. 593, it is specifically held by the supreme court of Wisconsin that

"The Industrial Commission under the workmen's compensation act is an administrative body and not a court. It has no powers as such body other than those granted it by the statute of its creation, and it has no power of certifying or sending proceedings brought before it to any court or other tribunal."

In re *Stone* (No. 10144) 117 N. E. Rep. 609, is also pertinent. In paragraph 5 of the decision it is held by the Appellate Court of Indiana

"* * * we do not hold that the industrial board is more than an administrative body or arm of the government, which in the course of its administration of the law is empowered to ascertain some questions of fact and apply the existing law thereof, and in so doing acts quasi judicially. It is not a court, and is not vested with judicial power within the general acceptation of that term."

Savoy Hotel vs. Industrial Board of Illinois, et al., 116 N. E. Rep. 712. Therein the Supreme Court of the State of Illinois holds that:

"The arbitrator, committee of arbitration, and Industrial Board are administrative bodies and have no judicial functions."

In re *Levangie*, Supreme Judicial Court of Massachusetts, 117 N. E. Rep. 200, it was held that

"The answer to this position is that the Industrial Accident Board is not a court of general or limited common law jurisdiction, that it is purely and solely an administrative tribunal specially created to administer the workmen's compensation act in aid and with the assistance of the superior court."

In *Mackin vs. Detroit-Timkin Axle Co.*, 187 Mich. 8, 153 N. W. 49 (1915), the court, in speaking of the powers and functions of the Industrial Accident Commission and arbitration committees, and in upholding its creation as constitutional, said:

"This board was created purely as an administrative agency to carry the provisions of the act into effect. The act being elective, it is operative only as to those who choose to come within its provisions, and in that particular it is a board of arbitration by agreement, but, aside from that consideration, it is but an administrative body, vested it is true with various and important powers, some of them quasi judicial in their nature, but without that final authority to decide and render enforceable judgment, which constitutes the judicial power. Its determinations and awards are not enforceable by execution or other process until a binding judgment is entered thereon in a regularly constituted court. * * * We conclude that the Industrial Accident Board is a ministerial and administrative body with incidental quasi judicial powers exercised by consent of those electing to be governed by the act, not vested with powers or duties in violation of constitutional limitations."

5 *Fed. Stat. Ann.*, p. 176. In defining what constitutes required "prejudice or local influence" it is here declared:

"The prejudice or local influence which the law means to make the ground of removal may relate to the person of a litigant or the subject matter of the litigation, but in either case there must exist improper

bias, partiality, unreasonable predeliction, or hostility in the local community or courts which will work injustice or prevent the parties seeking a removal from obtaining justice."

In *Des Moines Union Railway Co. vs. Funk*, 164 N. W. p. 650, speaking for the Iowa Supreme Court, Justice Weaver said:

"The statute which provides for workmen's compensation for injuries received in the course of employment also creates a special tribunal to hear and dispose of such claims. Its jurisdiction in the first instance is made exclusive."

Hunter vs. Colfax Consolidated Coal Company, 154 N. W. 1037, was brought to test the constitutionality of the Iowa Workmen's Compensation statute wherein the whole range of powers conferred and reserved was considered. In many paragraphs the court expressed views in harmony with those hereinbefore quoted, a few of which are cited below. In paragraph numbered 2, page 1060, it is stated:

"* * * It might perhaps as well be claimed that what has really been delegated is not judicial power but power by award and resulting entry of decree to apply the measure of damages created by legislative act, a delegation of legislative rather than of judicial power. * * *"

After citation supporting this theory, it is stated on page 1061:

"Other of the authorities proceed on the reasoning that the commission and arbitration boards are not courts; that the hearing before them is not the hearing the denial of which is inhibited by the due process clause; that there is no adversative proceeding, that such bodies have, at most, only quasi judicial function; that they are an administrative body or arm of government which in the course of its administration of the law are empowered to ascertain some questions of fact, and apply that law thereto; that such are not thereby vested with judicial power in the constitutional sense."

The contention of defendants seems to have the quality of originality. The idea of removing workmen's compensation cases at their very inception to a Federal court is so unique as to have apparently never before been suggested. Defendants cite no precedents for such action and it is believed none can be found.

The Industrial Commissioner would be guilty of gross dereliction if he failed to exercise any power he may have to prevent the injustice involved in this proposition to unfortunate workmen or their dependents and to support his denial to the best of his ability. If the defendants shall succeed in this endeavor for removal, serious hardship is foreshadowed. Many employers qualify to carry their own compensation risks, as does this defendant. Many of these may successfully plead diversity of citizenship in injury cases. The pledge of the statute that "process and procedure under this chapter shall be as summary as reasonably may be" is violated, and only in cases involving large sums and little complication can the workman or his dependents afford to follow a rich defendant to the Federal court, deprived of the considerate application of the humane compensation statute. Surely, no reflection upon the Federal court, or any court, is suggested unless the Workmen's Compensation law and the unique system it creates may be so regarded.

In view of the extraordinary contention of defendants, their failure to meet the requirements of the Federal statute, the unfavorable decisions of courts herein cited, and the hardship suggested by this proposition, defendants petition for removal is denied.

Dated at Des Moines this 15th day of October, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Compromise settlement.

SEWER GAS—FAILURE TO CONNECT WITH INJURY

Alfred J. Malone, Claimant,

vs.

Barnes Cafeteria Company, Defendant,
Employers Liability Assurance Corporation, Insurance Carrier.
F. L. Meredith and W. W. Scott, for Claimant;
Miller, Kelly, Shuttleworth & McManus, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration September 9, 1921, the committee denied compensation on the ground "that the claimant has failed to discharge the burden of proving that he has suffered any compensable disability as a result of injury arising out of and in course of his employment by defendant."

In the application for arbitration it is alleged that on the 16th of May, 1920, claimant was overcome by sewer gas, resulting in the loss of eight weeks of work immediately following, and permanent partial disability to the extent of fifty per cent.

Claimant in evidence at first stated that the incident upon which this action is based occurred about the 15th of May, 1920. Recalled, he corrected his statement to Sunday, May 10th. May 10, 1920, did not come on Sunday, as the calendar shows.

Alfred Malone was serving the Barnes Cafeteria Company in the capacity of stationery engineer at one of its restaurants in May of 1920. It would appear that during this service difficulty arose as to sewage disposal, which required close contact handwork with a sewage tank in order to promote discharge. Claimant alleges that he consented under protest to assist in this disagreeable task and that exposure to noxious gas for the space of some twenty minutes is the basis of this action. He says he was immediately attacked with nausea and otherwise, and at the close of the day's work he quit the employ of the Barnes Cafeteria Company. He further alleges that for a period of several weeks he was wholly incapacitated from earning.

Fellow workmen testify as to evidence of indisposition manifest by Malone at the time of the incident in question. One of these, James Richardson, states that he thinks Malone worked for several days thereafter, but swears positively that he returned to work the next morning and worked all that day.

Called by claimant, Mrs. Florence Kelly testified that during the month of May, 1920, and for sometime thereafter claimant was a boarder at her hotel. That she recalls his mention of the sewage incident and that thereafter he was for several weeks about her house in a disabled condition.

Mr. Malone testifies that about three weeks after the date of the alleged injury he took work as stationary engineer at the Kirkwood hotel; that he continued in this employment from the latter part of May, or the first of June, until the 16th of December following. Further, that he then got a job at the Trades and Labor Assembly hall in like capacity which continued until the latter part of March, 1921.

At the time of the arbitration in September of 1921, he testified that he had not had a regular job all summer, admitting, however, that work was pretty scarce.

The incident upon which this action is based would not seem to afford basis for reasonable inference as to any considerable measure of resultant disability. The few minutes of exposure would not seem significant to the extent of illness alleged. Assuming, however, that it promoted illness to the point of incapacity, it is not claimed that he was what might be termed bed-sick at any time from this cause. He alleges no medical attendance. The landlady, Mrs. Kelly, thinks he had a doctor once, but does not recall the name.

Within three weeks, according to his own testimony, claimant was again earning wages and he continued in steady employment for a period of nearly a year. He alleges reduced earnings which may or may not have been due to any measure of disability. He seems to have been equal to the employment he assumed to perform.

Nowhere in this record appears testimony of any physician as to any illness, or to any basis of permanent disability in a case in which medical testimony is usually considered indispensable to the establishment of a compensation claim.

It requires very long range inference to get any sort of impression as to the inherent probability of any measure of disability on the part of this claimant due to employment on the part of the Barnes Cafeteria Company. Furthermore, consideration must be given to an additional substantial element of defense.

Defendant alleges that on the part of this defendant both notice and knowledge as to the injury alleged is entirely wanting until a letter dated May 24, 1921, more than a year after the injury alleged, from an attorney representing Alfred Malone. No evidence was introduced by claimant as to notice to or knowledge on the part of this defendant. The secretary of the defendant company, Ira B. Thomas, whose duty it was to report all compensable accidents, swears he had no knowledge of any such accident or injury at any time whatever prior to the letter from the attorney, as aforesaid.

Counsel for claimant seems disposed to assume that since fellow workmen of Malone knew of the incident upon which this action is based, it should be inferred that it was within the knowledge of the employer or a representative of the employer.

The statute relative to notice or knowledge first fixes a limit of fifteen days within which such notice or knowledge must be received. It makes a further limit of thirty days in which such knowledge or notice may within limitations be considered as sufficient. It finally provides, however, that "unless knowledge is obtained or notice given within ninety

days after the occurrence of the injury, no compensation shall be allowed." This provision seems mandatory and utterly without qualification.

The record affords substantial basis for denial on the part of defendant that either notice or knowledge on the part of the defendant was received or acquired within the limit prescribed by law.

WHEREFORE, the conclusion is justified that the record does not establish compensable injury within the meaning of the statute, and that if it did, the claim is barred by definite statutory inhibition as to notice or knowledge.

The decision of the arbitration committee is affirmed.

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

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HEMORRHOIDS—INJURY FROM STRAIN HELD COMPENSABLE

Hollis Huffman, Claimant,

vs.

W. O. Schuyler, Employer,
Southern Surety Company, Insurance Carrier.
Helmer & Minnich, for Claimant;
Risher & Adams, for Defendants.

In Review Before the Iowa Industrial Commissioner

This action is brought to establish a claim for disability alleged to have arisen from hemorrhoidal development produced by the strain of heavy work. In arbitration at Carroll, May 4, 1923, the finding was for defendant.

Circumstances involved are substantially as follows:

In June, of 1922, and for several months preceding, this claimant was in the employ of W. O. Schuyler, a ditching contractor operating in Carroll county. For some time prior to June 7, 1922, Hollis Huffman was engaged, with the assistance of a fellow workman, in rolling tile sections various distances to a derrick by which the said tile were put in place. These tile were made of concrete material 36 inches in diameter, each weighing about one thousand pounds. The employer and others testify that the ground over which these tile passed was rough and boggy, making the work more strenuous. Mr. Schuyler says "that was the hardest rolling we ever had."

On or about June 7th claimant complained to the employer, to his foreman, to T. A. Perry, and to his fellow workman, H. J. Griffe, of rectal distress. Some days later he went to Dr. Anneberg, of Carroll, who operated for hemorrhoids on the 22d of June.

It is the contention of defendants, based wholly upon hypothetical grounds, that the affliction of claimant upon which this disability is based, is not due and cannot be due to incidents of his employment. They insist such theory is wholly untenable because of medical authority to the contrary.

In the reasonable administration of the Workmen's Compensation Service an ounce of fact outweighs a ton of hypothesis or theory. It is the common holding in administration generally that where an able-bodied workman in service of extraordinarily strenuous character, as well as through some specific accident, sustains definite disability, obligation devolves upon the employer to comply with statutory provisions as to payment. There is in this record no indication of any other cause for the disability existing excepting the strain of pushing, and the development of hemorrhoids during this process cannot reasonably be regarded as mere coincidence. The testimony of the employer, the foreman, the fellow workman, the claimant and two doctors all tend to fortify this claim within the coverage of the compensation law.

Defendants further contend that under the compensation statute of the state of Iowa it is necessary that as a condition precedent to compensable disability the workman must at some specific instance and in some definite incident be able to focalize something in the matter of accidental injury.

While some specific accident or some definite incident makes a compensable claim more outstanding and incontestible, the employer may be held in payment without such conspicuous demonstration. The drinking of polluted water, freezing or overheating under unusual exposure, the breathing of noxious gases and numerous other incidents of employment not instantaneous in operation are the frequent basis of compensable claims.

Very few compensation cases based upon hemorrhoids appear in the reports, and opinions in support and in denial may be cited. This is doubtless due to facts developed in controversy. It may be presumed that disability arising out of employment is rarely due to hemorrhoids. Be this as it may. Whatever the cause, and whenever the occurrence, definite circumstances making it comparatively plain that a workman put out of commission and sent to the operating table as a result of specific performance is entitled to the full measure of relief afforded by statute.

The instant case is manifestly of this character. Here we have an able-bodied man. His work was of unusually straining nature. In the midst of it he sustains disability due to development which cannot be accounted for except as incidental to his employment. No inference or conjecture suggests any other cause. After deliberate scrutiny of the record in this case to say that under such circumstances a workman is to be denied statutory relief is to cast reproach upon the compensation system.

A decision in point is *Hallock vs. American Steel & Wire Company*, rendered by the Connecticut Workmen's Compensation Commission, appearing in Volume 2 of its reports, at page 320. Payment was demanded by claimant for disability alleged to be due to hemorrhoids caused by heavy lifting. The claim was sustained by the Commission and motion for rehearing was denied.

The decision of the arbitration committee is reversed. Defendants are ordered to pay to Hollis Huffman the sum of $105.00 as compensation

covering seven weeks of disability, and to meet medical, surgical and hospital obligations as provided by law.

Dated at Des Moines, Iowa, this 27th day of July, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA—INSUFFICIENCY OF EVIDENCE

Samuel Ritter, Claimant,

vs.

Pooley-Clark Lumber Company, Employer,
London Guarantee & Accident Company, Insurer.
M. Hartness, for Claimant,
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

This case was arbitrated at Greene, Iowa, March 29, 1922, before the Deputy Industrial Commissioner, additional arbitrators having been waived by counsel.

April 4, 1922, the Deputy Commissioner filed a decision finding for defendant.

Samuel Ritter testifies that on June 20, 1919, he sustained an injury resulting in hernia. He says the injury occurred while unloading buggies for the defendants at the Greene depot, assisted by A. R. Kennedy. He tells a rather plausible story as to incidents co-related in submitting evidence of hernial disability. He relates conversations with Kennedy and with each of his employers in the endeavor to fortify his claim.

The record fails to disclose, however, any measure of corroboration whatever relative to an injury having been sustained as alleged. Mr. Pooley and Mr. Clark flatly contradict him as to any conversation such as alleged relative to this matter and testify definitely and positively that they never had any knowledge whatever of any injury as alleged until nearly two years after it is said to have occurred.

Mr. Kennedy, who was working with claimant in unloading the buggies, was unable to testify at the hearing because he was in quarantine with his family. A statement in writing, however, signed by A. R. Kennedy is in evidence as defendant's Exhibit "1," and it was admitted that if Mr. Kennedy were present he would testify in accordance therewith. This statement positively denies on the part of Kennedy any knowledge whatever as to any accident having occurred or injury sustained by claimant at the time alleged, or at any other time suggestive of hernial difficulty.

Dr. Call testifies as to an examination about the date of the alleged injury which developed the existence of hernia, but he has no word to say as to any history of an injury given by the workman at the time he consulted the doctor.

The holding is justified that since these employers had no notice or knowledge of any injury as alleged by Ritter within ninety days, as required by law, this case is without the coverage of the compensation statute.

If, however, such holding were not justified, claimant has wholly failed to meet the requirements of the burden of proof in such cases made and provided.

In view of the claim made by Ritter as to the serious nature of his injury and the direct relation of the same to an incident of occupation, he has seriously discredited his case by waiting nearly two years before making any effort to secure the relief the law so readily provides in genuine compensation cases.

All the testimony against him is wholly disinterested. The employers have no financial interest in the matter as their insurer is assuming all responsibility involved. It cannot be believed that the fellow workman, A. R. Kennedy, would deliberately falsify the record and defeat this claim if it occurred under the circumstances described by claimant.

While his argument squints in that direction, counsel for claimant can hardly mean to say that a claim for compensation need only be asserted by a workman in order to secure award under the law, no matter as to credible contradiction or as to how inherently improbable his story may be. Corroboration is not required by eye witness testimony. Circumstantial corroboration is frequently permitted to establish an award if circumstances tend to indicate the probability of self-serving allegation. In this case no color of credibility is given the story of claimant by any fact or circumstance or reasonable inference.

The arbitration decision of the Deputy Industrial Commissioner is affirmed.

Dated at Des Moines, Iowa, this 12th day of February, 1923.

Seal. A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA—AWARD IN COMPLICATED CASE

A. L. McMasters, Claimant,

vs.

John Morrell Company, Employer,
London Guarantee & Accident Company, Insurance Carrier.
W. A. Hunt, for Claimant,
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Ottumwa, October 25, 1921, decision was adverse to claimant.

Within the legal time limit no application for review was made.

Claimant had received legal and timely notice of the arbitration hearing. He appeared without an attorney, and it was subsequently claimed that his case had not been fairly developed, and that justice demanded further proceeding in scrutiny of the circumstances.

The insurance carrier made no objection to this process, and accordingly by agreement a hearing was held at Ottumwa before the Deputy Industrial Commissioner October 25, 1921, for the purpose of making a record to be submitted for judgment to the Industrial Commissioner at the department.

Claimant alleges injury in the employ of the defendant packing company. On the witness stand he seemed confused as to whether the date of injury was July 16th or July 26, 1921, but he seemed to settle down to the conclusion that the later date was correct.

On the date in question and for some time previously claimant had been engaged in "holding door," as he termed it, on the fifth floor of the plant. That is to say, it had been his duty to open and close a door some four or five inches thick, and six or six and one-half feet high, and perhaps four and one-half feet wide. He testifies that this door opened at times with considerable difficulty; that it required all the strength he could summon in shoulder and hip and legs to effect an opening.

On a certain day, as alleged, McMasters felt a pain in the groin and medical examination a little later disclosed hernial development.

There is considerable support to these allegations in the testimony of fellow workmen. They agree that the door was heavy, requiring the exertion of considerable strength in opening; that McMasters did complain of injury, as alleged, at about the time stated, and as to his later disability. Legal requirement as to notice or knowledge on the part of the employer seems to have been met.

It may be frankly admitted that this case is strictly on the border line of uncertainty as to liability on the part of the insurer.

It would seem, however, that the line of reasoning followed by our Supreme Court in Buncle vs. Sioux City Stock Yards Company, 185 N. W. 139, and in other hernia cases passed upon, easily brings this case with its imprint of good faith, even with its meager record, within the coverage of the workmen's compensation statute.

Four hernia cases have gone from this department to the Supreme Court, in all of which decision was against the workmen, and in all of which the department has been sustained. But the fact that these cases were none of them well supported in evidence did not prevent the court from admonishing the Industrial Commissioner to the exercise of great care in scrutinizing cases of this character.

Upon holding this case to be compensable, the more perplexing task of deciding as to the measure of liability develops.

This injury occurred in July of 1921. It involved no more than a plain case of rupture. It is a matter of common knowledge that in such a situation operation is practically certain to restore the workman to his former state of usefulness. This workman was not justified in neglecting himself and assuming an attitude of utter helplessness. It might be plead that McMasters had not means sufficient to pay for the necessary operation. There is not the slightest doubt but that in Ottumwa or any other city of like character in Iowa, no man need to be scheduled as human junk because of his inability to pay for a hernial operation. Doctors and hospitals and welfare societies do not permit of such sacrifice if appeal is made. In cases of such flagrant self-neglect, industry and society must not be heavily penalized.

Experience shows that in case of operation for hernia the workman is usually back in service in about five or six weeks. In cases where operation is objected to, the department advises commuted settlement upon the basis of six weeks of payment and the sum of one hundred

twenty-five dollars ($125.00) for surgical and hospital expense. This method of settlement is frequently adopted.

At the time of injury claimant was receiving as wages the sum of $12.00 a week, making the weekly compensation rate $6.92.

In order to provide for contingencies that might have arisen prolonging period of recovery, defendant is held in payment for ten weeks of compensation, together with expense of surgical and hospital service in the sum of on hundred fifty dollars ($150.00).

Dated at Des Moines, Iowa, this 31st day of October, 1923.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA—FAILURE TO SUSTAIN BURDEN

Ray Morrison, Claimant,

vs.

John Morrell & Company, Employer,
London Guarantee & Accident Company, Insurance Carrier.
L. M. Cox, for Claimant,
Chandler Woodbridge, for Defendant.

In Review Before the Iowa Industrial Commissioner

In arbitration at Ottumwa April 17, 1923, defendants were ordered to pay claimant $100.00 for medical, surgical and hospital expense, together with $27.60 as compensation for four weeks of disability.

In December of 1922, claimant was in the employ of the John Morrell Company. His particular task is said to have been breaking breast bones in hogs as they passed his station on a carrier. This work was performed with a knife about eighteen inches long, as it appears. Morrison testifies that on the 27th or 28th of December, he doesn't know exactly which, after the treatment of a certain heavy hog, he was conscious of immediate hernial development.

This evidence appears in the transcript:

"Q. Were you working pretty regularly the last five or six weeks?
A. Yes sir.
Q. And prior to that time, December 28th, you worked about half the time?
A. Yes sir.
Q. Did the lump get bigger?
A. No, just sore. Come down oftener, and when I laid down it would go away, and when I got up it would come back.
Q. Now just what were you doing when you noticed this?
A. I first noticed it when I was stooping way down.
Q. Did you tell the foreman you were hurt?
A. Yes sir.
Q. What did you tell him?
A. I told him I hurt myself opening that big hog, and he told me to go to the doctor.
Q. Where is the foreman now?

A. Down at the packing house.
Q. Did you call him as a witness?
A. I did not.
Q. What made you think you were hurt?
A. I felt something give; felt like something tore and drop down.
Q. You continued to open hogs?
A. Yes sir.
Q. When you went back, did you do the same kind of work?
A. I don't remember; I don't believe I did.
Q. What did you do.
A. Just anything; dressing, cleaning; just anything there was to do."

John Dunning, a fellow workman claims Morrison told him "right after the hog passed." He says "Ray worked the next day." Doesn't know whether he finished the week out or not. Quoting:

"Q. Has he been working very much of the time since?
A. No.
Q. Has he been working for the last six weeks?
A. No.
Q. How long after was it that you found out that he had a hernia?
A. Did not know it until he went to the doctor.
Q. What has Ray been doing since?
A. Shaving, mostly."

This, after saying Ray had not been working since he went to the doctor. Claimant testifies he went to the doctor about five days after the alleged injury.

Called by claimant, Dr. Vinson testifies in part as follows:

"Q. Were you acquainted with Ray at one time prior to December 27, 1922?
A. Yes sir.
Q. Did you at that time find he had a rupture?
A. I did not. I examined him for an abdominal condition. There was no presence of any hernia. He was not complaining of hernia at that time.
Q. About what time was that, Doctor?
A. Sometime in the winter or late fall of 1922. I do not remember exactly.
Q. You did not at that time notice he had a hernia?
A. No sir."

Cross-examination:

"Q. Did you not examine him for hernia?
A. No sir. I did not examine him in the internal (inguinal) rings.
Q. What was his trouble, Doctor?
A. He had an infection of the gall bladder.
Q. Have you examined him since that time?
A. Yes sir.
Q. When last?
A. Sometime during January.
Q. At that time did you discover any hernia?
A. I discovered a small hernia."

Dr. A. O. Williams testifies that:

"Probably about January 4th he came to me when I examined him and found he had a direct inguinal hernia. He had a large ring there, and by voluntary coughing on his part, it would come up to the external opening, and I think his condition was such that it would require an operation."

Did Mr. Morrison give you any reason for this at the time of his examination?

I have a faint recollection he said it came from lifting, and examining him, I found that the impulse of a cough would make the intestine come outside.

This case in its development opens with doubt on the part of the workman as to the particular day on which injury occurred as alleged, though less than four months had elapsed between that date and the date of arbitration. Furthermore, the doctors' records should have aided him in definitely fixing a date of injury. He says he told his foreman who was then at the plant of his employer, but whom he had not summoned as a witness in support of the important matter of notice and any measure of corroboration.

His testimony, as accurately quoted, gives no definite basis of understanding as to the measure of disability since his alleged accident.

His fellow workman, John Dunning, says: "Ray said 'I hurt myself on that hog.'" Says claimant worked next day. Didn't remember whether he finished the week out or not, though they were working side by side and the incident was by no means remote. He says claimant "has not been working much of the time since." Says he "did not know Ray had hernia until he went to the doctor," though Ray seems to have known it at once. Asked: "What has Ray been doing since?" The answer was—"shaving mostly."

Ray Morrison may have sustained a definite injury resulting in hernia as alleged; but the record submitted to the Commissioner does not justify such conclusion.

In all jurisdictions hernia is regarded as the most fruitful source of compensation perplexity. It is very common in human experience—so common that physicians have usually insisted that it should not be regarded as traumatic, except in cases of injury in the immediate vicinity of the inguinal rings.

In many states requirements as to proof of definite injury are so strict as to make it fairly impossible in ordinary cases to establish compensable hernia. This department is sympathetically disposed in such cases. It is held that where a a matter of direct proof or of inherent probability hernial development and diability are due to some specific and unusual incident of employment, the workman must have relief. The fact that he cannot name the exact day upon which any injury occurred, is not necessarily fatal, but it suggests suspicion as to good faith. The circumstances attending the incident alleged as a source of disability should at least suggest substantial basis for inherent probability. The exercise of conjecture should not be necessary.

It is a matter of common knowledge that hernia may come from a trivial incident, a mis-step, a cough, or even a sneeze. It may be so easily produced that no guess work as to its arising out of employment can be indulged.

To say that in the case at bar the claimant has met the burden of proof under even the lenient rules of this department, is to yield requirement as to facts and rely substantially upon the loose testimony of claimant, dubious corroboration of a fellow workman, the very doubtful support of doctors, and the lack of other important elements of inherent probability.

The decision of the arbitration committee is reversed.

Dated at Des Moines, Iowa, this 7th day of November, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

HERNIA—FAILURE OF EVIDENCE

Walter Paul, Claimant,

vs.

Frank Foundries, Corp., Employer,
Iowa Mutual Liability Insurance Company, Insurance Carrier.
Cook & Balluff, for Claimant,
Bollinger & Block, and Sampson & Dillon, for Defendants.

In Review Before the Iowa Industrial Commissioner

This case was submitted at Davenport, May 21, 1924, to the Deputy Industrial Commissioner, arbitrators being waived by stipulation of counsel.

In this proceeding it was held that claimant developed a left inguinal hernia as result of injury arising out of his employment, and defendants were ordered to pay medical, surgical and hospital expense in the sum of $100.00, together with compensation in the sum of $120.00.

Defendant contends that any incapacity sustained by claimant is not due to injury occasioned by any incident of employment at the time and in the manner alleged.

Walter Paul alleges injury on January 2, 1923, while he was at the work of making cores in the foundry of employer. These cores are of greater or less weight, claimant averring the one he was handling at the time of his injury weighed some seven hundred pounds. He was not lifting it. He says, "I didn't push it very far, just placed it on the hook on the crane and slid it and kind of gave it a pull to slide it out." Apparently he had help in the process.

Claimant testified that immediately afterward one of his testicles swelled up and he seemed to be hurt in the region of the kidneys. Said he felt sick and couldn't move, but right away went to the doctor, walking a distance of three blocks. He claimed the testicle swelled up nearly as big as his fist. In cross examination he finally admitted that it might have been a little smaller than a hen's egg. The doctor he first visited was Dr. Neufeld. He stated he says to the doctor that the injury "bothered me around my back and he put a bunch of plasters on my back." He further claims the doctor particularly examined his groin and looked at the injured member.

The following Sunday (January 7) claimant alleges he went to see Dr. Ficke, his "family physician." The doctor called his injury a "rupture" and told him to "come back the following Sunday." "He could tell for sure then." He says he went back and then the doctor told him it was a rupture, for which he should either get a truss or be operated on.

The workman returned to the foundry where he continued in service until March 27th. Says he "lost no time" in this interim, a period of nearly four months, when he went to the hospital and was operated upon for abdominal hernia.

A brother of claimant, William Paul, corroborates claimant to the extent of admitting that claimant submitted himself for examination to witness, and to another fellow workman. He didn't remember the date, but remembers the incident. He says his brother took down his clothes and showed his back; put his hand around there and said his back hurt. Says he showed him "where the leg and abdomen came together." Said it was "pretty small." "Just barely noticeable." He noticed the next morning that the testicle was swollen.

Clyde Hampton, testifying for claimant, said he did not remember whether or not he helped him do the lifting at that time, but that "I always have to help him." Witness did not seem to be at all certain as to swelling of the groin. He believes it was swollen. Didn't remember whether it was in January or March. Swelling was "just enough to notice." Said claimant complained of his back.

Claimant introduced no medical evidence.

Neither of these friendly witnesses corroborate claimant as to swollen condition of testicle.

Dr. Frank Neufeld was called by defendant. He testifies that Walter Paul came to his office January 2, 1923, as he testified. Said he had been lifting and got a kink in his back. "I examined his back and strapped him and put on some adhesive plaster." Claimant had testified in detail and repeatedly as to Dr. Neufeld examining the groin and testicles. Dr. Neufeld positively says he made no such examination because there was no reference made to it. Denies that he told him he should either wear a truss or be operated on. Asked in case of rupture: "Is it accompanied by a pain in the back?" The answer was "No."

Dr. E. O. Ficke testified for defendant. He is the family physician to whom claimant referred. Says he saw claimant January 14, 1923. That would be twelve days after the alleged accident. Claimant says it was six days. Asked: "What was his trouble then?" The doctor said: "Came down there complaining of a little headache and a little pain in the small of the back, etc., and "he had a redundant scrotum at that time and I advised him to get a suspensory." Asked if there were any indications of hernia, the doctor said he made no particular examination for hernia. He says a great many people have a redundant scrotum which he termed a "healthy scrotum." Said he had no scrotal hernia at that time. Says the first time he knew claimant had a hernia was the 25th of March, when he found a left inguinal hernia and advised him to see a specialist. Did not know how long standing this hernia was, but thought of a few days, concluding: "This showed a new hernia to me."

It is possible that the hernial operation late in March was due to injury as alleged the 2nd day of January, but the claimant has by no means met the burden of proving this fact. His own testimony is so loose and rambling and disconnected and contradictory as to discredit all statement of fact he makes. In view of the nature of this evidence, it is not within the bounds of credence to assume that he is at all accurate or reliable in his statements relating to examinations by Dr. Neufeld. He testified to great pain and a greatly enlarged testicle. He further says Dr. Neufeld made strict examination of that source of trouble, while Dr. Neufeld positively declares he made no such examination because no reference was made to it at the time. He merely treated him by strapping up his back with adhesive plasters, which met the only source of complaint made by claimant.

Claimant's statements are grossly inconsistent with those of Dr. Ficke, the so-called family physician. In the testimony of Dr. Ficke we find substantial support to the impression given by other evidence that the hernia operated upon the 27th of March arose from circumstances entirely removed from the alleged accident or incident of January 2nd. The doctor advised claimant to wear a suspensory. The voluntary statement: "I had some old ones laying around that I wore for a few days afterward" may have some significance, by no means affirming the alleged source of the scrotal trouble.

Claimant was not represented by counsel at the review hearing. Only a few minutes before the hearing opened a letter was received from the firm of Cook & Balluff, stating that it would be impossible for any member of the firm to be present at the hearing, and the only brief or citation submitted by this letter for consideration and review were nine cases appearing in our department reports for 1918, 1920 and 1922. Refreshing our memories as to these decisions, it is apparent that they do not commit this department to an award in a hernia case such as is submitted in Paul vs. Franks Foundry, Corporation.

The arbitration decision is reversed.

Dated at Des Moines, Iowa, this 21st day of October, 1924.

Seal.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA—NOT ARISING OUT OF EMPLOYMENT

John R. Megonigle, Claimant,

vs.

Waterloo Gas Engine Company, Defendant.

McCoy & Beecher, for Claimant;

Pike, Sias, Zimmerman & Frank, for Defendant.

In Review Before the Iowa Industrial Commissioner

In arbitration at Waterloo, October 30, 1923, it was found that the claimant had failed to discharge the burden of proving that the hernia from which he seeks recovery resulted from injury arising out of and in course of his employment by defendant.

Claimant alleges that while in the employ of the defendant, Waterloo

Gas Engine Company, in the year 1920, he sustained an injury resulting in hernia which has culminated in total permanent disability. He was unable to state the day, the week or the month in which any incident of employment produced his said injury.

In the application for arbitration the injury is alleged to have occurred on or about May 15, 1920. Claimant testified (Abstract p. 11) that he thought it was "sometime in February, 1920." Later, he testified "I think it was in the month of March." (Abstract p. 25).

Megonigle says he thinks he told foreman Searles and that Searles said nothing about his going to the company doctor. It seems in evidence that claimant was sent to the company doctors a number of times when he had an injured toe, when he was treated for constipation, when he complained of cold and sore throat, and again for cold, constipation and sore mouth. But both company doctors testify positively that he never mentioned any injury arising out of employment.

Examination on August 30, 1920, by Dr. Acker discovered hernia, but claimant did not hint at any injury as the cause of this hernia. At this time and at times subsequently claimant was offered an operation by the employer without in any measure admitting liability or as having had any notice of any injury whatever. In any event, this date was beyond the ninety day limit of legal notice of injury.

D. M. Searles, foreman of the department in which claimant was employed, and to whom he claims to have given notice of injury, positively testifies that no such notice was given.

There does not appear in this record any credible evidence of notice or knowledge on the part of the employer of any injury whatever as alleged for three years or more after the alleged date of alleged injury.

While the Iowa law would not seem to erect any bar in the way of legal time limit to the bringing of compensation action, it should be understood that three years or more of delay in bringing such action is distinctly suggestive of prejudice and bad faith, and particularly when it is sprung as a surprise, as is doubtless the fact in this case.

The story of claimant is practically without corroboration. It is substantially lacking in the elements of inherent probability. Scrutiny of the record justifies the allegation of defendant that Megonigle is untruthful and that his testimony lacks the imprint of credibility. The support so vitally necessary in cases of such tendency on the part of a workman is wholly wanting in this case.

The arbitration committee was abundantly justified in its denial of award, and the arbitration decision is therefore affirmed.

Dated at Des Moines, Iowa, this 23d day of January, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

INTERMITTENT EMPLOYMENT—AWARD FOR DEATH

Margaret Pfister, Claimant,

vs.

Doon Electric Company, Employer,
Fidelity & Casualty Company of New York, Insurer.
Deacon, Sargent & Spangler, George C. Gorman, Riniker & Thomas, for Claimant;
Snyder, Gleysteen, Purdy & Harper, Harvey H. Hindt, for Defendants.

In Review Before the Iowa Industrial Commissioner

In the arbitration proceeding at Doon, May 8, 1923, additional arbitrators were waived and the case was by stipulation submitted to Deputy Commissioner, Ralph Young, with rights of appeal reserved to litigants. The arbitration finding was for claimant.

In the employ of the Doon Electric Company on June 27, 1922, John F. Pfiister, husband of this claimant came to his death by an electric shock while doing pole work.

The deceased was regularly employed by the Western Electric Telephone Company as manager of its plant and business in the town of Doon. It would appear that because of the fact that his regular employment did not require all his time Pfister was disposed to increase his modest earnings by using his unoccupied hours in other employment.

The Doon Electric Company is a local enterprise having no power plant of its own and operating through energy supplied from an outside distributing center. Affairs of management were in charge of C. R. McDowell, a local banker. He was entirely unfamiliar with technical requirements of electric construction and operation. The only available expert in this technical field was John F. Pfister, hence an engagement mutually advantageous developed between these parties. The record shows it was understood that Pfister was to be in charge of and actually perform all skilled or technical work required in the maintenance of the service plant of the Doon Electric Company. It would have been much less difficult to fill the position held by McDowell than to supply from another source the service rendered by Pfister. Neither devoted a large share of working time to his employment with the Doon Electric Company.

Defendants deny that the deceased, John F. Pfister, was at the time of his accidental death in the employ of the Doon Electric Company, but that if he were, his employment was in its nature either casual or under the usual terms of independent contracting. By the testimony of McDowell and otherwise a contract of employment is definitely in evidence.

Webster defines "casual" as "happening without design and unexpectedly." There was definite design in each act of service rendered this defendant by the deceased. Nothing in the line of his service came unexpectedly, but was planned and performed under specific arrangement.

In a New Jersey decision, *Sabella vs. Brazelerio*, 91 Atl. 1032, appears this exceedingly significant language:

"The ordinary meaning of the word 'casual' is something which hap-

pens by chance and an employment is not casual—that is, arising through accident or chance—where one is employed to do a particular part of a service recurring somewhat regularly with the fair expectation of its continuance for a reasonable period."

Surely, the deceased was employed to do "a particular part of a service recurring somewhat regularly, with the fair expectation of its continuance for a reasonable period." As a matter of fact he supplied all the technical skill and performed all expert service required by the Doon Electric Company from the time of his engagement until his untimely death as a sacrifice to its continuing function.

In Schneider's "Workmen's Compensation Law," page 159, it is declared:

"The question to be determined, in deciding whether one is an independent contractor or an employee, are: 'Who has the general control of the work? Who has the right to direct what shall be done? Who shall do it and how it shall be done? If the answer to these queries shows that this right remains in the employer, the relation of the independent contractor does not exist between the contractor and the employer."

Clearly, the general control of this work was vested in McDowell, who had the absolute right to direct what should be done.

In Bradbury, Third Edition, at page 133, based upon numerous decisions, it is held that:

"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."

Pfister did not contract to do a specified work. McDowell says, Abstract 11: "He was employed to take care of any installation work or connections as to the consumers." In the very nature of the case this arrangement was very indefinite as to specified performance. No essential element of independent employment is revealed in this record.

The contention of defendant that no direction or instructions were given to the deceased "as to the manner or method of doing the work" is based upon the fact that the manager could not have given this direction since he was entirely lacking in technical knowledge required for such instruction. If this situation shall be deemed as significant, any workman in the performance of a technical service beyond the knowledge of his employer might be deemed as excluded from compensation benefits. Surely, a ridiculous proposition.

The service of Pfister while occupying no considerable proportion of his time was vital to the Doon Electric Company. The exercise of his skill saved this corporation from the employment of a man on full time or from the necessity of importing a man upon every occasion where technical skill was required in the operation of its electric service. Counsel admits deceased did this work "as the occasion arose." How much he did is not important. He did all there was to do "as the occasion arose" upon call of McDowell.

To say that a man so important to the activities of a service corporation shall frequently expose himself to extreme hazard in promoting its

interest and be deprived of compensation benefits is wholly unreasonable not to say fairly grotesque. The record clearly establishes a contract of employment between the president and manager of the Doon Electric Company and John F. Pfister which discloses that under this contract Pfister performed intermittent but continuing service as occasion required under the general authority and direction of C. R. McDowell. It further shows that in the performance of duty arising under his contract, Pfister lost his life in the employ of the Doon Electric Company.

The fact that the deceased did occasional odd jobs of expert work for individuals does not tend in any degree to relieve the Doon Electric Company from its plain obligation under its valuable contract with John F. Pfister.

The arbitration decision making an award to the dependent widow, Mrs. Margaret Pfister, is abundantly justified by the record and is accordingly affirmed.

Dated at Des Moines, Iowa, this 30th day of July, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

OCCUPATIONAL DISEASE NOT COMPENSABLE

Charles Sample, Claimant,

vs.

Consumers Twine & Machinery Company, Employer, and Ocean Accident and Guarantee Corporation, Insurance Carrier.

C. R. Metcalfe, for Claimant,

Jepson, Struble & Anderson, for Defendants.

In Review Before the Iowa Industrial Commissioner

This action is brought to secure the payment of compensation alleged to be due on account of alleged disability sustained by Charles Sample in the employ of these defendants in the month of June of the year 1919. Almost three years elapsed before application for arbitration was filed. By agreement between the parties the case was submitted in arbitration to Ralph Young, Deputy Industrial Commissioner, other arbitrators being waived.

Under date of May 19, 1923, decision was filed, holding that: "Although traceable to the employment, as the record would seem to disclose, the claimant's ailment was of gradual development and comes within the classification of occupational diseases."

Controversy exists as to whether or not the employer had notice or knowledge of any injury, as alleged, having at any time arisen out of this employment.

Scrutiny of the record is not reassuring as to any substantial measure of disability having arisen out of and in course of employment of Charles Sample by the Consumers Twine & Machinery Company.

However these issues might be decided, the case is vitally weak in its development as to the compensable character of any injury that may or might have been sustained in this employment.

In the manufacture of binding twine by this employer, the process included treatment of this product with various chemicals and materials for the purpose of preventing damage to this binding twine on the sheaf by insects which might otherwise destroy its usefulness. It does not definitely appear whether the purpose of these chemicals is to poison or merely to make the binding twine distasteful to the marauding insects. Claimant alleges that the effect of these chemicals, with which he came in contact continually during his day's work, was to produce a rash, affect his eyesight and otherwise promote disease and disability. There is support to this allegation as to more or less of such effect as alleged.

On page 19 of the transcript of evidence, however, Charles Sample testifies:

"Q. When did you first notice any trouble of the kind you refer to? How soon after you started to work?

A. I was there about three days before I noticed any breaking out; on my hands first then on my face.

Q. In other words it seemed to be a gradual development of the matter?

A. Yes, sir.

Q. And you first noticed the breaking out about three weeks after you started to work?

A. Yes, sir.

Q. But you continued to work on?

A. I continued to work because I didn't think it amounted to much."

In paragraph (g) of subsection 7, diagraming the application of the words "injury" and "personal injury," it is provided:

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

There is manifest in this case nothing that can be classified as an injury. No incident of employment is submitted which indicates that as any specific instance anything happened in the nature of accident or injury. Such affection or disability as may have occurred came through days of contact with the offending elements, and is clearly within the classification of occupational diseases.

In *Hansen vs. Dickinson*, 188 Ia., page 733, our Supreme Court says:

"The manifest design of the General Assembly in providing that the term 'personal injuries' should not include a disease, was to eliminate occupational diseases; that is, those which are incidental to or result from the occupation in which the employe is engaged."

This statement snugly fits physical developments in the case at bar.

In its biennial report for 1920, on page 15, in pleading for statutory coverage, this department outlined its conception of occupational diseases:

"The Iowa Compensation Statute provides that the word '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 goes 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."

No clearer interpretation of this subject can be made by the writer of this opinion.

In alleged support of his contention counsel for claimant cites *McCauley vs. Imperial Wollen Company*, et al., 17 N. & C., 883.

In this case the workman died from the effects of anthrax, the germ of which evidently entered his body through a scratch or abrasion, assumed to have been sustained in employment. The finding for claimant in this case is based upon this logical reasoning:

"Here the underlying findings show sufficient evidence of the kind just mentioned to sustain the ultimate, or controlling, findings made by the referee, to the effect that the scratch upon the neck of James McCauley occurred during the course of his employment, and at that time the anthrax germ entered the body of deceased, subsequently causing death. On these latter findings, the referee was justified in concluding that McCauley died as the result of an injury by accident while acting in the course of his employment, and hence that claimant was entitled to compensation."

On page 885, the court further says:

"The complaint from which McCauley died can be traced to a certain time when there was a sudden or violent change in the condition of the physical structure of his body, just as though a serpent, concealed in the material upon which he was working had unexpectedly and suddenly bitten him."

The death of McCauley was traced directly to the scratch upon the neck which afforded entrance to the anthrax germ. Here we have definite injury as the basis of the McCauley claim. Compensation authorities and the courts could not escape from the conclusion that the death arose out of and in course of employment because of injury inflicted in employment.

So it occurs that the only citation submitted by claimant in its interpretation of occupational diseases is absolutely decisive in directing the defeat of his contention.

The arbitration decision of the Deputy Industrial Commissioner is affirmed.

Dated at Des Moines, Iowa, this 13th day of September, 1923.

Seal A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

AWARD FOR INJURY WITH RHEUMATIC COMPLICATIONS

Ernest C. Newman, Claimant,

vs.

Jacob E. Decker & Sons Company, Employer,
Georgia Casualty Company, Insurer, Defendants.
Bess Swenson, for Claimant,
Blythe, Markley, Rule & Smith, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration May 9, 1922, the committee found that Ernest C. Newman was entitled to the sum of $10.38 a week for a period of fifteen weeks for disability resulting from injury December 23, 1921, in the employ of Jacob E. Decker & Sons Company, at Mason City.

Defendants resist this claim chiefly on these grounds:

Some six years prior to the accident in evidence claimant sustained some measure of impairment of complete function of his right foot in an attack of rheumatism. Icing a refrigerator car, a bucket of ice weighing some seven hundred pounds so injured his right foot as to promote substantial disability. It is contended that the disability resulting is due to the rheumatic impairment and not to the icing incident of December 23, 1921.

A settlement was affected between the insurer and this claimant on the basis of an operation afforded by defendants, no compensation payment to be made.

The record indicates that for years subsequent to the rheumatic trouble this workman was able to make a full hand at all times at farm work; that he played ball and otherwise gave evidence of ample physical capacity, losing no time from any degree of physical impairment.

The allegation of Newman as to the injury of December 23rd and the disability following is not disputed. It may be true that the measure of disability would have been smaller but for the rheumatic infliction, but if established this fact cannot be plead in mitigation of compensation payment since the disability at this time and to the extent shown is distinctly chargeable to the incident which interrupted earning capacity —manifestly the injury of December 23rd.

The contract plead as a bar to compensation payment has no place in this record. The workman signed, according to the testimony of a representative of the insurer, because he was informed that he was not entitled to compensation because of the previous disability, but this contract provided for the surgical operation necessary. This statement was wholly unjustified by statute, and in fact censurable on the part of the insurer.

In any event, the workman could not sign any binding agreement without the approval of this department, and the approval of this department could not bar him from any measure of relief provided by law upon conclusive showing as to his right to further payment.

To the injury of December 23, 1921, is due all loss of earnings involved, for without such incident no loss of earnings would have occurred. The extent to which a pre-existing cause may have contributed to the measure of disability is not important since it was not the proximate cause of such disability.

WHEREFORE, the decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 26th day of January, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

SPINAL TROUBLE HELD NOT TO HAVE ARISEN OUT OF EMPLOYMENT

R. D. Park, Claimant,

vs.

Quaker Oats Company, Employer,
Employers Liability Assurance Corporation, Insurance Carrier.
Will L. King, for Claimant,
Carl F. Jordan, for Defendants.

In Review Before the Iowa Industrial Commissioner

November 1, 1921, there was filed in this department an application for arbitration in this case on the part of the claimant.

In this application it was alleged that plaintiff received an injury in the employ of the defendants arising out of and in course of his employment at Cedar Rapids on or about the 11th day of October, 1921. Said injury, it was alleged, resulted in "curvature of the spinal column, caused by lifting one hundred pound sacks of chicken feed and other mill products while working in the capacity of piler and trucker."

The arbitration finding on December 20, 1921, was for defendants.

Application for review was filed at a date without the limit fixed by law for such proceeding.

The file in this case discloses correspondence from various parties at Cedar Rapids alleging mistrial at the arbitration hearing and strenuously urging a reopening.

Yielding to these appeals the department was disposed to reopen the case contrary to the regular course in such cases made and provided. Advice of the Legal Department of the State justified this proceeding. The Industrial Commissioner directed the committee of arbitration to reconvene, with orders to proceed to a new hearing.

The defendant insurer resisted this procedure to the limit of ingenious legal strategy, but all available expedient was finally exhausted and the case again went to arbitration.

The committee reconvened November 9, 1922, for the purpose of taking the testimony of Dr. Arthur Steindler, Professor of Orthopedics of the State University.

July 9, 1923, the third and final hearing was held by the arbitration committee, whereupon recovery was denied on the ground that in the several hearings "the claimant had failed to discharge the burden of proving that the disability for which he seeks recovery results from injury arising out of and in the course of his employment by the Quaker Oats Company."

It is observed that in the original application for arbitration it was alleged that existing disability was caused "by lifting one hundred pound sacks of chicken feed and other mill products while working in the capacity of piler and trucker" "on or about the 11th day of October, 1923." This statement was signed less than six weeks after the alleged accident when circumstances should have been fresh in memory.

At the first arbitration hearing, in the month following, R. D. Park confirms this statement. On page 12 of the abstract of evidence he says:

"Q. Can you tell the Committee in detail how this injury occurred, when you got your back out of joint, so to speak?
A. Why, first I felt it come on all at once.
Q. Were you standing still or lifting a sack?
A. Lifting. Loading the truck.
Q. Did this happen while you were in the act of lifting the sack?
A. Yes sir.

On page 13 claimant was asked:

"Q. What hour was it this injury took place?
A. Why, it was along about noon."

In the abstract of evidence taken at the final arbitration hearing, on page 16 appears this testimony:

"Q. Mr. Park, will you state to the Commissioner and the arbitrators here what happened to you during the month of August at the mill?

A. I was trucking 20 one hundred pound sacks, and I fell striking on my back while going over the iron plate."

Here was developed new dates and circumstances substantially different. Under the revised statement the accident occurred in the month of August, instead of October 11th. (Abs. p. 37). The sack lifting story is abandoned. As above, claimant fell striking on his back while going over iron plate. He was unable to get up "for five or ten minutes" (Abs. p. 52) but he kept on working until evening and told no one at the mill. (Abs. p. 18).

In this change of front the claimant gives substantial support to the contention of defendant that having admitted at the first hearing that he had laid up for three days on account of his back, prior to the date of alleged accident, (Abs. p. 18) a change of date was necessary, and that he also concluded that as the "fall" story was more suggestive of spinal injury than the "sack lifting," claimant had changed the facts to promote his chances of recovery.

To carry weight with compensation authority good faith on the part of the claimant must be established, and he must base his claim for award upon consistent and unwavering evidence. Herein this claimant has failed. It is impossible to reconcile his grossly conflicting statements. He has utterly failed to establish by competent testimony that the disability of which he complains was due to some specific accident or incident of employment. His statements relating to his alleged injury are utterly without corroboration and the element of inherent probability is distinctly lacking.

The utter lack of similarity between circumstance of injury detailed at the final hearing with the statement submitted near the time it is alleged to have occurred, strongly suggest the conclusion that no accident whatever occurred. That he could have been so badly injured as to be unable to arise after his alleged fall for a period of from five to ten minutes without anyone making the discovery, or without mentioning the matter to anyone, as he admits, is utterly inconceivable.

At the first hearing (Abs. p. 13) claimant says he "told some of the men he was working with" of his accident, and that he also reported same to his foreman, Bert Wagley, at five o'clock the day of the injury.

At the final hearing (Abs. p. 18) claimant says that he worked the day of the accident until five o'clock and "didn't tell anyone at the mill."

Bert Wagley, the foreman, (first abs. p. 47) says claimant never complained to him of having suffered an accident.

Albert Holmes, called in support of his claim, testifies in such a vague manner as to dates and circumstances as to give his testimony no value whatever.

Medical testimony in this record tends to discredit the contention that the spinal trouble from which R. D. Park suffers is due to accident, even if accident were established as alleged in the amended and substituted statements of the final hearing, but the claimant so utterly fails to sustain the burden of proving any accident at all that further consideration seems unnecessary.

It is observed that while at the first arbitration hearing there was a dissenting arbitrator, at the final hearing decision was unanimous.

It is the rule in compensation jurisdiction to deal sympathetically with the victims of industrial misfortune. This claimant is in a serous physical condition. He has a large dependent family. His situation appeals to human sympathy, but if the integrity of the law is to be maintained the burden of support of himself and family cannot be imposed upon his employer unless it is definitely established that his disability was caused by some accident or incident of employment. The burden is definitely upon the claimant, and in his endeavor to sustain the same he has signally failed.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 19th day of October, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

TUBERCULOSIS OF KNEE—DUE TO INJURY

Robert Guthrie, Claimant,

vs.

Iowa Gas & Electric Company, Employer,
Employers Mutual Casualty Company, Insurance Carrier.
Livingston & Eicher, for Claimant,
Miller, Kelly, Shuttleworth & McManus, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Iowa City, September 6, 1923, it was found that the Iowa Gas & Electric Company is held in payment to this claimant for total disability from March 15, 1919, during such disability, still total in character.

Robert Guthrie was unable to appear at the arbitration hearing because of his serious physical condition. While not in the record, it is a matter of common knowledge he has since died.

Stipulation made a part of this record is substantially to the effect that if present, Robert Guthrie would testify that while in the employ of this defendant in March of 1917, a hod of brick struck him forcibly on the left knee inflicting painful injury; that from and after this date he intermittently suffered pain more or less intense; that during the

remainder of the year 1917 and during the year 1918 and the year 1919, until about August 16th, he was able to work only about half time; that prior to this injury he was in good health and continuously engaged in heavy manual labor, and had no physical ailment that disabled him or prevented him from such employment. Furthermore, that one J. E. Tuttle, then residing in Washington, Iowa, was at the time of this accident general superintendent and employing officer of the defendant herein and in charge of the construction of the building on which claimant was employed.

Further on in the arbitration record it is conceded that J. E. Tuttle, referred to in a previous concession in this case, if personally present and testifying, would testify that he knew that the claimant, Robert Guthrie, did receive what Mr. Tuttle supposed at the time, a slight injury on the knee helping hoist brick at the Iowa Gas & Electric Company's office building; that he knew of his own personal knowledge that the claimant had received such an injury and that he had this knowledge on the same day the injury occurred.

Dr. E. T. Wickham attended this claimant at the time he became unable to perform further service in the year 1919, and for some time thereafter.

On the basis of the history of the case as given him by the claimant and as hypothetically submitted to him before the arbitration committee, Dr. Wickham expressed the opinion that the disability for which claimant seeks to recover is due to the injury of March, 1917.

Dr. Arthur Steindler, Professor of Orthopedic surgery, at the University of Iowa, examined this claimant in March of 1920, and for some time afterward he was under his professional observation.

Replying to a hypothetical question, Dr. Steindler said to the committee: "I should think that the injury could be considered as a contributing factor to the tuberculosis of the knee."

This tubercular infection resulted in amputation of the injured member.

As a bar to this action defendant plead limitation of two years fixed by statute in personal injury cases under the law of damage. This department has held and still holds that this limitation does not apply in Workmen's Compensation jurisdiction. It might be admitted that such limitation should exist. But this has nothing to do with department duty under existing circumstances.

It seems grossly inconsistent with prudent procedure that this action should have been brought nearly five years after the date of injury as alleged. Nevertheless, the case bears the imprint of good faith, and because of peculiar circumstances there would seem to be some measure of mitigation for this extraordinary delay. In any event, the case is here and properly triable upon its merits.

It is contended by counsel that claimant has utterly failed to submit a preponderance of evidence in accordance with legal requirement in support of his claim.

The testimony of Robert Guthrie, as appears in stipulation, is undisputed. Since no evidence appears in the record to contravert the same, it must stand substantially in support of recovery.

While the testimony of the son and daughter submitted to the arbitration committee is strenuously questioned by counsel, their statements of fact in support of this claim are unopposed by contradiction in evidence.

The testimony of several witnesses is to the effect that each for himself as representatives of the employer denies notice or knowledge of the injury in question. But of what significance is such evidence in view of the testimony of the General Superintendent, J. E. Tuttle, that he knew of his own personal knowledge of the accident upon which this case is founded?

How much weight of evidence is required to create a preponderance when nothing is in evidence to oppose affirmative declaration?

Honnold on Workmen's Compensation, at page 464 says:

" 'By a preponderance of the evidence' is means 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 workman 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."

Due to long delay this case lacks in some elements of vital force, but these significant facts are undisputed.

1. An accident more or less serious and painful actually happened as alleged.
2. The employer, through his superintendent, had definite knowledge of this accident.
3. From and after the injury as alleged in March of 1917, until about the middle of August, 1919, claimant was unable to work more than half time, and thereafter was wholly disabled.

These undisputed facts, together with other direct or circumstantial evidence support the vital theory of inherent probability. They clearly place in this record a preponderance of the evidence in favor of recovery.

WHEREFORE, the award of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 19th day of October, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

EXTENT OF DISABILITY—COSTS OF SUBROGATION ACTION NOT TO BE DEDUCTED FROM JUDGMENT

C. H. Quenrud, Claimant,

vs.

Ingvolstad Lumber Company, Employer,
London Guarantee & Accident Company, Insurance Carrier.
W. S. Hart and E. W. Cutting, for Claimant,
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

May 4, 1922, an arbitration committee at Decorah decided this work-

man to be entitled to 200 weeks of compensation for injury totally disabling him, and for 50% of total disability for the remainder of the term provided by law in such cases, upon the basis of fifty per cent earnings established at $12.50 a week, deducting $500.00 secured in court judgment as damages for personal injury.

While driving a coal wagon on the afternoon of March 25, 1916, the horse drawing the vehicle, frightened by escaping steam from a passing tractor, plunged to the side of the street throwing claimant to the ground, in which accident he sustained injuries including dislocation of right elbow, joint fracture of ribs, fracture of shoulder blade and sundry bruises, and injuries to other parts of his body.

A damage case was brought against the town of Decorah, pending which claimant declined to consider settlement with the defendant insurer. In final adjudication a judgment was secured by claimant in the sum of $500.00.

Upon the basis of testimony appearing in the arbitration record, the committee would seem to have been justified in its decision in this case.

Since the date of arbitration a good deal of time has been consumed in controversy over the extent of disability and ways and means for arriving at just conclusion relative thereto.

By agreement between the parties concerned, C. H. Quenrud was examined by Dr. O. J. Fay, Medical Counsel for this department, on September 1, 1923. In his report of said examination to the department Dr. Fay estimates disability "not to exceed seventy-five per cent of total disability." This estimate was upon the basis of thorough examination by himself and a report from Dr. F. M. Ely, to whom claimant had been referred for further examination.

Counsel for the defense submits extended and impressive argument as to causes why defendants should not be held in payment to the limit of disability established in evidence. It is plausibly alleged that the condition of claimant is much more serious and disabling because of mental anxiety and disturbance involved in his long litigation with the city and other attendant circumstances and conditions tending to a neurotic state of mind and to consequently debilitated physical condition.

Giving credence to much of this reasoning would not seem to justify the Commissioner in losing sight of the controlling factors in this case.

Quenrud sustained very serious injuries. His right to appeal for damages against the city can hardly be questioned, and he was doubtless acting under legal advice in declining compensation settlement while this suit was pending.

Any measure of disability that may have its origin in the worries caused by the law's delay is impossible to estimate, and if such estimate were possible, the process of deducting such measure of disability from the substantial situation otherwise involved could not be justified. Any disability now existing is due to the accident of March 25, 1916.

It is the view of this department that under the statute the sum of any judgment secured in subrogation proceeding must be deducted from such measure of compensation as may be awarded, hence the demand of claimant for the deduction of costs of litigation from the $500.00 of court award must be denied.

Since evidence in the record so well sustains the decision of the arbitration committee, and this record is so distinctly justified by Doctors Fay and Ely, the arbitration decision is hereby affirmed.

Dated at Des Moines, Iowa, this 31st day of October, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

NON-RESIDENT ALIEN DEPENDENCY—RIGHT TO PROSECUTE—METHOD OF COMPUTATION

Anton Bartholomy, Consul for France, Acting for Freda Mike, Alien Dependent of George Mike, Claimant,

vs.

The Quaker Oats Company, Employer, Defendant.
H. E. Spangler, for Claimant;
Carl F. Jordan, for Defendant.

In Review Before the Iowa Industrial Commissioner

In this case it is not disputed that George Mike in the employ of this defendant lost his life April 16, 1921, as arising out of and in course of his employment.

It was found in arbitration July 25, 1923, that the deceased left surviving him, his wife, Freda Mike, and Michael Mike, a minor son, both qualifying as total dependents within the meaning of the act, and both residing in Syria, and holding this defendant in payment for the sum of $15.00 a week for a period of 300 weeks, together with costs of action.

Defendant alleges error on the part of the Deputy Industrial Commissioner, sole arbitrator by stipulation:

1. Regarding the existing treaties between the United States and Turkey and permitting the Consul for France to prosecute the action before the Industrial Commissioner.

2. In regard to the holding for maximum weekly payment.

It is held by the Industrial Commissioner that existing treaties affords jurisdiction in this case and that Antonin Bartholomy, as French consul is the proper representative of this claimant.

Defendant contends that payment should be upon the basis of total earnings for the year preceding the injury, divided by 52 weeks.

Claimant contends that the actual number of full days the deceased put in during the year specified was 266, claiming that the earnings for the year should be divided by that number, the quotient multiplied by 300, and that result divided by 52 weeks. The year's earnings is shown to have been $1,227.32 with the proper inclusion of the sum of $111.39 which was paid as an earned bonus for faithful and continuous service under arrangement previously made with the deceased by the company.

It is held that the method of computation urged by the claimant is correct, and that the weekly rate of compensation is the statutory maxi-

mum of $15.00. It is apparent, however, that if 283 days were to be substituted for 266 days in line with defendant's argument, the weekly rate of compensation would be only one and one-half cents less than $15.00.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 9th day of November, 1923.

Seal A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. No appeal.

COACHING SCHOOL PLAY—AWARD

Mrs. Laura Mitchell, Claimant,

vs.

Emmetsburg Independent School District, Employer,
London Guarantee & Accident Company, Insurer.
Kelleher & Mitchell, for Claimant,
Chandler Woodbridge, for Defendants.

In Review Before the Iowa Industrial Commissioner

Defendant appeals from the decision of an arbitration committee at Emmetsburg, September 28, 1923, wherein it is held:

That Laura Mitchell suffered personal injury on the 26th day of May, 1921, in the course of and arising out of her employment by the Emmetsburg Independent School District resulting in total disability for a period of twelve weeks, and 50% partial disability for ten weeks.

The record discloses that in the spring of 1921 claimant was engaged by the Superintendent of the Emmetsburg Independent School District to "coach what was known as the Senior play." It was understood that the engagement would continue until the night of graduation of the Senior class, culminating in a public entertainment. This engagement was assumed to cover a period of about three weeks. In fact, it was a little longer.

On the afternoon preceding the evening entertainment at the close of a dress rehearsal, while leaving the Opera House, Mrs. Mitchell stepped on an air register in an aisle, which gave way, resulting in injury quite serious to the left leg of claimant, injury upon which this claim is based.

Defendants contend:

1. That the employment of this claimant was casual.
2. That this claimant was engaged in independent employment.

Was this employment casual?

Webster defines "casual" as "happening without design and unexpectedly, coming without regularity, occasional."

In *Sabella vs. Brazelerio*, 91 Atl. 1032, the Supreme Court of New Jersey gives this striking definition:

"The ordinary meaning of the word 'casual' is something which happens by chance, and an employment is not casual—that is, arising through accident or chance—where one is employed to do a particular part of a service recurring somewhat regularly with a fair expectation of its continuance for a reasonable period."

In California and Connecticut, and perhaps in other states, an arbitrary rule has been established to the effect that employment of less than ten days is casual, and more than ten days is not casual.

It has been frequently suggested that the meaning of the word "casual" may be more clearly understood by referring to its antonyms which are "regular," "systematic," "periodic," and "certain."

It would appear that the employment of Mrs. Mitchell did not "happen by accident or chance." The record would indicate that this class play training is regular, systematic, periodic and certain. It occurs regularly, periodically and certainly every year. While it is not employment continuing during the year, it is of such duration and of such character as to take it out of the casual class.

Was this claimant engaged in independent employment?

The right to supervise, control and direct on the part of an employer is not consistent with independent employment. The right to control and the right to direct may exist without conspicuous exercise of such right. If the right exists, the principle is established. Regardless of the extent to which this right was exercised by the superintendent of the Emmetsburg Schools, he had the undoubted right to supervise, control and direct the work of this claimant during her engagement with the school district. To be sure, he looked to Mrs. Mitchell chiefly for results, but it was within his right and duty to so far control the situation as to secure satisfactory results from the employment of this claimant.

In argument counsel admits the engagement of Mrs. Mitchell "was for no certain period, but for the length of time she would find necessary to perform this service."

This statement is consistent with the record and is held to support, rather than to discredit, the theory of compensable relationship.

There would seem to be no argument against this claim in the insistence of counsel that the claimant was engaged in "a professional line of work." Her work is profession, perhaps, but no more professional than that of the vocational teacher, the playground teacher, or others rendering professional service whose right to compensation admits of no question. The attempt to classify her with physicians, dentists, lawyers and ministers, is decidedly unfortunate, for there is no analogy whatever in the situation.

This is not held to be a case unquestioned in its compensable character. It is admitted to be rather of the borderline order, but, considering all the elements of relationship, equity would seem to abide with Mrs. Mitchell in her claim against the Independent School District of Emmetsburg, and the law would seem to afford coverage to this employment.

The decision of the arbitration committee is affirmed, and defendants are held in payment to claimant in the sum of Two Hundred Twenty-five Dollars ($225.00) as compensation, together with all other statutory charges.

Dated at Des Moines, Iowa, this 23d day of November, 1923.

Seal A. B. FUNK,

No appeal. *Iowa Industrial Commissioner.*

DILATED HEART—DEATH DUE TO INJURY

Amanda Webb, Claimant,

vs.

Iowa-Nebraska Coal Company, Employer,

Integrity Mutual Casualty Company, Insurance Carrier.

Clarkson & Huebner, for Claimant,

H. W. Raymond, for Defendants.

In Review Before the Iowa Industrial Commissioner

October 16, 1923, an arbitration committee sitting at Lucas, Iowa, found for this claimant in an award of $15.00 per week for a period of 300 weeks.

On the 3rd day of March, 1923, in the employ of this defendant, William Webb, husband of this claimant, sustained serious injury. March 21st following, the workman died. It is contended by defendant that the death of William Webb was due to causes other than his injury of March 3rd.

On the date in question, the deceased was working with his son in a mine operated by the defendant company. It appears from the evidence that while so employed a mass of rocky coal and slate fell from the roof of the mine room, striking the father squarely on the head. The testimony shows this mass to have been some eight or nine inches thick and weighing from ten hundred to fifteen hundred pounds.

Rescued from the crushing mass, the workman was found to be very seriously injured. The shock would seem to have rendered him unconscious for a few moments. He was even thought to be dead. He soon rallied, however, and was carried to the surface, placed upon a stretcher and conveyed by automobile to his home. The testimony shows that the workman had a very severe chill, continuing for some time after arrival at home. Apparently, no bones were broken, and Dr. Bell, the attending physician, evidently expected early recovery, though the workman was suffering intensely much of the time. He could not be moved without evidence of great distress, and he complained continually of pains in his back and leg.

An autopsy occurred under the direction of Dr. Daniel J. Glomset, a Des Moines pathologist of recognized skill and large experience. His deposition is a part of this record. Herein he definitely expresses the opinion that the death of William Webb was brought about by the injury he sustained March 3, 1923, although the final cause of death was dilation of the heart.

Defendant contends that the dilation of the heart developed in autopsy had no relation with the injury herein described. It is insisted that to assume that his death resulted from the injury is to indulge in speculation and conjecture to such an extent as to indicate failure on the part of the claimant in sustaining the burden of proof.

It would appear from the record that speculation and conjecture is wholly developed by the defendant and has no substantial basis in the facts related to this injury and death.

This claim had its inception in an injury of very serious character. The wonder is that the workman was not killed outright under that mass of coal and slate. The assumption that an injury of this character, followed by weeks of intense suffering had nothing to do with the death which occurred March 21st, in fact was a mere co-incidence in point of time with the injury in question, is so strained and unwarranted as to be unworthy of serious consideration. To deny compensation to this widow would be in this case utterly to defeat the just purposes of the compensation service.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 21st day of November, 1923.

Seal A. B. FUNK,

Iowa Industrial Commissioner.

Affirmed by supreme court.

MEMORANDUM OF SETTLEMENT ONLY TENTATIVE AGREEMENT

Mrs. Floyd Comingore, now Mrs. Verna Griffin, Claimant,

vs.

Shenandoah Artificial Ice, Power, Heat & Light Company, Employer,
Globe Indemnity Company, Insurance Carrier, Defendants.
Ferguson, Barnes & Ferguson, for Claimant;
Stipp, Perry, Bannister & Starzinger, for Defendants.

In Review Before the Iowa Industrial Commissioner

In the employ of the Shenandoah Artificial Ice, Power, Heat & Light Company, of Shenandoah, Iowa, on September 17, 1920, Floyd Comingore, husband of this claimant, sustained injuries through contact with an electric transmission line resulting in his death the day following.

As insurance carrier, the Globe Indemnity Company promptly proceeded to the performance of its obligation by the payment of $100.00 as medical, surgical, hospital and burial charge, and with the payment of $15.00 each week to this claimant.

On the 17th day of September, 1922, as appears in Claimant's Amendment to Answer, Mrs. Floyd Comingore through remarriage became Mrs. Verna Griffin.

Apprised of this fact some months later, the weekly payment of compensation was terminated under the assumption of the insurer that the statutes of Iowa in such cases made and provided released it from further obligation under its insurance coverage afforded the employer in this case.

Having notice that this claimant was still making claim against these defendants, and that she had instituted suit against them in the district court of Iowa, in and for Page county, the said defendants filed with this department February 15, 1924, as appears in our records, an application for hearing in this case, and requesting that an order be entered herein terminating said compensation as of the date of the remarriage of claimant.

Under date of March 5, 1924, counsel for claimant filed with this de-

partment a motion to require attorneys to produce or prove authority under which they appear for the Shenandoah Artificial Ice, Power, Heat & Light Company.

On the same date said counsel filed with the department Answer to Application of the Globe Indemnity Company resisting the defense of the Globe Indemnity Company on the ground that the case was pending in the District Court of Page county, and that said court had full jurisdiction in the premises.

July 3, 1924, notice was given to all parties concerned that on July 11, 1924, at 9 A. M. a hearing would be given by the Industrial Commissioner at the department upon issues involved in this proceeding.

At this hearing claimant filed an Amendment to Answer which appears as part of the records in this case.

As appears in our official records, there was filed with this department November 6, 1920, an instrument technically called a Memorandum of Settlement. In this instrument is given the date and cause of injury, the date of death, and the monthly earnings of the deceased; also the amount due as medical, surgical and hospital relief supplied. Opposite the printed words "Amount of compensation agreed upon" is inserted in typewriting "$4500.00."

It is the contention of claimant that under this instrument she is entitled to receive the sum of $4,500 notwithstanding any statutory bar that may exist as to remarriage. It is further contended that upon its approval by the Commissioner this settlement became absolutely binding upon the insurance carrier, whereupon the Industrial Commissioner lost jurisdiction to make any change in the terms therein set out upon the face of the language employed.

It is contended by the defendant insurer that the figures indicating $4,500.00 were inserted inadventently and through mistake on the part of the adjuster representing the said defendant.

Paragraph 1 of subsection (c), Section 2477-m16, Supplement to the Code of 1913, provides:

"* * * and 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 view of this definite statutory provision the question arises: Can any act of any party related to compensation settlement defeat the conspicuous legislative intent to deny compensation to a surviving widow without children in case of her remarriage? This is, in fact, the issue to be decided in this case.

It may be interesting to consider the requirements of practical administration in cases of settlement between an injured workman or his dependents and an employer or insurer held in compensation payment. In developing the record in each individual case it becomes necessary for the department to be advised:

1. As to the fact of injury or death;
2. As to the amount to which such workman or dependent is entitled under the law in weekly payments;
3. As to whether or not the obligation as to medical and burial charges is discharged;

4. As to whether or not the party liable is proceeding with statutory weekly payments.

The first requirement is met by the filing of an accident report by the employer. Further evidence is provided for in a blank furnished by the department, known as a Memorandum of Settlement. In all cases employer or insurer is ordered to file this Memorandum at the earliest practicable date, that is to say, as soon as obligation is accepted. The department specifically advises employers and insurers that they need not, must not wait until the limit of disability or the measure of obligation is fully determined. Otherwise files would be for months, and in some cases years, without evidence as to contemplated statutory relief being received by the injured workman or his dependents. In order to remove any apprehension of claimant, and to encourage the prompt filing of this instrument, the department has repeatedly broadcasted the information that the execution of these agreements does not bind any party in interest, except in so far as its terms may comply with the provisions of the statute, and that in case injustice is done in the amount of weekly payments, or the amount due in case of permanent disability, because of mistake or misconception, fault or purpose, no loss shall occur to any subscriber.

Suppose the agreement signed by these parties had fixed as the amount due this widow the sum of $3,500.00, instead of $4,500.00, and suppose the widow had not remarried, would not the admission of counsel's contention deprive her of $1,000.00 which the law definitely provides for her support?

The department has proceeded upon the theory that compensation requirement has its basis in substantial equity. In our reports and otherwise it has been our boast that the compensation statute is a foolproof law; that no workman nor his dependents need entertain any worry as to the danger of being deprived of the full benefits provided by law in case of error intentionally or otherwise; that the signing of no instrument, no matter what its terms, can deprive such workman or dependents of the full benefits in such cases made and provided. We have felt justified in affording widespread comfort to the victims of industrial accident by such counsel. If this rule applies to a workman or dependents, can it any less apply to any other party to such instruments in question. It is not necessary to assert the obvious that the law knows no distinction in its dealings with persons or classes.

Was it within the power of this insurance adjuster to mulct her company, to burden industry and to tax society with a charge from which the statute affords definite relief?

The alleged contract upon which this controversy is based is by the department given the title Memorandum of Settlement, with intelligent understanding as to the meaning of this word. In Webster we find this definition: "Memorandum. Law. A brief or informal note in writing of some transaction, or an outline of intended instrument." The intent of this memorandum is tentative and its purpose is for information. The practice of this department which insists upon correcting any errors

which it may contain is absolutely necessary to just dealing and efficient administration.

In Section 2477-m24, appears this mandatory provision relative to the approval of the Memorandum:

"Such agreement shall be approved by said Commissioner only when the terms conform to the provisions of this act."

The inference is plain that if the Commissioner has lent his approval to any agreement not in conformity with the statute, such approval is without force or effect.

The contention of counsel that the defendants knew of claimant's remarriage immediately thereafter, and that they "also knew that this plaintiff was claiming the right to enforce the said settlement in full" is untenable. Occasionally during her widowhood inquiry was submitted to her by the insurer as to whether or not she had remarried. Denial was made probably several times. As is shown herein, she remarried September 17, 1922. Twenty days later, under date of October 7, 1922, she wrote the insurer at Des Moines, as follows:

"As I have lost my position with the Electric Light Company and my only means of support now is the money I am receiving from the Globe Indemnity Company, would it not be possible for you to pay the compensation in a larger portion? I have not looked into the matter as yet, and will wait until I hear from you in regard to the matter.

Please let me hear from you as soon as possible."

Claimant signed herself Verna L. Comingore, concealing her legal name. This letter appears as Defendant's Exhibit 9 in this record.

It would appear from this communication that the attitude of innocence and intent, as expressed in pleading, is without substantial foundation.

The interests of the Globe Indemnity Company in this case are of minor importance. If ordered to pay a substantial sum in excess of legal requirement because of a blunder on the part of its representative, it can easily recoup itself in the readjustment of rates. Much more important is the interest of the Workmen's Compansation Service in the possible demoralization of its administrative policy, which is believed to be founded in substantial equity and demanded by efficient service to all concerned, and particularly to the workmen of Iowa and their dependents.

Hasty conclusion commonly considers compensation payment as a levy upon insurers or employers who, out of the abundance of their possessions are not supposed to need or deserve especial consideration. It ought to be understood that the public is the party most deeply concerned in such levy. Insurers could not continue stable; in fact, insurance companies could not exist if they did not collect from the insurer sums sufficient to meet all requirements of outlay for all purposes. Industry could not survive if it failed to take into consideration in its estimates all elements of expenditure involved in industrial enterprise. Just as much as interest on investment, cost of material, overhead charges and labor cost is insurance of all kinds added to the cost of operation. As in case of all other expenditure, it is added to the cost of production and becomes a charge upon the ultimate consumer.

In the authorities appears little in the way of precedent on either side

of this controversy. The contention of claimant, either as to the unalterable character of a Memorandum of Settlement, regardless of equity or justice, or as to the validity of a dependency claim absolutely barred by statute, has never been suggested in Iowa, and we search in vain for basis thereof in decisions of other jurisdictions.

Bearing upon the right to correct mistakes in instruments of agreement between an employer or an insurer and workman, however, we find this important reasoning applicable to this case by the Appellate Court of Indiana, in **Aetna Insurance Company vs. Shively, et al.**, 121 N. E. Rept. at page 50, and the Compensation Law Journal, Volume 3, at page 261. Quoting:

"(3) It results from what we have said that the mere fact that an insurance carrier is not a party to the execution of such an agreement as is involved here, or to a proceeding directed to its approval, does not invalidate it even as against such insurance carrier. It does not follow, however, that an employer and an injured employee, or dependents of the latter in case of his death, may, over the opposition of the insurance carrier, bind the latter by such an agreement, regardless of the good faith of the parties of the merits of the involved claim. Where such an agreement is the result of mistake, or is tinctured with fraud, or characterized by gross irregularity affecting substantial rights, or has no meritorious foundation in fact, or the like, we do not regard it as binding on the insurance carrier, either before or after its approval, as against a proper proceeding, seasonably made, to right the consequent wrong.

It has been intimated by this court (In re Stone, 117 N. E. 669), and we now hold, that in any proceeding pending before the board, involving either the determination or the administration of a claim, the board has the power, on the application of any interested party, including an insurance carrier, to vacate its own order, on application seasonably and diligently made, where it appears that any such order is the result of fraud, duress, mistake, gross irregularity, affecting substantial rights, and the like.

(8) The board is not expressly authorized to vacate an order approving such an agreement as is involved here. It is expressly authorized to approve such an agreement, fairly made, and conforming to the act. It necessarily follows that, as an incidental power the board is authorized to determine whether such an agreement was fairly made and whether it does conform to the act. But when the board's approval has been procured by fraud, or is the result of mistake or the like, and where as a consequence the agreement and its approval have no just foundation upon which to stand, it seems to us apparant that in any pending proceeding the board, as an incidental power, has a right to determine such fact, and, if found to exist, annul the order approving the agreement."

This opinion not only justifies the correction of mistakes in compensation agreements but supports our view that an order of approval of the Commissioner may be annulled by him in case of error or other lapse occurring that may work injustice.

It is the purpose of this department to act in effective sympathy with the spirit and purpose of the compensation statute. The law specifically says we shall not "be bound by common law or statutory rules of evidence or by formal or technical rules of procedure, but may hold such arbitrations, or conduct such hearings and make such investigations and inquiries in the manner best suited to ascertain the substantial rights of the parties."

We have held this to be a vital factor in the exercise of our commission, in building up a service and system best calculated to meet the demands of equity with due regard to the provisions of law.

It is held that Stipp, Perry, Bannister & Starzinger, as attorneys for the Globe Indemnity Company, are duly authorized to represent both employer and insurer in the action pending, hence Motion to Require Proof of Authority is overruled.

As prayed in defendants' application, the Memoranda of Settlement, dated November 6, 1920, is hereby vacated, and it is ordered that the right of compensation terminated as of the date of remarriage September 17, 1922. Furthermore, restitution by the claimant to the Globe Indemnity Company be made of payments made after remarriage, to-wit: October 9, 1922, $60.00; October 30, 1922, $60.00; December 2, 1922, $60.00; January 8, 1923, $60.00.

Dated at Des Moines, Iowa, this 11th day of August, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

OSTEOMYELITIS—DUE TO TRAUMA

Cecil Munson, Claimant,

vs.

Western Asphalt Paving Company, Employer,

United States Fidelity & Guaranty Company, Insurance Carrier.

Helsell & Helsell, for Claimant;

Farr, Brackney & Farr, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Fort Dodge, March 24, 1924, the committee found the claimant to be totally disabled as a result of an injury occurring on or about the 26th day of July, 1923, and accordingly, an award of $6.00 per week during the period of total disability was made.

At the time of the injury as alleged, the Western Asphalt Paving Company was executing a paving contract in the town of Clarion. Cecil Munson was in its service as water carrier. He testifies that at a date he cannot exactly identify, except that it was between the 20th and 26th day of July, 1923, while carrying a pail of water he stepped on a clod of dirt spraining his ankle and falling to the ground; that he did not experience much pain at the time and was able to work the rest of that day and for a day or two following, but that at the seat of the injury there soon developed such serious affection as to demand the services of a physician, and that since that time he has been totally incapacitated for all forms of manual labor.

The defendants insist that the injury, as alleged, is not sufficiently established, and that if it were, it does not afford substantial basis for the character of disability sustained.

The case actually hinges upon the question as to whether or not the accident as alleged occurred in the employment of these defendants.

There might be better proof of this fact, but such as there is seems to point in the direction of support to this claim.

We are impressed with the straightforward story told by this boy. For a youth only thirteen years old he is wonderfully self-possessed, and the evidence bears upon its face the suggestion of good faith and substantial veracity. The father and the grandmother of the boy testify consistently as to his limping the evening of the alleged injury and as to the progressive development of trouble resulting in total incapacity.

Arthur Rossman, called by claimant, testifies to certain circumstances in connection with the fall and subsequent conditions.

While admitting the narrow margin in favor of claimant, the Commissioner in review is not disposed to reverse the arbitration committee upon a question of this character where such evidence is submitted by the witness under scrutiny of the arbitrators.

Physicians in the case agree that the disability of Cecil Munson is due to development of osteomyelitis. There is disagreement among physicians generally as to whether or not osteomyelitis can be traced to traumatic experience. Compensation authorities have found for claimants in case of osteomyelitis alleged to be due to injury arising out of employment.

Without too much regard for technical medical opinion as to the origin of disability, it is common in compensation jurisdiction to hold that where a workman actually receives an injury in employment which is closely followed by disability, the injury in question is properly assumed to be the proximate cause.

In this case it is likely that the injury sustained would not have resulted at all seriously but for pre-existing physical conditions. It appears in evidence that this claimant was of low vitality; that while no disease really existed, his system was in such debilitated condition as to almost invite trouble. This fact affords no defense against this claim if it be found that but for the injury in question disability would not have been sustained at the time it occurred in this case.

Under the rule of greater probability, which must be exercised in such cases, it is found that Cecil Munson is entitled to recover.

WHEREFORE, the decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 8th day of August, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

TUBERCULOSIS—INJURY AS PROXIMATE CAUSE OF DISABILITY

Virgil B. Fraze, Claimant,

vs.

The McClelland Company, Employer,

American Mutual Liability Insurance Company, Insurance Carrier.

E. F. Richman, for Claimant;

Lane & Waterman, for Defendants.

In Review Before the Iowa Industrial Commissioner

At the arbitration hearing in Davenport, May 26, 1924, this case was submitted to the Deputy Industrial Commissioner, additional arbitrators being waived by counsel.

The finding in review occurred at this department before the Industrial Commissioner, September 10, 1924.

It would appear from the record that during most of the year 1923 claimant was in the employ of the defendant company. On the 28th of September, 1923, an oak door, nine feet high, twelve feet long and two and one-half inches thick was being transferred to an elevator. This process consisted in sliding the door on its edge. Workmen to the number of six or eight were assisting.

Claimant testifies that he had "his hands up, kind of balancing the door and it got away from them like and came over my way" * * * "By the time I got through I was back against the wall and it strained my chest."

In substance claimant states that the squeezing made him sore through the chest and kind of sick; that he kept getting weaker and sicker every day he tried to work, and that he finally got so bad he could hardly stay on his feet any more, when his foreman, Mr. Kerker, advised him to quit work and he went down to see Dr. Middleton, who put him to bed, where he remained for over a week, and has not been able to perform any labor since. The record shows this date to have been October 13, 1923.

Claimant testifies that he never was sick before except that he had a little touch of the flu in 1918 or 1919. He was not bedridden but was indisposed possibly a week, but the flu settled in his forehead and jaw.

Mary E. Fraze, wife of claimant, testifies that during their married life of thirteen years, she never knew her husband to lose a day from ill health aside from the time he had the flu. Following this, she says he had bronchial trouble of which he was relieved by Dr. Bendixen, of Davenport. At that time there was pus behind the bone in the forehead. After the injury, in October, 1923, she says he discharged pus in large quantities for a period of two and one-half or three weeks.

The deposition of Alvin Simmons, witness in behalf of claimant was taken at Columbus Junction, September 2, 1924, in the usual form. It went into the record at the review hearing. The wife of claimant is stepdaughter of this witness. He was employed by the McClelland Company at the time of the accident alleged, and states that he was taking a hand in the removal of the door at the time of the injury to Fraze. Says he was on the same side of the door with claimant when it occurred; that the "door started to tip over on our side and we tried to catch it and Fraze being the closest held up both of his hands and the weight of the door shoved him against the elevator entrance. He tried to hold it up but it was too heavy and the strain was too great and pushed him back. After we got it straightened up and in the elevator, he went back to his bench and laid down." He further states that after the door was loaded he went over to the bench where Fraze was lying down; that he said he was hurt in the chest; that his face was white; that he didn't do much work afterward. Witness says he has known claimant for fifteen years and his health was good. Never knew of him being unable to work.

On behalf of claimant the deposition of George Dykeman, of Moline, Illinois, was taken on the 6th day of September, 1924, and submitted at review hearing. Witness qualifies as inspector at the McClelland plant, in the fall of 1923. Knew Virgil B. Fraze by sight. Never knew his name before. Witness recalls that he was helping move down some oak and heavy pine doors. Recalls that one of them tipped as it was being moved; tipped against the fire wall. Says Fraze was helping with the door. He says he was working on the outside of the door while claimant was on the opposite side. Shortly afterward, as he testifies, he saw Fraze lying on his bench. He said he had hurt his side. About two or three days after he quit work.

Dr. George M. Middleton, of Davenport, was called by plaintiff. He says that on October 1, 1923, three days after the alleged injury, claimant came "to see me about an injury he suffered on September 28th, injury to his chest. * * * He complained of soreness about his chest and there was a little redness. He alleged he was struck by a door which fell over on him. * * * "I saw him again on the 3rd of October. He had a little more soreness, especially on breathing and I strapped his chest at that time with adhesive straps. * * * On the 9th he was complaining a little more about discomfort * * * in his chest; the upper right chest.

"Q. Did you have any occasion up to this time to make any particular examination of the condition of his lungs?

A. Not until that day. I did at the time he came in, of course, when he was first in, but there was no indication of any trouble then.

On the 9th, began to have, what we call, lung signs." * * * Evidence of trouble respiratory murmur; it wasn't normal. * * * He had mucus of some substance in his lungs.

On the 13th of October he had very definite signs of trouble in the lung and he had a temperature on that day of 102.1 degrees, and I sent him home to bed.

Dr. Middleton saw him every day or every other day at home until he left to go to Columbus Junction, about the 8th of November. "He was bedridden, excepting the last few days of that time he was able to walk about. He has never been able to work since I sent him home on the 13th of October." Asked as to the occasion of the disability, the doctor answers: "The occasion of his disability now is pulmonary tuberculosis." He said this condition is "due to an infection of the germs of tuberculosis in his childhood at some time."

"Q. I will ask you whether or not the injury which he received is a probable cause?

A. Well, you know, I couldn't very definitely tell you whether; of course, nobody could tell you whether that was definitely the cause of this living up the tuberculosis process in the lung, but there is a continuity of symptoms from the time he was struck until it went along and developed the first abscess of the lung within this tuberculosis.

Q. Where did this abscess occur with reference to the point which he assigned as the point of his injury, when he first came to you?

A. Directly under it."

In cross-examination the doctor recites considerably in detail the account given him by claimant on his first visit after the injury as to the circumstances connected with the removal of the door and how it fell over against him. He treated him for the abscess in the right lung, which was emptied by coughing. Upon inquiry the doctor stated that only in one case in 1,000 are adults infected with tuberculosis; they develop it.

"Q. Cases of traumatic tuberculosis, are they quite rare?

A. Well, now, I don't know any disease like traumatic tuberculosis. What you mean, I presume, tuberculosis that is lighted up by traumatism. For instance, in France, we had hundreds of thousands of boys who were gassed and shortly after that they developed tuberculosis, because the traumatism from this cause had devitalized the lungs just enough so the germs could get foothold. Your traumatic tuberculosis is, I presume, that starts from traumatism, has devitalized a part sufficiently for germs to get foothold and prevent nature from taking care of things normally."

In re-direct examination Dr. Middleton said the abscess which he treated claimant for would make one "suspicious of tuberculosis." In re-cross examination the doctor stated that abscesses are common in tuberculosis cases, and that "it is entirely probable that if he did have a tuberculous condition in the lungs, that an abscess such as this one could develop, because of that condition."

In the month of November claimant took up his residence at his former home in Columbus Junction. After that time he was under professional care of Dr. J. W. Pence, in practice for seventeen years at Columbus Junction.

The doctor testifies that he has known claimant for about twenty years; that he had treated his wife, but had never treated him until after the removal, just cited. He said claimant was in good health and could do a day's work all right previous to this time. When he took over case of claimant the doctor testified he was having real pain across the upper part of his chest. Dr. Pence says he did not make a thorough examination; that he referred him to Iowa City. Nothing appears in the record as to examination at Iowa City.

Roy K. Kerker, department foreman in the plant of this defendant company, was called by defendants. He testifies that according to his record Fraze quit work October 13th; that a short time prior claimant reported an accident to himself, under conditions cited by claimant. Doesn't remember whether the report was made the same day, but it seemed to him a few days later.

Aloise Hiegel recalls the incident of moving a door in which he was a helper with several others. Doesn't know when incident occurred. Might be September. Door didn't fall over and crush anyone. On cross-examination said about three doors of this kind were moved, but not on the same day. Said he assisted in moving all of them, but finally admitted he couldn't say no doors were removed without his help. Says the door was moved close to a wall.

Martin Leonard, shipping clerk, says he assisted in moving heavy doors at the McClelland plant about September; that Mr. Fraze was there at the time helping move the doors. About seven or eight were doing the work; that Mr. Fraze was not crushed against the wall. In cross-examination he said he assisted in moving all the doors at that time, and there was only one big one. He says about two weeks later that Fraze got hurt. Doesn't see how he could have. He was told by Mr. Kerker.

Recalled for further cross-examination foreman Kerker was asked if he remembered a talk a week or two after the accident with Martin Leonard. Stated he may have passed a remark in some way about it; that Leonard may have had something like that; didn't see how he could have been hurt. Asked if he knew Mr. Fraze had been sent already to a doctor and was consulting a doctor. He replied "Certainly." Said he had no reason to believe claimant was not hurt. Admitted he had sent the claimant to report the accident. Says there were two big doors to move, one pine and one oak. He doesn't remember which door was being moved at the time of the alleged injury.

At the arbitration hearing no medical testimony was submitted by defendants. It developed at the review hearing that claimant had been examined recently by Dr. Bendixen of Davenport, but no report was introduced in evidence. Everything in this line submitted was in the nature of replies to hypothetical interrogation at the time of review.

Dr. John H. Peck, of Des Moines was first called. In reply to hypothetical questioning on the part of defendants' counsel, Dr. Peck gave it as his opinion that under no circumstances such as outlined in the diagram of this situation could have produced the disability from which claimant suffers.

Dr. Arthur R. Small, of Chicago, practically duplicated the testimony of Dr. Peck.

In its peculiar circumstances and important consequences the evidence in this case has been given the closest scrutiny in every particular. It is so perplexing in its deevlopments that it must be decided under the rule of greater probability.

The burden is on the claimant, and it must appear that he has submitted a preponderance of evidence. This preponderance, however, does not relate to the bulk so much as to the weight of testimony. Furthermore, a preponderance need not necessarily be of great weight if it is what it should be, an actual preponderance over a weak defense.

The straightforward story of Virgil Fraze and Mary Fraze, his wife, has much corroboration, direct and circumstantial, and it is not substantially contradicted.

The statements of Alvin Simmons are reassuring and evidently in good faith. He has the remote relationship of stepfather to claimant's wife, but declares he has no financial interest whatever in the case.

George Dykeman is evidently wholly disinterested, and his statements afford weight in corroboration.

Defendants rely for support in denial upon testimony as follows:

Aloise Hiegel recalls the incident of removing a door in which he was a helper, but doesn't know whether or not Fraze was helping. Doesn't know of any accident occurring. Doesn't know what month the incident

occurred. This is about as definite as witness testifies in his examination.

Martin Leonard says he assisted in moving heavy doors about September; that Fraze was not crushed against the wall. In cross-examination he said the door to which he referred was made of white pine. The record contains the admission of defendants that the door to which reference is made in connection with this injury was of oak, as testified by claimant.

The testimony of these two witnesses would seem very flimsy and unreliable.

Roy K. Kerker, the department foreman, testifies that claimant reported an accident about the time of this alleged incident under circumstances as related by claimant herein. Doesn't remember whether the report was made on the same day, but he thought a few days later. Says he knew Fraze went under the treatment of a doctor almost immediately after the alleged accident.

The fact that defendants introduced no medical evidence at the time of the arbitration, or by any physician who had examined the claimant is by no means reassuring. Hypothetical inquiry must be given consideration, but it cannot be given the weight that would attach to actual intimacy with the case involved on the part of a skillful physician.

Dr. George M. Middleton is a physician of high standing. His services in behalf of this claimant were secured and paid for by the insurer. His testimony bears upon its face evidence of sincerity and professional skill. His theory of the case is most reasonable, being as we understand it, as follows:

That in all probability Fraze was infected with disease germs prior to his accident, probably in childhood; that the lowered resistance resulting from the drain of the abscess upon his physical resources would tend to develop this infection to the point of serious results. One of the strong points in this case is suggested by Dr. Middleton, that is to say, as to *"continuity of symptoms."* In intimate contact with the circumstances, the doctor would appear to have no doubt as to the injury of September 28th being the inception of the trouble from which Fraze has suffered ever since.

Defendants seem to give considerable weight to the theory that the flu attack of 1918 or 1919 is deserving of attention. This would seem to be true, but the only effect it could have had was to encourage activity of any lurking infection claimant may have entertained, and would make more probable a plausible setting for the results produced by the injury of September 28, 1923. The only sense in which this incident may be considered important is as affording better explanation for the development of 1923, and it would not in any sense afford support to the defense.

Emphasis is placed upon the fact that the circumstances relating to moving of the door afford an insignificant basis for this serious disability. The facts that examination developed no contusion, and that no bones were broken are considered as reliable support to denial of payment.

This is held to be by no means decisive. The easing of the very heavy door squarely against the chest of claimant would not suggest the producing of contusion, and the breaking of bones would not seem to be necessary to chest injury sufficient to produce results following.

The record discloses that the insurer paid this claimant compensation for twenty-two weeks in the sum of $330.00; that medical expense was supplied. This fact is not recited as being at all conclusive in the matter of legal liability, but it must be regarded as more or less significant.

Insurance corporations are organized solely for purposes of profit. They are not given to supplying "easy money" to injured workmen. Ridicule of this injury as precedent to compensation payment is by no means impressive in view of the serious treatment they seemed disposed to give this case until heavy liability loomed.

As hitherto suggested, this perplexing case must be decided upon the basis of greater probability, a rule very frequently applied in compensation jurisdiction. The weight of probability seems to fall on the side of the workman for these reasons:

Here we have a man in the prime of life, forty years of age. There is nothing in the record to refute the repeated allegation that claimant had been in good health with the exception of his brief trouble with the flu several years previously, and that at all other times during his manhood career he was able to do a good day's work without any interruption whatever on physical grounds. An insurance policy submitted as claimant's Exhibit 1, gives him a clean bill of health late in 1920. There is abundant corroboration for the fact that there was an incident such as claimant describes at the date he alleges, however differing the views may be as to indications of serious injury.

On the third day thereafter, the man hitherto in good health, goes to Dr. Middleton, a company doctor. From that time on he has been in the doctor's care and from chest trouble. He has been, and continues to be wholly unable to perform manual labor. Strange coincidences do occur in human affairs, but this department is not disposed to give weight to cases of this sort when an able-bodied man immediately following an accident or incident of more or less importance is almost immediately prostrated and condemned to total disability.

Surely, it is more probable, decidedly more probable, that the disability sustained by Fraze is due to the incident of September 28, 1923, than that he has artfully and adroitly built up a fake claim with the help of Dr. Middleton and other reputable people.

This department is disposed to rely substantially upon the assistance of physicians in solving the problems of compensation settlement. It is a matter of common knowledge, however, that doctors have frequently declared things could not happen which actually do happen, otherwise doctors would not so frequently disagree.

The physicians testifying in this case upon hypothetical inquiry may be justified in saying that the disability from which claimant suffers could not have resulted from the incident of September 28, 1923—practically, that tuberculosis is never due to trauma. From citations fol-

lowing, however, it would seem that such things actually happen in the opinion of the higher courts:

Retmier vs. Cruse, 119 N. E. 32. This is an Indiana case, decided in 1918. A workman had sustained a severe injury to the lower part of his back as the result of an accidental fall which disabled him for a period of nineteen days. He soon attempted to resume work but was unable to do so. Injured on September 8, 1915, about twenty months later he became ill and died July 8, 1917. In affirming the award, the Supreme Court of Indiana said:

"There is evidence tending to support the finding of facts. The board has drawn the necessary inferences, and there is evidence from which such inferences may reasonably be drawn. The evidence authorizes the inference that the accidental injury suffered by Cruse while in appellant's employment aroused the latent germs of the disease to which he was predisposed, materially accelerated the disease, and caused his death earlier than it would otherwise have occurred."

Van Keuren vs. Dwight Divine & Sons, 165 N. Y. Supp. 1049. In this case the workman while lifting a box of knives, weighing thirty or forty pounds, fell upon a vice, striking his neck about the collar bone. Some three weeks after the fall claimant returned to work, apparently fully recovered. After working two and one-half days he quit work complaining of feeling tired. About nine months later he died from pulmonary tuberculosis. In affirming award the court said:

"The evidence shows quite clearly, and the commission has found, that the disease existed before the injury, which accelerated the disease and shortened life. The injury caused a hemorrhage, which, so far as the evidence discloses, the deceased never experienced before or after, and there is medical testimony to the effect that such an injury would develop the disease then existing. If an employee has a disease, and, having the same, receives an injury 'arising out of and in the course of employment,' which accelerates the disease and causes his death, such death results from such injury, and the right to compensation is secured, even though the disease itself may not have resulted from the injury."

State ex rel. Jefferson vs. District Court Ramsey County, Minnesota, 164 N. W. 1012. The workman sustained several broken ribs and other lesser injuries, dying six weeks later. In affirming award of the district court, the Supreme Court of Minnesota said:

"An autopsy disclosed that he (deceased) had pulmonary tuberculosis in such an advanced stage that one lung had been entirely destroyed and the other to a considerable extent; also that he was suffering from other diseases. The relators called three physicians who testified that, in their opinion, his death was caused by pulmonary tuberculosis, and that the injuries which he had sustained were not sufficient either to cause or hasten his death. The claimant called no physician, but other witnesses testified that the deceased had worked continuously at hard labor until the accident, had apparently been in good health at all times theretofore, and had never been able to leave his bed thereafter. In view of all the circumstances, we are unable to say that it conclusively appears that the injuries sustained had no part in causing his death, nor that the trial court was concluded by the testimony of the experts."

Lundy vs. George Brown & Company, 106 Atl. 362. The workman had been seriously injured in December, 1916, and died in February, 1918. After injury he gradually grew weaker, though in this period he did

some work. A strong man previously, tuberculosis developed. The Supreme Court of New Jersey held the injury of 1916 to be the actual cause of death, though tuberculosis and heart trouble were the proximate causes. The Court of Errors and Appeals, 108 Atl. 252, affirmed this decision of the Supreme Court on the theory that the lower court was justified in the inference that the workman's system had become so impoverished from the effects of his injury as to predispose it to an infection of tuberculosis of which there was not the slightest indication before the injury.

These decisions afford substantial support to this claim. They would seem to thoroughly discredit the theory of defendants that tuberculosis cannot develop out of traumatic injury. It may be urged that in the cases cited injury was more serious than in the case at bar. It should be borne in mind, however, that the record justifies the assumption that injury did occur. While in the immediate circumstances of the accident serious results were not to have been expected, the seriousness of the injury developed rapidly after the date of same.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 28th day of October, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

ANEURYSM DUE TO AGGRAVATING PRE-EXISTING CONDITION

William Gardner, Claimant,

vs.

Scandia Coal Company, Employer,
Sherman-Ellis, Inc., Insurance Carrier.
Clarkson & Huebner, for Claimant;
Stipp, Perry, Bannister & Starzinger, for Defendants.

In Review Before the Iowa Industrial Commissioner

Arbitrators being waived by stipulation of counsel, this case was submitted to the Deputy Industrial Commissioner, at Des Moines, October 8, 1924, whereupon finding was for claimant.

On the 29th day of January, 1924, in the employ of the Scandia Coal Company, William Gardner was the victim of accidental injury under these circumstances:

Driving mine entry, he was caught by a mass of falling slate while in a stooping position which doubled his body in a jackknife position with his head between his legs. He was released in a badly disabled condition and carried to his home in Des Moines, where he was bedridden for a number of weeks, while under the care of Dr. J. W. Osborn. No bones were broken.

The physician diagnosed the case as "bruising and spraining of the muscles and ligaments, and he had torn the periosteum loose underneath the second and third ribs. After about two or three months when he did not improve we sent him over and had an X-ray which showed an aneurysm at this point." Dr. Osborn further testifies that in his

opinion the injury of January 29, 1924, either caused this aneurysm or aggravated or accelerated it.

This statement is supported by Dr. D. J. Glomset, and Dr. Eli Grimes, both leading physicians, of Des Moines.

Called by the defendant, Dr. M. M. Myers, of Des Moines, on direct examination emphatically challenged the conclusions of the physicians quoted, indulging the statement that in his opinion the injury had nothing to do with the subsequent disability of the claimant. These statements were materially modified in cross-examination, however.

Dr. O. J. Fay, of Des Moines, in a deposition appearing in the record, as Defendant's Exhibit D, in direct examination expressed the opinion that the blow in question would not cause eneurysm of the aorta, and gave it as his opinion that the cause of the aneurysm was syphilis. He later admitted, however, that increased blood pressure from this injury might cause a weakened aorta to bulge out into an aneurysm. Further on in his testimony he appears to have expressed the opinion that while the weight of the mass of slate would not produce the aneurysm, his struggle to release himself would increase blood pressure which might aggravate it. "He probably tried to get out from under it. At least I would. That exertion, you see, could cause it just the same as hard work."

It is a fact undisputed, that William Gardner for a long time prior to his accidental injury, was an unusually steady worker. The work at which he was engaged at the time of his injury, that of entry driving, is understood and admitted to be of a very heavy character, and it would seem that the strength and assiduity of the workman made him especially efficient at this strenuous manual labor. There is nothing in the record to indicate any indisposition whatever in the nature of his present trouble, or of any kind whatever. The development of aneurysm following the injury was of such serious character as to apparently destroy his capacity to earn. The doctors, excepting Dr. Myers, positively stated that his injury is total and permanent.

Numerous tests established a Wasserman plus record, indicating the presence of syphilitic infection, but a preponderance of medical testimony in the record sustains the contention of claimant that he would have continued his strenuous employment indefinitely but for the accident in question.

In such cases as this, we are not much disposed to rely upon the remote contingency of coincidence as an explanation for disability resulting. It is commonly held in compensation jurisdiction that any injury arising out of employment which causes disability which would not occur but for pre-existing cause, but of which the pre-existing cause is not the proximate cause, is definitely compensable. There is abundant support for this statement.

This general holding is clearly expressed in Schneider's Workmen's Compensation Law, at page 686, and sustained by numerous citations. We quote:

"As a general rule the pre-existing physical condition is immaterial if the injury is proximately caused by an accident arising out of and in the course of the employment. The fact that the accident of itself would not have been sufficient to cause the injury in the absence of a pre-existing disease is no defense, for the employer takes the employee as he finds him, and if the accident accelerates or aggravates a pre-existing diseased condition the injured party is entitled to compensation."

In *Hansen vs. Dickinson*, 176 N. W. 823, the Iowa Supreme Court has definitely sustained this holding. In the course of his employment Hansen hit his leg with a hammer. The small bruise sustained resulted in considerable disability. The workman was subject to gonorrheal infection, but for which it was admitted his injury would not have resulted in incapacity. It also appeared that but for the bruise resulting from the blow of the hammer the existing infection would not have produced disability at the time, or in the manner herein stated. The court held for the workman, its most significant statement being, "the claim is not based on disease, but what the bruise did with the disease."

It is therefore held herein that the injury sustained by William Gardner, January 29, 1924, is the proximate cause of existing disability, which is shown by the record to be total in character and permanent in quality.

WHEREFORE, defendants are ordered to pay to this claimant the sum of $15.00 a week for the period required by law, medical and surgical charges being subject to department adjustment.

Dated at Des Moines, this 12th day of November, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

COMMISSION SALESMAN DENIED COMPENSATION

L. E. Robinson, Claimant,

vs.

Paddock Broom Company, Employer,
The American Mutual Liability Insurance Company, Insurance Carrier.
Phelps & Burke, for Claimant;
Wolfe, Wolfe & Claussen, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration at Clinton, May 22, 1924, the Deputy Industrial Commissioner found for defendant.

Appeal is based upon the allegation that the arbitration decision is contrary to law and not in accordance with facts submitted.

Defense is founded as follows:

1. The injury upon which this claim is based occurred in Minnesota, and hence, beyond the jurisdiction of the Iowa Industrial Commissioner.
2. Claimant at the time of his injury was an independent contractor.
3. The injury alleged did not arise out of employment by the defendant.

The evidence in this case shows that at the time of his injury and for sometime previous L. E. Robinson had been selling brooms on com-

mission in a territory covering practically the north two-thirds of Iowa and the south one-third of Minnesota.

This is all the relation involved as between employer and employe except the incidental fact that the employer had furnished Robinson with a Ford touring car with the understanding that claimant was to pay all the expense of maintaining the said car as to running operations and repairs and to return the car in as good shape as he took it, natural wear excepted.

The alleged accident occurred January 14, 1923. On the Thursday previous claimant had driven the car to his home in Minneapolis. He said: "We worked all day Friday and Saturday and practically all Sunday putting the car in order for operation." While working with the lighting equipment he was struck in the eye with a screw driver which resulted in serious loss of vision.

Under holding of the courts it is held that this case is within the jurisdiction of this department.

Circumstances submitted strongly suggest independent employment.

Since, however, the third ground of defense seems so clearly substantial, we pass to the question as to whether or not this injury arose out of and in course of employment of L. E. Robinson by the Paddock Broom Company.

In the earlier part of his engagement with this defendant claimant had traveled by public conveyance paying all his own expenses. Under the terms hitherto stated, the car belonging to the employer might be used by claimant. It was turned over to Robinson. Claimant's Exhibit "A" and other evidence indicates that at the time of the accident negotiations were pending for the purchase of the car by Robinson.

In order to establish compensable relationship the workman at the time of his injury must have been performing some service for his employer.

In this case the repair work done by the workman was wholly self-serving since it was incumbent on him to keep the car in working order at his own expense. Usually an overhauling job requiring several days of time would be done at a public garage. It was done by this claimant instead, not as a favor to his employer, but to save expenditure on his own part out of his own earnings. It was wholly immaterial to this employer how or by whom this job was done. If at a public garage it could not be assumed that any responsibility could have been imposed upon him for any incident of such service, and so it was when the claimant chose to save outlay from his own earnings by doing the work himself.

If on the highway remote from a public garage some emergency had arisen requiring incidental repair and in meeting this emergency claimant had received this injury, it might have been covered—that is to say, if the employment were not held to be independent, but the circumstances of this case involved no such emergency.

There is no dispute whatever as to facts and circumstances relating to the employment and to the injury involved. The crux of the situation is that all expenses of operating this car, even including expense

of insurance on same, was to be borne by claimant. It is difficult to understand the reaction of counsel in insisting that coverage exists while admitting, and even stressing the fact, that his client was at the time of the injury merely meeting the obligations of his agreement with the employer, wherein it specifically appears that the employer was not to be responsible for upkeep of any kind or character. Robinson was working for himself and not for the Paddock company when his eye was injured.

Counsel submits a number of perfectly good decisions in cases where their terms may reasonably be supplied, but they do not afford support to his contention. We read with surprise his statement that: "Our courts have been uniform in holding that the Workmen's Compensation law was enacted and should be construed for the benefit of the workman." We had not supposed that any law, on any subject, in any known jurisdiction had been enacted for the benefit of any particular interest, unmindful of any other interests. On the contrary, it has been assumed as fundamental that all law is enacted and is to be construed in the interest of justice to all classes and conditions of men. In support of his strange contention counsel quotes the Supreme Court of Iowa as declaring in *Elks vs. Conn*, 186 Iowa: "The compensation law is for the benefit of the workman." What the court actually said in this case is: "The compensation law is for the benefit of the workman *and society in general*," which puts an entirely different face on the matter.

In his brief and argument counsel for claimant indulges in strictures wholly unwarranted in criticism of the Deputy Industrial Commissioner in questioning the claimant upon the witness stand. The manifest purpose of Mr. Young was simply to develop the facts bearing upon questions vital to the decision he was required to make. It is a common practice in all courts for the sitting magistrate to assist himself in a just decision at any stage of the submission of testimony by interrogating witnesses for the purpose of establishing a complete understanding as to facts and circumstances.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 26th day of June, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

ALLEGED ELEVATOR ACCIDENT NOT PROVEN

Charles Joiner, Claimant,

vs.

Cudahy Packing Company, Defendant.

C. R. Metcalfe, for Claimant,

Snyder, Gleysteen, Purdy & Harper, for Defendant.

In Review Before the Iowa Industrial Commissioner

At Sioux City, December 2, 1921, finding in arbitration was for the defendant.

For several months during the last half of 1917, this claimant was in

the employ of the defendant packing company. He alleges that on the 24th day of December, 1917, he sustained an injury to his knee which is the cause of serious existing disability in his left leg.

August 16, 1921, nearly four years after the alleged accident, there was filed in this department an application for arbitration due to alleged injury. No definite date of injury was named, but it was alleged that notice was given the defendant on the 26th day of December, 1917.

A motion of defendant for more specific statement was sustained, whereupon on September 26, 1921, an amendment to claimant's petition was filed, alleging as cause of injury that claimant "slipped and fell on the greasy floor," causing injury to his knee joint.

A second amendment to claimant's petition, filed November 18, 1921, sets out as proximate cause of injury an elevator accident not hitherto alleged.

At the arbitration hearing claimant testified that he was in the service of the Cudahy Packing Company skimming grease, running elevator and performing other services; that while descending in the elevator with twenty gallons of liquid lard the elevator fell from the fourth to the first floor, the fall throwing him out of the cage, bumping his left knee and spilling the tank of grease.

He further testifies that while washing up the grease he slipped again, inflicting a second injury to his knee. He positively fixes the date of this accident as of December 24, 1917. He testifies that some twenty minutes later he informed his foreman, Larry Jordan, of his accident. He declares that while his leg sustained serious injury many years previously, it had not in recent years given him any trouble whatever and had required no treatment and caused no measure of disability. He says that on December 24th the leg at once commenced to swell up and soon reached nearly twice its natural size.

Dr. Murphy was called to his home. Asked how long after the injury Dr. Murphy's call occurred, he stated: "The injury was done on the 24th and Dr. Murphy came down on the 26th." It seems the doctor advised Joiner that it was not a case within his line of practice and that he must go to a hospital. At St. Vincent's hospital he was operated upon, but no evidence appears as to what occurred there, the excuse being that the doctor who performed the operation and gave after treatment had left the state.

Claimant returned to work at the Cudahy Packing plant June 26, 1918, where he continued in service until about the middle of October following.

Herbert Washington testified that he was in the employ of the Cudahy Packing Company in December of 1917. He testified that he saw Charley washing the greasy floor of the press room, and saw him slip and fall while so engaged. He states that the date of this fall was December 24, 1917. He further testifies that two days later, December 26th, he told foreman Jordan of Charley's accident, in explanation of why he did not return to work.

In this record appears the deposition of Lewis Johnson, taken in Clark County, Alabama, November 10, 1921. Deponent states that he saw Charles Joiner skimming grease in an elevator when it "got loose from him and he fell over and busted the box of grease on him."

In replying to interrogatories submitted by claimant in direct examination, he repeatedly identified the date of this injury as of December 24, 1917. In cross interrogatories he declared he could not state the day nor the month nor the year when the accident he described occurred.

These and several other witnesses called by claimant testified that they had no knowledge of any trouble Joiner had with his leg prior to the date of alleged injury in the way of pain or necessary treatment within recent years.

Oscar F. Smith, now in the employ of the Smith Electrical Works of Sioux City, was called by defendant. He testifies that in the years 1917-18 he was division timekeeper at the Cudahy plant. It was his duty to check up the men in his division twice each day. He knew Charles Joiner. Refreshing his memory from the pay roll before him, witness stated that claimant did not work for this employer on the 24th of December, 1917. In fact, he did not work from December 22nd until the following June 26th. He further states that Lewis Johnson, deponent hitherto referred to, was not in service at the plant at the alleged date of the alleged accident. In fact, his last day's work before Christmas was December 20th. Witness states he never heard anything about any injury sustained by Joiner at the Cudahy plant prior to the bringing of this action nearly four years later.

C. L. Heffner qualified as office manager of the Cudahy Packing Company. He testifies the letter of counsel Metcalfe, identified as Exhibit 4, dated nearly four years after the date of alleged accident, was the first notice he ever received or knowledge he ever had as to any claim for injury, or any injury having occurred to Charles Joiner during his service for the Cudahy Packing Company.

Larry Jordan, foreman tank department of the Cudahy Packing Company, knew Charles Joiner intimately while in the service of this employer. Saw him twenty or thirty times a day. Had hired him when he commenced work at this plant. Was advised of his lameness and he was given work accordingly.

Jordan further testifies that on a number of occasions Joiner talked to him about his knee giving him so much trouble he couldn't work; that he couldn't rest with it in the evening and couldn't sleep with it. He states that on the 19th or 20th of December, immediately previous to the alleged date of injury, Joiner asked to be away for two months that he might be operated upon by a doctor who had promised to straighten his leg and put it in shape like the other one. Jordan gave his consent to this arrangement, and put him to work again when he returned the following June. Upon his return witness declares he was told by Joiner that his leg was in worse shape than usual. Says positively that Joiner at no time referred to any accident or injury while in this employment, and had no knowledge or notice of any alleged basis for claim on account of such accident or injury until it came through Exhibit 4 of this record—the Metcalfe letter.

Dr. Frank J. Murphy, testifying for claimant, states that he made an

examination of Joiner's ailing leg when called upon for this purpose. He informed claimant that this case was not in his line; that he must go to the hospital for treatment. He had not much definite recollection as to exact conditions, but did not recall external evidence of recent wound. He says the knee was full of pus when he saw it. Could not identify the date, but the date of his visit was positively identified by Joiner as December 26th, two days after the alleged accident. The doctor states that more time than two days or three or four days would be required to form such a deposit of pus.

Introduced by defendant, Dr. W. J. Cronin testified that it would be impossible to get pus in a joint in the time between the dates of the accident and the visit by Dr. Murphy, as identified definitely by claimant.

A number of witnesses called by defendant testified they were advised as to the fact that Charles Joiner was having a good deal of trouble with his leg before the 24th of December, 1917; that he had to poultice it and otherwise favor it to give him temporary relief. All these witnesses testified that they never heard anything directly or remotely as to any injury to Joiner during his service in the Cudahy plant on or about the 24th day of December, 1917, or at any other time.

In connection with this review proceeding this voluminous record of 264 pages, together with exhibits and deposition have been given careful scrutiny, and such scrutiny would seem to justify the conclusion of the arbitration committee. The claimant has utterly failed to prove by preponderance of evidence that the disability from which he suffers is in any measure due to any incident of employment by this defendant.

The pleadings in this case do not invite confidence. The petition for arbitration is very vague as to dates and facts. The first amendment still fails to develop definite cause of action. No mention of any elevator accident is made until the second amendment appears which closely follows the deposition from Alabama where the alleged incident may have had its origin.

In good faith cases claimants sometimes find difficulty in identifying important dates, but in such cases of good faith it is usually possible to establish the fact of injury from corroborating circumstances.

In this case the date of injury is definitely fixed by the testimony of several witnesses at a time when it could not have occurred because of record evidence that must be accepted.

The alleged elevator accident as finally relied upon was sensational, not to say spectacular, if it actually occurred. Counsel makes light of the fact that no fellow workman in a room, perhaps 50x100 feet in which the elevator shaft stood had any recollection of the alleged fall of the elevator. Such a fall from the fourth to the first floor, a distance of probably thirty-five feet, would call every man from his post in amazement at the terrific affair. And the spilling of twenty gallons of liquid lard upon the floor of the press room would have been an incident not to have been forgotten by any person witnessing the spilling or the effects thereof.

The testimony of doctors is by no means reassuring as to the probability of the disability from which this claimant suffers having arisen from the incident of injury as alleged.

Probably in no other of the forty-four compensation states would this petition for arbitration have secured department recognition.

Defendants plead statute of limitation, but under our law, or perhaps lack of law, it seems necessary to deny relief. Nevertheless, it should be understood that in bringing action nearly four years after the alleged date of alleged injury a claim for compensation must be regarded with more or less of doubt, not to say suspicion.

Ignorance of the law is plead by claimant in excuse for this extremely dilatory proceeding. Legal presumption runs counter to such plea, but ignoring this fact ignorance in this case is not fairly presumable. The Cudahy Company at Sioux City was employing nearly two thousand men. In all large plants workmen are advised by posted notices and by other forms of instruction as to procedure in case of accident under the terms of the compensation statute. In all such plants injuries are comparatively frequent and legal provisions are exercised. Workmen talk over such matters collectively and individually. It is not reasonable to assume that after six months of such relationship this claimant should have known nothing of the compensation statute as alleged. If this were possible, is it probable that in case of such serious disability, due to cause as alleged, no suggestion of relief from any sympathetic source should have been made until the lapse of nearly four years?

In cases evidencing good faith where doubt may exist as to the source of injury, or the measure of disability, the rule of inherent probability should be intelligently exercised. The application of this rule affords little support to this claim. In view of the credibility of witnesses, the details developed in evidence and the conclusions most reasonable of adoption, deliberate judgment points the way to denial of award.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 18th day of January, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in supreme court.

BORDER LINE CASE—AWARD

Louis R. Sayres, Claimant,

vs.

Martha Washington Doughnut Shop, Employer,
Southern Surety Company, Insurance Carrier.
H. P. Daly, for Claimant;
Risher, Adams & Brown, for Defendants.

In Review Before the Iowa Industrial Commissioner

Hearing at the department before the Deputy Industrial Commissioner, December 6, 1923, resulted in an award of $67.20 for disability covering a period of six weeks.

Louis Sayres alleges that he was injured on or about September 25, 1923, in the employment of the defendant Doughnut Shop, at Des Moines.

At an early hour in the morning he was arranging the contents of an ice box in the basement of the building. Meanwhile, his right hand was resting upon the edge of the refrigerator, standing about three feet high, when the heavy lid, because of a broken hinge, fell upon his hand, breaking one of the bones thereof.

Testimony of claimant and other witnesses introduced is not definite as to the exact date, or as to various statements more or less corroborating.

It appears in the evidence that on the day following the injury Sayres was jailed for gambling or intoxication, or both. Defendant relies chiefly upon evidence of this nature to defeat award.

The question is, however, was the claimant disabled, and did his injury arise out of his employment? Intoxication could be successfully plead only in case it could be made to appear to be the proximate cause of injury, and nothing submitted in evidence suggests such assumption.

Examination of this record in the process of review is by no means satisfactory. The case is lacking in clean-cut statement and definite incident.

These conclusions, however would seem to be justified. The accident, substantially as outlined, seems highly probable, indeed much more than a matter of conjecture. It had its inception in the broken hinge to the top door of the ice chest. This hinge condition was a matter of general knowledge about the establishment. A number of witnesses among the employes, including Mrs. Frase, one of the proprietors, while manifesting no particularly friendly attitude toward the claimant, all recall the fact of Sayres having had an injured hand, and admit knowledge as to the refrigerator accident. Further corroboration appears in the testimony of two witnesses at Sayre's boarding house, who had knowledge of the injured hand and who recall substantial relation as to the accidental injury.

In view of all elements of greater probability developed in this case, the conclusion reached by the Deputy Commissioner cannot consistently be disturbed.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 27th day of December, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DEPENDENCY OF PARENT ON BASIS OF CONCLUSIVE PRESUMPTION TO CEASE AT LIMIT OF MINORITY PERIOD

Mrs. Clara Double, Surviving Parent of Harold Lage, Deceased, Claimant,

vs.

Iowa-Nebraska Coal Company, Employer,

Integrity Mutual Casualty Company, Insurance Carrier.

Clarkson & Huebner, for Claimant,

H. W. Raymond, for Defendants.

In Review Before the Iowa Industrial Commissioner

On the 12th day of January, 1923, Harold Lager, son of this claimant, sustained a personal injury in the employ of the defendant coal company, which resulted in his death June 23, 1923.

At the arbitration hearing October 16, 1923, it was contended on the part of the claimant that the defendant insurer is held in weekly payment to the surviving mother for a period of 300 weeks, less weekly payments made before the death of Harold Lager.

Claimant also contends that if dependency on the basis of conclusive presumption continues only until the date of majority on the part of the deceased, that the record establishes dependency on the basis of actual contribution.

Defendant contended:

1. That the relations of the deceased workman to this claimant established a staus of emancipation from legal obligation to the claimant.
2. That in the event an award was made it should cover the period only from the death of Harold Lager to the date when the workman would have reached the age of twenty-one years.

The arbitration committee found that:

Under statutory conclusive presumption of dependency the claimant is entitled to compensation payment at $10.00 a week as from date of the death of the workman up until December 21, 1924, the date the deceased would have reached majority.

That the claimant was not in any degree actually dependent for support on the deceased at the time of his injury and that, therefore, the compensation payment to the claimant is limited to the amount and period named in the preceding paragraph.

Both parties appealed from this decision.

In this action no issue was raised excepting as hereinbefore stated, all other questions having been settled by stipulation on file.

The record fails to support the contention of defendant that at the time of his death, Harold Lager had been emancipated from legal obligation to this claimant.

The record justifies the committee in its finding that claimant was not in any degree actually dependent for support upon the deceased.

During the employment of the deceased by the defendant, the monthly earnings of the stepfather as head of the family were $225.00, ample for the support of himself and wife. The fact that Harold Lager paid some old family debts and contributed in a measure to the family budget does not establish actual contribution as to actual dependency.

The question remaining is as to whether or not parents are entitled to compensation payment for the death of a minor son beyond the date at which the said son would have reached his majority.

Upon this question the decision of the committee is consistent with the holding of this department in Keyes vs. American Brick & Tile Company, in its decision in review filed April 2, 1917. This holding was affirmed by the district court of Cerro Gordo county, but was not passed upon by the Supreme Court.

In the Keyes case dependency on the basis of conclusive presumption was held to continue only to the date when the deceased minor son would

have reached the age of twenty-one years, and further, that any dependency that might be established on the basis of actual contribution would entitle the claimant to weekly payments for the remainder of the period of 300 weeks following the date of majority.

If the contention of claimant is good, then if a minor son shall lose his life in employment an hour before his majority, his employer is held in payment for nearly six years beyond his minority period even if he has never contributed a cent to the support of his parents. If, on the other hand, he were killed an hour later, his parents would receive in compensation not a single cent. No legislature ever intended to establish such a grotesque theory.

Workmen's compensation is bottomed on the theory that industry shall make restitution to an injured workman or to the dependents of one who loses his life in service on the basis of loss of earnings or loss of support. The law provides that certain persons shall be conclusively presumed to be dependent, that is to say, that without proof dependency shall be presumed.

Such presumption is certainly not intended to be so strained as to work violence to the basic theory of compensation, or the plain principles of equity. Conclusive presumption logically applies in case of dependency on the part of a wife or children under the age of sixteen years. Loss of support in such cases is a matter of common experience. On the part of legislators it required extreme compassion to include parents in the list of those conclusively presumed to be dependent upon a minor son, even during the minority period. Surely, they did not mean to have it presumed that loss of support on the part of parents affords basis for compensation years into the majority period.

If the statute is obscure, in reaching conclusion as to its meaning why not apply the test of inherent reasonableness? The General Assembly herein meant to frame a statute consistent in its support of the principle that compensation payment should be on the basis of actual loss. Is it reasonable to assume that in this particular legislators so far abandoned this principle as to intend that compensation to parents as from a minor son should be projected years and years into the majority period? Is it reasonable to assume that they meant to afford more than the coverage of conclusive presumption within the minority period, and that if actual loss were established payment should continue during the remainder of the 300 week period on the basis of such actual loss?

With a single exception Iowa is the only state in which parents of a minor son are by statute included in the list of those conclusively presumed to be dependent. In the excepted state of Washington the law recognizes the obvious in logic and equity by specifically saying that in such cases payment shall cease at a date when the deceased minor son would have reached the age of twenty-one years.

The statute fixes the amount of dependency as due a minor son at two-thirds of the amount in other cases of dependency upon this basis. It may be contended that this diminished payment was intended to provide for projecting this dependency to any necessary extent within 300 weeks beyond the majority period. It is more reasonable to assume that this

deduction was made because of the fact that in the usual family relation where the minor continues as a member of the home, the contribution is materially reduced by necessary expenditure for his board and other elements of family contribution to his care. On the basis of actual contribution only in very rare cases would parents receive from the death of the son the maximum, or anywhere near it, as in this case.

Statutory expression and common experience draws a plain line of demarkation noting the changed relation between parents and children at the end of the minority period. Below this line parents are held in obligation for support, and children are bound in obligation for service. Crossing this line, conditions are automatically changed. Parents may, and in this generation they frequently do voluntarily contribute support. Children may, but in these days they usually do not render substantial service. They have plans of their own as to personal careers and obligations of their own as to family support in new relations assumed. If the legislature of Iowa has made it possible to heavily tax industry on the assumption that a minor son would continue to turn over to his parents wages earned years after he reached his majority, gross injustice based on ridiculous assumption is wrought.

The claimant bases her demand for 300 weeks of payment substantially upon the contention that the statute provides for 300 weeks of payment in usual cases of dependency; that her claim to this coverage becomes a vested right.

It is admitted that a good deal of force is given in compensation jurisdiction to the condition at the time of the injury, but this theory may become logically and equitably unworkable.

In this connection, it is well to consider:

"Giggndelle vs. Piedmont & Georges Creek Coal Company, et al., 111 Atl. 134 W. C. L. J., Vol. 6, p. 535.

In this case a husband was killed June 9, 1917, leaving a widow and infant child. The child died October 20, 1918, and December 11, 1918, the widow remarried. The court held that where a dependent widow of a deceased employe, awarded compensation, remarried at a time when she is without dependent children, a child dependent at the time of her husband's death having died, compensation ceases.

In discussing the case, the court said:

"The sole question to be decided is the proper construction of section 43 of article 101 of the Code which is in part as follows:

In case of the remarriage of a dependent widow of a deceased employe without dependent children, all compensation under this article shall cease * * *

Did the Legislature mean by the language above quoted that, on the remarriage of the widow without dependent children of the deceased husband living at the time of such remarriage, compensation should cease, or were the words 'without dependent children' intended to refer back to the date of the death of the deceased?

The respective interpretations of this language contended for are ably presented by the dissenting opinion of the chairman of the commission, and by the opinion of Judge Henderson, set out in full in the briefs of appellant and appellee, respectively. As a matter of grammatical construction both views are possible, although even from this point of view we think the conclusion reached by the circuit court is the sounder. Of

course the legislative intent as gathered from the entire section, and from all parts of the act which throw light upon it would be controlling even if the grammatical construction were doubtful. And we find no difficulty as to this in reaching the same conclusion as that arrived at by the circuit court.

We can see no reason why the compensation should cease on the remarriage of the widow when there were no children at the date of the death of the deceased husband, and not on the happening of the same event when there were dependent children at the death of the husband, but none at the time of the remarriage. On the death of the child the widow was entitled to the entire amount awarded because she was then the only dependent on her deceased husband, and not, as to any part of the award, because she has been the mother of the child. In other words, she was in exactly the same position in reference to the award as she would have been if she had been the only dependent at the time of the death of her husband. The amount of the award, when made had no reference to the number of dependents, but to the character of dependency.'"

In Washington case of *Boyd vs. Pratt, et al.*, 130 Pac. 371, appears a state of facts quite analogous to those of the case at bar and interesting reasoning of the court in relation thereto. We quote:

"The only question involved in this case is one of statutory construction. James Boyd, aged 19 years, was killed while in the employ of the Pacific Coast Coal Company. He had for about 18 months contributed to the support of his mother. That she was dependent upon him is admitted. In due time Catherine Boyd, the mother, filed a claim with the industrial insurance department, and an order was entered allowing her $20 per month until the time when James Boyd would have arrived at the age of 21 years. From this order an appeal was taken to the superior court, where the order of the department was reversed, and an order allowing $20 a month so long as the dependency continued was entered. From this order the department has appealed.

Both the department and the respondent rely upon the same statute (subdivision 3 of the compensation schedule, being section 5 of the act of March 14, 1911 (Laws 1911, c. 74), relating to compensation of injured workmen. The statute, so far as it is pertinent to our inquiry, reads as follows: 'If a workman * * * leaves a dependent * * * a monthly payment shall be made to each dependent equal to 50 per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed $20 per month. * * * If the workman is under the age of twenty-one years and unmarried at the time of his death the parents or parent of the workman shall receive $20 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.' We think the interpretation of the statute adopted by the lower court is correct. It is quite clear to us that the Legislature must have intended that the first clause quoted should apply to cases of dependency, while the last clause refers only to cases of nondependency. This construction is in keeping with the spirit and object of the law; that is, to protect the injured, and to save dependents from becoming public charges. To hold that an allowance given because of dependency is to be cut off arbitrarily at a time when the deceased would have attained the age of 21 years would defeat the humane purposes of the statute, for the dependency would not then cease, but might continue over a period of years. The second clause seems to have reference to that principle which, under the common law, gave a parent the right to demand and receive the wages of a minor child.

As suggested by counsel, any other construction would lead to an absurd result. The act being passed for the purpose of compensating dependents, the present order of the department would deny compensation if the death occurred one day before the deceased was 21; but, if it occurred one day after, the compensation would continue as long as the condition lasted. The material object of the statute was to protect dependents, and not to fix arbitrary limitations."

In this case it was clear that on the basis of conclusive presumption payment should cease at the date when the deceased would have attained his majority; that the mother was actually dependent for support upon the minor son and the court righted the wrong of the commission in making the conclusive provision an agency for depriving her of her rights on the basis of actual contribution received.

The Washington law does not say that any other rule should apply in justice to this claimant, but the court recognized the essence of equity in the logical application of the statute. Our law does not say that any rule but conclusive presumption shall apply in cases like the one at bar, but logical inference clearly suggests the application of both rules of dependency based on conclusive presumption and also upon actual contributions of support.

Compensation jurisprudence is comparatively new. Legislation was at first more or less experimental, and as yet is by no means beyond this stage of development. In this uncharted field legislators have done their best to work out a finished program, but with the natural result of much incompleteness of detail as to meeting every remote contingency and in the clear expression of legislative intent. As administration has felt its way along dim trails it has frequently found itself without precedent and without recorded experience. Where the law has seemed obscure, and where the authorities have afforded little light, it has been the way of this department so to decide as best to meet the dictates of common sense and simple equity, and in so deciding we have been so well sustained as to feel encouraged to further pursue this ordinary policy. In devotion to this purpose we reach a conclusion as to what in this case in equity and justice ought to be the rule, a rule entirely consistent with deliberate legislative intent and suggesting no violence to statutory expression.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 22nd day of November, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in supreme court.

AGENT NOT INDEPENDENT CONTRACTOR

Robert J. Tyler, Claimant,

International Correspondence Schools of Scranton, Pennsylvania, Employer,

American Mutual Liability Insurance Company, Insurance Carrier.

J. E. Purcell, for Claimant,

J. L. Wolfe and George Claussen, for Defendants.

In Review Before the Iowa Industrial Commissioner

On or about the 7th day of June, 1923, claimant was seriously injured in the service of this employer.

In arbitration at Clinton, April 16, 1924, it was held that Robert J. Tyler suffered a personal injury on the 7th day of June, 1923, in the course of and arising out of his employment by the International Correspondence Schools of Scranton, Pennsylvania, resulting in a 7½% permenant disability. On the basis of earnings, in excess of $25.00 per week, an award for $15.00 per week for thirty weeks was made.

Defendants resist payment of this award, alleging that the service of the claimant at the time of his injury was in the nature of independent employment.

The contract between employer and employe, appearing in this record as Claimant's Exhibit 1, among other conditions, recites the following:

"First. The said Employe shall devote his entire time and attention exclusively to soliciting contracts for Scholarships in the International Correspondence Schools, and to make collections from students of said Schools, in accordance with the prices, rules, and regulations to be put into effect from time to time by said Employers.

Third. The said Employe expressly agrees to forward a daily report each and every working day so long as he is in the service of the said Employers. On any day that said Employe has not received any moneys for said Employers, he will nevertheless forward a report marked "No Business" and will also state in the report what work he did on that day and where same was performed."

There conditions would clearly indicate that the relations of claimant with the employer was by no means that of independent employment.

The fact that he was bound to devote his entire time and attention exclusively to the business of his employer strongly suggests compensable relationship. This relationship would seem to be thoroughly clinched by the fact that claimant was required not only to make a daily report on days when there was business to turn in, but to report on other days—days of no business—and so particular was the employer that he required him to state "what work he did on that day and where same was performed."

These conditions would seem to leave no footing for the defense of independent employment plead by these defendants.

The contract provides for payments on a commission basis. The claimant testified at the arbitration hearing that he was working on a salary of $25.00 a week, together with certain commissions.

If it were vital in order to establish relationship between these parties as to which method of payment was actually exercised, it might be necessary to go into the matter with some degree of care. But whether payment was on a commission basis wholly, or salary with commissions, is not material to the issue.

Workmen's Compensation Law, by Schneider, is one of the latest publications of its character, and it is of excellent standing throughout compensation jurisdiction. Beginning on page 170, many cases are noted where workmen are held employes, and not independent contractors. Following are given a number of these cases. On the bottom of the page

on which they appear is cited a case upon which statement made is founded.

A carpenter employed periodically at a daily wage by a shopholder, in whose shop he is put to work to fill an order for window frames on the basis of 25c per frame.

A man employed to collect cream and deliver butter at a stipulated wage, receiving an additional amount for the use of his automobile and to hire a helper, the employer exercising full control over the man and his helper.

Bowling Alley boys. Working periodically at setting up pins and receiving 25% of the amount received by the owner of the alleys for each game served by the boys.

A person employed to collect bills for about two hours per day at a compensation agreed upon at the time, and with one unimportant exception was not employed by anyone else.

A miner employed to mine, at a fixed price per ton, using his own tools and being paid for timbering.

A man employed to haul, at a certain price per gallon, who furnishes his own horse and wagon.

One employed by the hour, using either his own wagon or one of defendant's, subject to discharge at any time.

A real estate agent, agreeing to devote his entire time to selling his employer's lots on commission.

A bread salesman, who is paid a percent of the retail price of the bread he sold.

Cases of a similar character could be quoted almost indefinitely, and in most of them evidence of relationship of employer and employe is less definite than the case under consideration.

The medical evidence in the record justifies the extent of disability found in arbitration.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, Iowa, this 17th day of October, 1924.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

STATUTORY DESERTION NOT ESTABLISHED

Mrs. Beda O'Farrell, Claimant,

vs.

Wright Construction Company, Employer,

Fidelity & Casualty Company, Insurance Carrier, Defendants,

Lloyd O'Farrell, by Delilah O'Farrell, his next friend, Intervenor.

Paul H. Cunningham, for Claimant;

B. O. Montgomery, for Defendants, and Intervenor.

In Review Before the Iowa Industrial Commissioner

In the employ of the Wright Construction Company, Earl O'Farrell was instantly killed May 5, 1924. The claimant herein, Mrs. Beda O'Farrell,

is his widow, and she is the mother of Lloyd O'Farrell, the two year old son of the deceased workman.

On the part of the defendants compensation is withheld only for the reason that the insurer is in doubt as to whom payment should be made.

Petition for Arbitration was filed by claimant June 25, 1924, and by the defendants July 3, 1924.

August 5, 1924, a Petition of Intervention was filed by Delilah O'Farrell, as next friend of Lloyd O'Farrell.

In the petition of defendants it is alleged that "claimant herein wilfully deserted deceased without fault upon the part of deceased, and therefore she is not a dependent in any degree."

Before consideration can be given in this case to any claim for dependency on the part of any person other than a surviving spouse, it is necessary to show that said surviving spouse wilfully deserted deceased without fault upon the part of deceased. The burden is on the defendants.

Earl O'Farrell and this claimant were married December 29, 1920. The undisputed testimony of the claimant seems to show that from that period until his death the deceased had many working engagements, and was evidently unable to hold a job for any considerable period. She says five months was the longest engagement he had during the three years they were married. He was idle much of the time. Within this period they lived in Des Moines, Valley Junction and Marshalltown, moving very frequently from one place to another, and one house to another. Claimant testifies that the couple moved fifteen times between the date of their marriage and the last separation, a period of three years. Several times they were separated for periods of a few days to months duration. By the testimony of the widow and one of her brothers it appears that two of claimant's brothers furnished their sister and her husband a house, free of rent, and paid each $5.00 a week for board, an arrangement which was evidently terminated for the reason that the deceased did not work, and did not seem to make reasonable effort to secure employment. During the two months this arrangement existed it appears that the deceased worked altogether about twelve days.

In paragraph 1, of subsection (c), Section 2477-m16, a surviving spouse is conclusively presumed to be wholly dependent upon a husband losing his life under compensable circumstances "unless it be shown that the survivor wilfully deserted deceased without fault on the part of the deceased."

The statutes of the several states of the union are scrutinized in vain to find any such qualification. In many, perhaps in most states, in order to secure compensation widows must have been living with the husband at the time of his accidental death. In Nebraska the widow must have been "living in a status of abandonment for more than two years," if she is to be excluded from recovery. In Washington the same provision exists, except that the necessary period of abandonment is reduced to one year. In New Jersey the widow must have been "actually a part of decedent's household at the time of his death." In Rhode Island the widow may recover "if living apart from her husband from justifiable cause."

Naturally, counsel is unable to submit any compensation case in support of his contention because it has not been passed upon in Iowa, and no law elsewhere affords basis for pertinent opinion. He quotes many rulings on divorce, but they are not held herein to be applicable because the statutes differ so substantially as to grounds for divorce and for the denial of compensation.

Successful opposition to this claim must be based upon a preponderance of evidence that his widow not only deserted her husband, but that such desertion, if proven, was "without fault on the part of deceased." Whether or not there was fault on the part of the widow is not material if there was fault on the part of the deceased, as our very liberal law must be interpreted. The record can not be made to show there was no fault on the part of the decedent, even if the separation existing shall be held to constitute desertion.

In her marital relations this woman is charged with no delinquency. No act of infidelity and no manner of unworthiness is alleged. It is not held that she has in any degree failed in devotion to her child, or that it is likely to be neglected in her custody. It does not appear that she will fail to properly apply these funds to the support of this child as well as herself.

The arbitration finding for claimant is sustained by the record, and it is hereby ordered that the defendant insurer pay to Mrs. Beda O'Farrell the sum of $12.00 a week for a period of 300 weeks, as by statute provided.

Dated at Des Moines, Iowa, this 29th day of September, 1924.

Seal (Signed) A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

HEART TROUBLE LIGHTED UP BY INJURY HELD COMPENSABLE

Hattie Farrow, Claimant,

vs.

What Cheer Clay Products Company, Employer,

Integrity Mutual Casualty Company, Insurer, Defendants.

F. M. Beatty, for Claimant;

H. W. Raymond, for Defendants.

In Review Before the Iowa Industrial Commissioner

In arbitration March 24, 1922, the committee found that Jasper Farrow, husband of this claimant, suffered a personal injury on the 20th day of December, 1920, in the course of and arising out of his employment by the What Cheer Clay Products Company, resulting in death December 25, 1920; and further found this claimant to be entitled to the sum of $15.00 a week for a period of 300 weeks with other and further statutory relief.

At the time of his death Jasper Farrow was sixty-four years of age. He had been engaged much of his manhood life in the digging of coal in Iowa mines. Most of the five years he had been in the employ of the What Cheer Clay Products Company he was engaged under ground mining fire clay.

After five days of more or less intense suffering in the region of the heart, this workman walked down town from his home, and while sitting in front of a business house he collapsed and died immediately. It is commonly understood that the immediate cause of death was aorta stenosis, a valvular disease of the heart. The question arises: Is this death due to any incident of employment?

On the morning of December 20, 1920, in the usual course of his daily duty, it would seem that Jasper Farrow climbed a ladder to a platform from six to eight feet above the floor upon which he was required to feed a clay press. He was working alone.

Samuel Edmundson, a fellow workman engaged in another part of the plant, testifies that as he came up the steps near the station of Farrow, he hailed him with the remark: "Getting the machinery in motion?" He then noticed that Farrow was leaning against the conveyer holding his hand on his left side, his appearance indicating that he was suffering pain and distress. In explanation Farrow said: "I fell when I went to go up the ladder. I got up to the top and was just stepping over on the platform and I did not get very far, the ladder slipped." Then showing witness a stick on the floor, which witness describes as being "1x4 or 2x4" saying, "I fell on that and it hurt me."

A number of witnesses testify to statements made to them by Farrow after the incident consistent with the relation to Edmundson. The workman remained at the plant until evening when he went home, and to other consistent statements relative to his accident and injury, his wife, Hattie Farrow, testifies in this record. He did not return to the plant until the second day, when he was utterly unable to assume any kind of labor, and it became necessary for him to be carried to his home.

There seems abundant evidence as to the continual suffering of the workman from the date of the accident he describes until the incident of his death as stated herein.

Evidence abounds as to the comparatively ablebodied condition of Jasper Farrow prior to the 20th day of January, 1920. He was steadily at his job and his earnings indicate ample working capacity. Evidence is featured to the effect that assistance had been assigned to help him at various tasks, but it is nowhere established by inference or otherwise that such help was given him because of waning physical forces. Nothing appears in the record to show any measure of debilitation up to the hour of the incident upon which claimant bases this claim for compensation. Numerous witnesses testify to a generally able-bodied condition and to the fact that during years of time he had little occasion to need the services of a physician.

In resisting this claim the defense relies on testimony tending to show that Jasper Farrow, in that he had heart trouble was in constant peril from this source, and since he died of heart trouble merely the expected happened. Their own witness, Dr. Raynor, testifies as to the valvular ailment of Farrow, but he says that compensation was always evident upon examination and that progressive tendency of the disease was not apparent during a term of years. Analysis of the evidence of Dr. Raynor gives feeble support to the defense. Doctors Kemp, Seeley and Williams

do not lend strength to the theory of defendants in its relation with the established rule of compensation obligation.

The record affords little support to the theory that any substantial cause had hitherto been manifest as to actual menace from this alleged heart affection. Assuming, however, that there existed in this vital organ of the workman a constant peril threatening fatal results, then it would become necessary to take into consideration this peril in connection with death in course of employment. If gradual increase of this affection had finally culminated in death, or such disability as occurred in this case rapidly resulting in death without incident accelerating difficulty at the seat of trouble, then, of course, employment would not be held in obligation of dependency.

From the record, however, we must conclude that there is no evidence whatever as to any failing power tending to incapacitate the workman prior to the 20th of December, 1920. While defendant is disposed to deny the statements of the deceased relative to his fall, the record justifies confidence in such statements, corroborated as they are by co-related circumstances.

If it be assumed that the death of Jasper Farrow was wholly due to pre-existing aorta stenosis, this fact affords no relief to the defendant, if through any incident of employment his death occurred at a time it would not have occurred but for such incident.

This rule is thoroughly established in compensation jurisprudence. In *Hanson vs. Dickinson*, 188 Iowa, 728, the Supreme Court of Iowa gives clear expression to this principle:

"The law is well settled that one predisposed to disease which is aggravated or accelerated by a negligent injury, is entitled to recover damages necessarily resulting from such aggravation or acceleration. In other words, the previous condition of the person injured cannot be invoked by the defendant for the purpose of escaping the consequences of his own negligence. * * * * The measure of damages is the injury inflicted, even though the injury might have been aggravated, or might not have happened at all, but for the peculiar condition of the person injured. * * * * The Workmen's Compensation Act dispenses with the necessity of any showing of negligence, contributory negligence, and the like, and adopts as the standard or condition that the injury must have been personal, and have arisen out of and in the course of the employee's employment."

In sustaining a compensation award made under the statute of Indiana, the Supreme Court of that state declares:

"His ailment, however, was such that it was not improbable that at any time, sooner or later, there might be a rupture of the aorta and a consequent death. But assuming that decedent was afflicted with a fatal malady certain to result in his decease sooner or later, and that such malady was a cause of decedent's death here, these facts alone are not sufficient to defeat appellees' claim. Such result would follow only in case his decease was in fact the result of his ailment progressing naturally and disassociated from any injury that he may have suffered by accident arising out of and in the course of his employment. If there was such an injury, and it concurred with the ailment in hastening the latter to a fatal termination, then the right to an award exists."

In the case at bar it is held that the record justifies the conclusion that the fall occurred as related by the deceased; that it ended his usefulness

and his human career by lighting up latent heart disease. While he might have died at some time later from this dormant trouble, he actually died December 25, 1920, as a result of his fall while at his work at a time he would not have died but for this incident of employment.

WHEREFORE, the decision of the arbitration committee is affirmed.

Seal A. B. FUNK,

Dated at Des Moines, Iowa, this 19th day of January, 1923.

Iowa Industrial Commissioner.

Affirmed by district and supreme court.

LOSS OF VISION

A. Romanski, Claimant,

vs.

Bennett Bros. Coal Company, Bituminous Casualty Exchange, Defendants.

Reopening and Review of Settlement Before the Iowa State Industrial Commissioner

On March 1, 1922, while engaged in his duties in defendant employer's mine, the claimant in this case was struck in the right eye by a flying piece of coal. Under settlement agreement entered into by the parties April 11, 1922, and duly approved by the Commissioner, the claimant received a total of $600.00 paid weekly at the rate of $15.00 as compensation for 40% loss of vision in the injured eye. In May, 1923, the claimant filed application for re-opening and review of settlement, alleging more substantial loss of vision and requesting additional compensation. The hearing on this petition was had at Des Moines June 18, 1924.

Upon the record, the conclusion is reached that the claimant has lost permanently 60% of the vision of his right eye as a result of the injury in question, entitling him to 20 weeks additional compensation.

Wherefore defendants are ordered to pay the claimant a compensation of $300.00 in lump sum and also to pay the costs of this hearing.

Dated at Des Moines, Iowa, this 24th day of June, 1924.

Seal RALPH YOUNG,

Deputy Industrial Commissioner.

No appeal.

INJURY TO VERTEBRAE—MEASURE OF DISABILITY

James G. Sheahan, Claimant,

vs.

Standard Biscuit Company, Employer;

London Guarantee & Accident Company, Ltd., Insurance Carrier, Defendants.

Reopening Before the Iowa Industrial Commissioner

While making his rounds as nightwatchman for the Standard Biscuit Company, about 4 A. M. June 2, 1922, James G. Sheahan, the claimant herein, stepped into a coal conveyor hole and fell a distance of several feet onto a pile of coal on the floor below. It was conceded that the

injury arose out of and in the course of his employment, and he has been paid compensation to date at the rate of $11.42 a week under settlement agreement entered into by the parties and approved by the Commissioner.

The matter came on for hearing April 6, 1923, upon petition for reopening and review of settlement filed by the claimant, such proceeding being instituted for the purpose of having the extent of injury determined and the paying period fixed.

The record discloses that in the accident the claimant suffered a fracture of the second lumbar vertebrae, fracture of six ribs, lacerations about the face and scalp and multiple contusions. He was immediately taken to the hospital where he remained thirty-seven days. In due course he was up and around and has long since been getting about with the aid of a cane. Sheahan is sixty years old. He has not and will not fully recover. His spine has lost some of its flexibility. His side is somewhat weakened by the fractured ribs and the shock incident to the fall is not entirely without permanent effect.

There is wide variance in the estimates of the measure of permanent disability given by the medical witnesses. Dr. C. B. Luginbuhl, the attendant in the case, estimates the permanent physical impairment due to the injury at between fifteen per cent and twenty-five per cent. Dr. O. J. Fay, the department medical counsel, places the minimum at twenty per cent and the maximum at twenty-five per cent. Dr. J. J. Flannery, called by the claimant, testifies that in his opinion Sheahan is totally and permanently disabled. Dr. Rodney Fagan, also called by the claimant, is apparently of the opinion that Sheahan's physical capacity is practically nil, and that it will remain so permanently.

The claimant's general physical appearance and his range of activity seem to be much more consistent with the estimates as made by the attending physician and by the department's medical counsel than with the testimony offered by the medical witnesses called by the claimant and give better basis for adjustment.

For the purpose of award, the claimant's disability is fixed in this proceeding at 25%. Wherefore, the defendants are ordered to pay the claimant compensation at the rate of $11.42 a week for 100 weeks, including previous payments. Defendants are also ordered to pay the costs of this hearing.

Signed at Des Moines, Iowa, this 16th day of May, 1923.

RALPH YOUNG,

Deputy Industrial Commissioner.

Appeal pending.

AWARD FOR BACK STRAIN

Chris Jensen, Claimant,

vs.

International Milling Company, Employer,

Integrity Mutual Casualty Company, Insurer, Defendants.

Reopening Before the Iowa Industrial Commissioner

On January 13, 1922, Chris Jensen, claimant herein, suffered a severe wrenching of his back through accident arising out of and in course of his employment by the International Milling Company. Compensation was paid for seventeen weeks at $15.00 a week under settlement agreement entered into by the parties in February, 1922.

On November 16, 1922, the claimant petitioned for reopening, alleging total permanent disability. Hearing on such petition was had at Sioux City, May 10, 1923.

The investigation disclosed that starting with the eighteenth week following the injury claimant took up light employment, as was recommended by the attending physician. He continued with such light employment for six weeks when he was forced to discontinue on account of his physical condition as affected by the injury. Since that date the claimant has been unable to work and is now totally disabled.

The record justifies the conclusion that the disability suffered by the claimant is chargeable to his injury of January 13, 1922, and it is so held. Wherefore, defendants are ordered to pay the claimant compensation at the rate of $15.00 a week, starting with the twenty-fourth week after the injury to date, and to continue such payments from date during such period as the claimant may be totally disabled on account of his injury. Defendants are also ordered to pay the costs of this hearing.

Signed at Des Moines, Iowa, this 11th day of May, 1923.

RALPH YOUNG,
Deputy Industrial Commissioner.

No appeal.

DEPENDENCY DENIED WIDOW UPON REMARRIAGE

Nellie I. Kramer, Widow of P. P. Kramer Deceased, and Kenneth Erwin Kramer and Melvin Eugene Kramer, Claimants,

vs.

Tone Brothers, Employer,
Iowa Mutual Liability Insurance Company, Insurance Carrier.
Fitzpatrick, Barrett & Barlow, and Chandler Woodbridge, for Claimants; Sampson & Dillon, for Defendants.

Reopening Under Section 2477-m34 Before the Iowa Industrial Commissioner

In the employ of Tone Brothers, at Des Moines, August 16, 1919, P. P. Kramer lost his life in industrial accident.

Compensation payment was made to Nellie Kramer, widow of deceased, in the sum of $1,495.00, covering a period ending June 6, 1921, at which date Nellie Kramer became the wife of Timos Flemig.

At the time of the death of P. P. Kramer, Kenneth Erwin Kramer and Melvin Eugene Kramer, as adopted children, were members of his family. These children remained in the custody of Nellie Kramer for a period of several months following the death of her husband.

The record developed at the hearing before the Industrial Commissioner February 15, 1922, that on the 30th day of March, 1920, this claimant

petitioned the Juvenile division of the district court of Polk county that the alleged delinquency of Kenneth and Melvin Kramer be inquired into with a view to the application of the provisions of Chapter 11, Acts of the Thirtieth General Assembly, having for its object the regulation treatment and control of dependent, neglected and delinquent children, on the ground that the father was dead and the mother unable to support said children.

It further appears that on the 31st day of March, 1920, by order of Judge Hubert Utterback, Kenneth Kramer, and Melvin Kramer as dependent and neglected children, were committed to the Soldiers' Orphans' Home at Davenport "by the right of disposition by statute in such cases made and provided."

This action is based on the contention that the existence of dependent children at the time of the death of P. P. Kramer entitles his widow to compensation payment for a full period of three hundred weeks regardless of any intervening incident or circumstances. Defendants deny liability further than in payment already made covering a period of dependency expiring at the date of the marriage to Timos Flemig.

Claimants rely upon a general rule that conditions at the time of injury are usually controlling as to the extent of compensation obligation. The statute provides 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."

It is unreasonable and illogical to interpret a statutory phrase regardless of its relationship with other statutory statement. Technically, the claimant would seem justified in her claim for additional compensation during the entire period of three hundred weeks because at the time of the accident there were dependent children of the deceased husband. There must, however, be taken into consideration in this connection notable exceptions to the general rule as to the status at the time of the injury.

Under the same rule "a child or children under sixteen years of age * * * whether actually dependent for support or not upon the parent at the time of his or her death" is under the same rule of conclusive presumption. If the status at the time of the injury is controlling, a child one month, or one week, or one day under sixteen years of age at the time of the injury would be entitled to compensation for a period of three hundred weeks. This is too ridiculous for serious consideration, and still it is merely the practical application of the rule contended for by this claimant.

The Iowa statute originally contained no bar to full compensation payment in case of remarriage upon the part of the spouse. When a statutory bar was erected, it is reasonable to inquire why exception was made in favor of a spouse as the parent of dependent children. Nobody would assert this exception is based upon any ground other than that of consideration for the children and not for the parent remarrying. It is for their better care and consideration. It is with the common view that a step parent is not apt to be actually enthusiastic in the matter of contribution to the children by a former marriage, and that this con-

sideration should be given these orphaned children as consideration justly due to the deceased parent in his sacrifice to industrial employment as well as to his unfortunate offspring.

Section 2690-b, Supplement to the Code, 1913, expressly provides:

"All children received in the Soldiers' Orphans' Home shall, when received, *become wards of the state.*"

Section 2690-d, Supplement to the Code, 1913, declares:

"It shall not be lawful for any parent * * * to interfere in any manner with or to assume to exercise any control over such child * * *."

Section 2685:

All destitute children of soldiers * * * who are destitute or unable to care for themselves, shall be admitted * * * and become *wards of the state.*"

Section 254-a21:

"In any case where the court shall award a child to the care of any association * * * the child shall, unless otherwise ordered, become *a ward* of the association."

Under the foregoing statutes and the facts as shown in the record, the dependent children became wards of the state on the thirty-first day of March, 1920, and long prior to the date of the remarriage of the claimant, and such minor children have since said date of committment been wards of the state.

The record nowhere suggests that this widow entertains any plan whatever involving the support in any degree of these little boys. At the hearing before the Commissioner it was frankly understood that these children were in no way to profit by any award that might be made. When it was suggested by counsel for defendant that the case as to the children be dismissed claimant's counsel stated this should not be done for the reason that in case of the death of the widow they would be entitled to compensation remaining unpaid, and only in such remote contingency are they considered as entitled to consideration.

Legislative intent could not have had involved any such miscarriage as this. It could not have been assumed or imagined that legislative meaning could be so far perverted as to bestow upon a widow for her own personal use and benefit reward for the existence of children whom she abandoned to the care of the State, children over whom she exercises and proposes to exercise no control whatever and to whom she has no plan or purpose of making contribution for support. Such interpretation is grossly repugnant to equity.

When Nellie Kramer asked the district court of Polk county to assume the care and custody of these children on the part of the state, she severed all ties of relationship entitling her to any consideration whatever in compensation payment as a parent. To assume otherwise is in direct violence to logical legislative intent and the spirit and purpose of the compensation statute. It surely was not proposed to penalize industry and reward parental perfidy by statutory command.

Suppose these children had both died before this remarriage occurred. Could it then be assumed the status at the time of the injury would still control? Such assumption was annihilated in a Maryland case, important in its bearing upon the case at bar.

Giggndelle vs. Piedmont & Georges Creek Coal Company, et al., 111 Atl. 134 W. C. L. J., Vol. 6, p. 535.

In this case a husband was killed June 9, 1917, leaving a widow and infant child. The child died October 20, 1918, and December 11, 1918, the widow remarried. The court held that where a dependent widow of a deceased employe, awarded compensation, remarried at a time when she is without dependent children, a child dependent at the time of her husband's death having died, compensation ceases.

In discussing the case, the court said:

"The sole question to be decided is the proper construction of section 43 of article 101 of the Code, which is in part as follows:"

In case of the remarriage of a dependent widow of a deceased employe without dependent children, all compensation under this article shall cease. * * *

Did the Legislature mean by the language above quoted that, on the remarriage of the widow without dependent children of the deceased husband living at the time of such remarriage, compensation should cease, or were the words "without dependent children" intended to refer back to the date of the death of the deceased?

The respective interpretations of this language contended for are ably presented by the dissenting opinion of the chairman of the commission, and by the opinion of Judge Henderson, set out in full in the briefs of appellant and appellee, respectively. As a matter of grammatical construction both views are possible, although even from this point of view we think the conclusion reached by the circuit court is the sounder. Of course the legislative intent as gathered from the entire section, and from all parts of the act which throw light upon it would be controlling even if the grammatical construction were doubtful. And we find no difficulty as to this in reaching the same conclusion as that arrived at by the circuit court.

We can see no reason why the compensation should cease on the remarriage of the widow when there were no children at the date of the death of the deceased husband, and not on the happening of the same event when there were dependent children at the death of the husband, but none at the time of the remarriage. On the death of the child the widow was entitled to the entire amount awarded because she was then the only dependent on her deceased husband, and not, as to any part of the award, because she has been the mother of the child. In other words, she was in exactly the same position in reference to the award as she would have been if she had been the only dependent at the time of the death of her husband. The amount of the award, when made, had no reference to the number of dependents, but to the character of the dependency."

This rule as to "character of dependency," rather "than number of dependents," fits snugly into this case. There is no character to alleged dependency in the case at bar for the reason that it is based merely on technical phraseology and is in violence to the spirit and purpose of compensation payment.

In a legal sense death no more definitely severed the tie of practical relationship in the Maryland case than did legal abandonment in the case of these boys, who are used as a subterfuge to secure personal benefit to indifferent motherhood. Shall this woman traffic upon her indifference to her personal advantage while the little fellows take their chances without the support the statute intended? They could not legally secure it except through the mother, and she deliberately proposes to draw the

money for her use alone upon the ground that she was once, but is no more, in law, their mother.

While under the Iowa law adopted children are to be regarded for compensation purposes "the same as if issue of the body," there may be a distinction under certain circumstances. No legal process can sever a tie of blood, while in case of adoption the law which unites may effectually separate legally constituted parent and child. If the issue of her body, these little boys would hardly be used by this claimant merely to eliminate a legal bar to personal indulgence. They would not be regarded as simply handy to use in the promotion of personal interest while being excluded from all share in benefits accruing. Claimant by law became in legal status the mother of these boys. By law she renounced all custody and responsibility and obligation she had assumed. A humane statute should not be strained to such advantage.

The character of this dependency is wanting in substantial elements of integrity and is foreign to the spirit and purpose of workmen's compensation.

WHEREFORE, it is held that in covering with statutory compensation payment the period from the death of P. P. Kramer to the date of her marriage to Timos Flemig, the defendants have discharged all legal obligation to this claimant.

Dated at Des Moines, Iowa, this 26th day of February, 1923.

Seal

A. B. FUNK,
Iowa Industrial Commissioner.

Supreme Court holds against widow but makes award to adopted children.

BRAIN INJURY AND NEUROSIS—PARTIAL PERMANENT DISABILITY

C. W. Turner, Claimant,

vs.

Chicago Great Western Railroad Company, Defendants.

Reopening Before the Iowa Industrial Commissioner

September 1, 1918, C. W. Turner entered the employ of the Chicago Great Western Railroad Company as a machinist's helper at a weekly wage of $21.60. On December 28th of that year while at work in such employment he was accidentally struck on the head with a sledge. On March 27, 1922, Turner returned to his employment and under settlement agreement entered into the parties April 2, 1922, and approved by the Commissioner, he received $138.60 at the rate of $10.80 a week for disability suffered.

On July 31, 1922, the claimant petitioned for reopening and review of settlement, alleging permanent injury. Hearing on this petition was had at Oelwein January 25, 1923. This hearing disclosed that since the injury the claimant's capacity for regular service in heavy employment has been impaired. The injury at the time was diagnosed as concussion of the brain, but it was admitted as possible that there may have been a fracture of the skull. In lifting or in any work requiring considerable

muscular effort effects of the injury are felt by Turner, and to date his range of employment has been somewhat restricted and his efficiency to a degree impaired. The condition may or may not be permanent. In either event, neurosis seems to be involved and it is thought best to definitely fix the paying period.

For the purpose of award it is held that the injury in question has permanently impaired the claimant as a laborer ten per cent. Wherefore, defendant is ordered to pay the claimant $10.80 a week for 40 weeks, including payment previously made. Defendant is also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 4th day of June, 1923.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

LEG INJURY—INCREASE OF AWARD DENIED

Elmer Zimmerman, Claimant,

vs.

Martens-Ketels Milling Co., Employer,
The Ocean Accident and Guarantee Corporation, Insurer, Defendants.

Reopening Before the Iowa Industrial Commissioner

September 25th, 1917, the claimant in this case suffered a fracture of the left leg just below the knee. The injury arose out of and in the course of his employment by defendant employer. Under settlment agreement entered into by the parties in April, 1918, Zimmerman received compensation for 25% the loss of the leg, it being estimated at that time that the usefulness of the member would be permanently impaired to that extent. In August, 1923, the claimant petitioned for a re-opening hearing, alleging that the disability in the limb exceeded 25%. Hearing on this petition was had at Sioux City November 27th, 1923.

The record does not disclose that there was error in the estimate of disability at the time of the settlement and it is not contended that the condition has grown worse. The claimant has a useful limb for all ordinary purposes. Since the injury the claimant has received higher wages in lighter employment than he was receiving at the time of the accident. There is nothing in the case to indicate error in the original settlement and further recovery is hereby denied.

Signed at Des Moines, Iowa, this 4th day of December, 1923.

Seal

RALPH YOUNG,
Deputy Industrial Commissioner.

No appeal.

SECOND INJURY TO LEG DUE TO PREVIOUS ACCIDENT

C. W. Butler, Claimant,

vs.

Norwood-White Coal Company, Employer,
Bituminous Casualty Exchange, Insurer, Defendants.

Reopening Before the Iowa Industrial Commissioner

In accident arising out of and in the course of his employment by defendant employer, occurring May 3rd, 1921, C. W. Butler, claimant herein, suffered a fracture of the tibia and fibula of the left leg at the juncture of the middle and lower thirds. On January 4th, 1922, before the healing process was complete, Butler slipped and fell on an icy walk on his way to the postoffice a few blocks from his home and as a result of this fall suffered an interscapular fracture of the femur of the same leg. In the interim settlement agreement had been entered into by the parties and approved by the Commissioner under which claimant was to receive $15.00 a week as compensation payment. Subsequent to the fracture of the femur, adjustment was made for the permanent disability resulting from the original injury.

On September 22nd, 1922, claimant petitioned for reopening and review of settlement, alleging that the fracture of the femur increasing the disability was a consequence of the original injury. Defendants plead in defense:

(1) That the settlement is not subject to review.

(2) That the fracture of the femur was due to an independent intervening cause. Hearing on the issues was had July 24th, 1924.

There was no statutory commutation of compensation payments in this case and there is, therefore, no bar to review of settlement, and to award of additional compensation if the claimant is able to establish further disability resulting from the original injury. It is, therefore, to be determined whether the subsequent accident shall be regarded as a proximate consequence of the original injury.

Examination by Dr. Fay November 14th, 1921, approximately six weeks prior to the fall resulting in the fracture of the femur, revealed that at that time there was complete union of the fibula but only partial union of the tibia, the larger bone. On January 4th, 1922, the tibia was, of course, nearer complete repair that it was on November 14th but it was still in the transition stage in the words of Dr. Fay. The exact condition of the limb January 4th is not and cannot be known. However, it is reasonable to assume that there was a tendency to favor the limb, and need to, and also that carriage was somewhat effected. Butler was doubtless handicapped in walking.

With such information as is of record as to the condition of the injured limb January 4th, can it be assumed that Butler's fall on that date was occasioned by the effects of the original injury? Is there present such degree of probability as exceeds speculation and conjecture?

Butler testifies that he stepped on an icy spot on the walk with the right foot, the good foot, and that the foot slipped and that the left and injured limb gave way when the entire weight of his body was thus suddenly thrust upon it. He further testifies that it was the impact of the fall which broke the femur. He was without either crutch or cane at the time as he was instructed by the attending physician to use and exercise the injured limb as much as possbile to strengthen it and aid in recovery.

Whether the injured limb was actually too weak to sustain the burden or whether it gave way because Butler, with fear and thought of favoring, failed to tense the leg for the emergency is not clear in the record; or would it matter, if claimant's testimony as to the manner in which he fell and the occasion of it is to be accepted, as would seem to be necessary. His story is plausible and is not refuted. It is argued by counsel for claimant that the slipping was a mere incident and that it was the weakened condition of the limb which caused the fall and such theory would seem to be consistent with the record. It is held that the subsequent accident was a consequence of the injury in the employment and is compensable. It is further held that due to both injuries the limb is permanently impaired 35%.

WHEREFORE defendants are ordered to pay the claimant additional compensation in the amount of $300.00, which represents twenty weeks at $15.00 per week. The defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 10th day of November, 1924.

Seal

RALPH YOUNG,
Deputy Industrial Commissioner.

Appeal pending.

MULTIPLE SCLEROSIS WITH TRAUMA AS CONTRIBUTING FACTOR

Lewis Lowry, Claimant,

vs.

Sioux City Brick & Tile Company, Employer,
Globe Indemnity Company, Insurer, Defendants.
George H. Bliven, for Claimant;
Jepson, Struble & Anderson, for Defendants.

Reopening Before the Iowa Industrial Commissioner

Lewis Lowry entered the employ of the Sioux City Brick and Tile Company, September 18, 1919, as a laborer. His place of service for the company was upon an elevated platform and his duties were to assist in dumping cars drawn to that point and to shovel the overflow of clay. Lowry was thus regularly engaged until October 7, 1919.

About 9 A. M. October 7th, the railing surrounding the platform, upon which Lowry worked, gave way as he leaned against it and he fell between 15 and 20 feet into a pit below, lighting on his head and shoulders. From developments serious injury was not suspected and on October 27th Lowry reported for work as recommended by the attending physician. He received payment of $76.80 for temporary disability under settlement agreement entered into November 25th. This agreement was reduced to writing and approved by the Commissioner.

On April 24, 1922, Lowry filed for reopening proceeding alleging total permanent disability as a result of the injury and claiming commensurate award. Hearing on such petition was had at Sioux City November 15, 1922.

Lowry's ailment is multiple sclerosis and it is not denied that he is totally disabled. The claimant ascribes the development of the disease to the injury. The defendants insist that the disease is wholly independent and that the injury is in no wise responsible. The claimant is within the law in assuming that he is entitled to compensation recovery for his present disability if it is shown that the injury was instrumental in promoting the disease. In this connection attention is called to the following:

"The courts very generally hold that, if an existing disease is aggravated by the accident or injury, compensation must be paid for the resulting injury. Note L. R. A. 1917 D, 105."

"Even where a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under certain circumstances which can be said to be accidental, his death results from injury by accident." (279 Ill. page 356, 116 N. W. page 652.)

"Whatever predispcsing physical condition may exist, if the employment is the immediate occasion of the injury, it arises out of the employment because it develops within it." (97 Atl. page 1022.)

It has been held that "if, by weakened resistance or otherwise an accident so influences the progress of an existing disease as to cause death or disability" it is sufficient to justify an award under the Workman's Compensation Act. Mailman's case 118 Me. 172, 106 Atl. 606.

Multiple sclerosis is a germ disease and is incurable. It is understood that the germ may remain latent in the body for a long period of time. The disease has been known to develop following injuries and trauma is held responsible when causal connection is established. In the case of *Blackburn vs. Coffeyville Vitrified Brick and Tile Co.*, a Kansas case reported in the 293rd Pacific, page 351, the Court affirmed an award for disability resulting from multiple sclerosis, the disease having developed following the injury.

After the fall, Lowry did not regain consciousness until the following morning. Dr. Katherman, the attendant, diagnosed the injury as cerebral concussion. Lowry remained in the hospital about two weeks and on October 27th, three weeks following the injury, reported for work, as recommended by Dr. Katherman. During the balance of October Lowry put in 30 hours and in November 57½ hours. He was not a full hand, due to effects of his injury and on November 8th was forced to quit. On November 11th the plant shut down for the winter as is the custom.

Late in November Lowry hired out to Joe Hagan to drive a dump wagon in connection with a cellar excavation. In this work he was handicapped by reason of his condition but he continued on the job which lasted about two weeks. Following this engagement Lowry did not work except an occasional odd job of a light character until in July, 1921, when he was employed as a deliveryman by Geo. Claridge, dealer in coal and wood. Lowry seemed not to have the physical capacity for this work and after five months of irregularity he was forced to quit. Since this engagement Lowry has worked none and has been unable to do so.

From the time of the injury on Lowry suffered constantly with pain in his back, especially about the lumbar region. Within five months following the fall he began losing control of his limbs. Gradually the condition developed until all symptoms of multiple sclerosis were present.

Prior to the fall Lowry was apparently able-bodied. He was at that time working regularly and at such capacity as might be found in a boy eighteen years of age. Coincident with the injury his condition changed and progressively he became the physical wreck he is today.

Dr. Katherman, the attending physician in this case, is seemingly of the opinion that the disease is wholly independent of the injury, although he admits in his testimony that injuries may aggravate and accelerate disease. Dr. Ely, who examined the claimant subsequent to the hearing at a request of the Commissioner, states in his report that in his opinion the injury "might justly be considered as the precipitating factor in the establishment of his illness."

Upon the record it is accepted as the greater probability that Lowry's injury was a material contributing factor in developing the disabling disease with which he is afflicted and it is so held.

WHEREFORE, defendants are ordered to pay Lowry compensation at the rate of $8.23 per week for such period as he has been absent from work since his injury to date and continuing during disability within statutory limit. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 3rd day of January, 1923.

Seal (Signed) RALPH YOUNG,
Deputy Industrial Commissioner.

No appeal.

PARTIAL PERMANENT DISABILITY ESTABLISHED

Emanuel Pickles, Claimant,

vs.

Sheriff Coal Company,
Bituminous Casualty Exchange, Defendants.

In Reopening Before the Iowa Industrial Commissioner

Through a fall of slate in the defendant employer's mine June 24th, 1920, Emanuel Pickles, the claimant herein, suffered a fracture of the pelvis of the right side and other injuries about that region. Under settlement agreement entered into by the parties August 5th, 1920, memorandum of which was filed with the Commissioner and approved, the claimant received compensation at the rate of $15.00 per week up to and including June 1, 1921.

On November 21st, 1921, claimant petitioned for a re-opening hearing, alleging permanent injury and requesting additional compensation.

The claimant is fifty-two years old, is robust in appearance, uses neither crutch nor cane and has no appreciable limp. The estimate of 100% permanent incapacity for work requiring any considerable exertion, as given by one of the medical witnesses, seems most too inconsistent to be given much consideration. There is nothing in the case to indicate that the prevailing medical estimate of a 20% permanent partial disability does not closely approximate the impairment and such estimate is accepted for the purpose of an award. It is held that the claimant is 20% permanently disabled as a result of his injury.

WHEREFORE defendants are ordered to pay this claimant such additional compensation at the rate of $15.00 per week which will, with what has previously been paid, total 80 weeks at $15.00 a week. Defendants are also ordered to pay the costs of this hearing.

Signed at Des Moines, Iowa, this 25th day of August, 1922.

Seal RALPH YOUNG,

Deputy Iowa Industrial Commissioner.

No appeal.

MEASURE OF PERMANENT DISABILITY

Daniel Van Ness, Claimant,

vs.

Standard Clay Products Co., Employer,
Integrity Mutual Casualty Co., Insurer, Defendants.

Reopening and Review of Settlement Before the Iowa Industrial Commissioner

During the summer of 1921 Daniel Van Ness was employed as a brick laborer by the Standard Clay Products Company of Oskaloosa. On June 20th of that year, while Van Ness was operating an automatic brick cutter, his right sleeve was accidentally caught on a set screw on a revolving shaft and he was drawn into the machinery. He sustained multiple fractures of both arms and legs and dislocation of his elbows and knees. He was treated by Dr. Williams of Oskaloosa and remained in the hospital 71 days. During the winter following he was confined to his home and was able to get about only with the aid of crutches. For some time past he has been attending the Penn School of Commerce at Oskaloosa.

In October, 1921, Van Ness entered into settlement agreement with the employer's insurer. Under this agreement approved by the Department, Van Ness received compensation at the rate of $10.39 a week up to October 1st, 1923, when the insurer discontinued payment and filed application for re-opening hearing to have determined "whether or not disability exists such as to warrant the continuance of compensation payments." Hearing on this petition was had at Des Moines November 20th, 1923.

Considering the nature of his injuries, Van Ness has made a remarkable recovery. His carriage, though not normal, is without serious impairment in ordinary activities such as in walking and in the act of seating himself and arising. There is some measure of disability in both arms and legs, particularly in the right leg which bows considerable in the thigh, due to mal-position resulting from fracture. The causes of substantial impairment are hidden and are revealed only in X-ray pictures.

There is wide variance in the estimates of permanent impairment as given by the medical witnesses. Dr. Williams, who attended Van Ness for his injury, testifies that in his opinion the disability is 100% for any such work as the claimant was following at the time of the accident. Dr. McClean, Dr. McCaffrey and Dr. Baker, all of Des Moines, who made a joint examination on behalf of the claimant, stated in joint report submitted in evidence that "amount of disability at his original occupation,

approximately 80%. Dr. W. J. Fenton, of Des Moines, who, a few weeks prior to the hearing, examined the claimant for the defendants, estimates the permanent disability at 35%. Dr. O. J. Fay, the Department's medical counsel, in his report of examination in July, 1922, gave it as his opinion that the permanent impairment ranged between 35% and 40%.

The estimates as given by Dr. Williams and the other physicains who examined on behalf of the claimant must necessarily be discounted to some extent as three doctors compare the disability with the requirements for the heaviest manual labor, whereas the general physical capacity is the proper basis of measure.

Taking into account the claimant's general physical appearance and his age and after carefully considering the medical testimony, the conclusion is reached that the claimant is 60% impaired permanently as a result of injuries and it is so held.

WHEREFORE the defendants are ordered to pay the claimant 240 weeks' compensation at $10.39 a week, including payments already made. Defendants are also ordered to pay the statutory medical, surgical and hospital benefits and to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 21st day of November, 1923.

Seal RALPH YOUNG,

Deputy Industrial Commissioner.

No appeal.

FINGER LOSS—SEVERANCE BEYOND DISTAL JOINT

Guido Burgonia, Claimant,

vs.

Saylor Coal Company,
Bituminous Casualty Exchange, Defendants.

In Reopening Before the Iowa Industrial Commissioner

As a result of a fall of slate in defendant employer's mine July 21, 1921, Guido Burgonia, the claimant in this case, suffered injury to the first, second and third fingers of his right hand. The second finger was amputated about the middle of the second phalanx. The first and third fingers were amputated just above the head of the second phalanx.

Paragraph seven (7) of subsection "j" of section (9) of the Act provides "the loss of more than one phalanx shall be considered as the loss of the entire finger or thumb." Under this section it is conceded by the defendants that the claimant is entitled to compensation for the entire loss of the second finger but they contend, contrary to Burgonia's claim, that they should be held for only one-half of the loss of the first and third fingers. One June 28, 1922, the claimant filed a reopening petition and hearing was had at Des Moines, August 16th.

The attending surgeon testified that, with the first and third fingers, only the terminal phalanxes were involved in the injury proper. As to these fingers, there was no injury to the middle phalanxes and in amputation a fraction of each of these phalanxes were removed solely for surgical result. Good surgery does not permit of amputation at the joint.

The distinction is made that, where a portion of the second phalanx of the thumb or finger is necessarily removed by reason of an injury to the second phalanx, compensation is paid for the loss of the entire thumb or finger, while in cases where the injury is confined to the terminal phalanx, and solely for the purpose of a good surgical result, the head of the second phalanx is removed, the employer is held for only one-half the loss of the finger. It is held accordingly in this case.

WHEREFORE, defendants are ordered to pay the claimant such additional compensation as will make a total of 50 weeks at the rate of $15.00 per week. Defendants are also ordered to pay the costs of the hearing.

Dated at Des Moines, Iowa, this 25th day of August, 1922.

Seal RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

Payment for second phalanx ordered by Supreme Court.

Payment for entire second and third fingers ordered by Supreme Court.

GAS FUMES NOT CONTRIBUTING TO HEART FAILURE

Millie Martin, Claimant,

vs.

Des Moines Gas Company, Defendant.

Arbitration Before the Iowa Industrial Commissioner

About 1:30 P. M. January 2, 1919, Ross Martin died. The death occurred during his hours of service for the Des Moines Gas Company.

Millie Martin, the widow and the claimant herein, seeks compensation recovery, alleging that the death was due to inhalation of gas fumes. The defendant contends that the workman died of acute heart failure and that there was incident, no injury arising out of and in the course of the employment.

The case was submitted at Des Moines, March 10, 1923, to the Deputy Industrial Commissioner, arbitrators being waived by stipulation of counsel.

The record discloses that during several months prior to his death Martin had been failing physically; that he had on two occasions been taken home ailing at which times he complained of a pain through his chest; that early in the morning of the day of his death he had stated, in effect, to a fellow employe that he did not feel able to work but was required to do so as he needed the money. It is also of record that autopsy examination revealed a diseased condition of the heart such as might cause sudden death. Further, it does not appear that on the day of his death Martin was more than ordinarily exposed to gas fumes, or to fumes of other materials used in connection with his work, or that he suffered injury of any nature arising out of and in course of his employment.

Accordingly, it is held that the claimant has failed to discharge the burden of proof and the claim is denied, and each party is ordered to pay costs incurred by himself.

Dated at Des Moines, Iowa, this 13th day of March, 1923.

Seal RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

INJURED VERTEBRAE—AWARD

Anton Martincic, Claimant,

vs.

Dallas Coal Company,
Bituminous Casualty Exchange, Defendants.

In Reopening Before the Iowa Industrial Commissioner

In a fall of slate in defendant employer's mine, Anton Martincic, the claimant in this case, suffered an injury to his spine described as a crushing of the body of the second lumbar vertebrae. Under settlement agreement entered into by the parties August 18th, 1920, memorandum of which was filed with the Commissioner and approved, the claimant received compensation at the rate of $15.00 per week up to and including June 8th, 1921. On January 20th, 1922, claimant petitioned for a reopening hearing, alleging continuing disability and requesting commensurate award.

Hearing on this petition was had at Des Moines August 16th, 1922. Dr. O. J. Fay and Dr. Edw. J. Harnagel, who professionally attended the case, estimated a 25% permanent partial disability. These doctors are of the opinion that the disability would have been less, had the claimant taken up light work several months ago as was recommended by them. Dr. Eschpach estimates the permanent disability at 15%, measuring only physical findings and not taking into account a neurotic condition which is alleged to exist. Dr. Van Epps, a neurologist, estimates the permanent disability at 25%, taking into account both the actual physical condition as affected by the injury and the neurosis also resultant. The prevailing estimate of 25% disability is accepted for the purpose of award, notwithstanding the fact that it is somewhat discounted by three of the medical witnesses. The claimant is a foreigner of low mentality and it is believed that a neurotic condition actually exists and that it in a measure increases the disability.

WHEREFORE defendants are ordered to pay the claimant such additional compensation as will, with what has previously been paid, amount to 100 weeks at the rate of $15.00 per week. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 25th day of August, 1922.

Seal RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

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