STATE OF IOWA
1926

SEVENTH BIENNIAL REPORT OF THE

Workman's Compensation Service

For the Period Ending June 30, 1926

AND

REPORT OF DECISIONS

By the Department and State Courts

A. B. FUNK
Industrial Commissioner

Published by
THE STATE OF IOWA
Des Moines

LETTER OF TRANSMITTAL

STATE OF IOWA
WORKMEN'S COMPENSATION SERVICE

Des Moines, September 30, 1926.

Hon. John Hammill, Governor of Iowa.

Sir: In compliance with Section 1432, Code, 1924, I have the honor to transmit to you the seventh biennial report of this 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	Deputy Commissioner
Helen A. Reed	Secretary
Kathryne Miller	Stenographer and Chief Clerk
Marie M. Grinstead	Stenographer
Margaret English	File Clerk
Maurine Lewis	Settlement Clerk
	Report Clerk

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

WORKMEN'S COMPENSATION SERVICE

GENERAL REVIEW

Since the issue of our 1924 report the incumbent has been reappointed Industrial Commissioner for a term of six years. After nine years of service the appointment was made apparently without opposition from any source, with the unsolicited endorsement of leading labor representatives in the state, as well as of many employers of labor and those prominent in insurance affairs.

It was without his own seeking, and with actual apprehension as to his own fitness, that the present Commissioner assumed the responsibility of this administration. In this service he has summoned to his support all his resources of capacity and experience and devotion in conscientious purpose. In its interest of development and its opportunity for distinct usefulness, the work has grown upon him from year to year. The confidence and support of those best advised as to department proceeding has been deeply appreciated, and the recognition involved in this further call to service under circumstances so favorable is keenly gratifying as evidence that the Iowa compensation service is functioning to practical results and with general satisfaction. May it prove that developments will justify further confidence on the part of those most concerned in its existence and its accomplishment.

The Workmen's Compensation System was so unique in jurisprudence and so revolutionary in its relations to labor and employment as to make both these interests skeptical as to satisfactory operation. Experience has not given universal satisfaction. The lure of the occasional big damage judgment on the one hand and the chance to defeat just claims on the other has to a degree obscured the benefit of widespread relief with little delay, and the protection afforded to well meaning employment in danger of calamity from heavy loss and expensive litigation. Then, of course, this system could not function to the limit of full value payment to the workman for such loss as he might sustain by industrial injury. Such loss is frequently inestimable in its financial and moral aspects. Furthermore, the benefits afforded may not be distributed with such exact justice and equity as to give all victims of accident the same measure of relief according to his actual loss of earning

power in a particular grade of employment. As experience develops manifest injustice, however, endeavor is made to work out more consistent statutory relief, but a perfect schedule will be long in coming.

Surely, progress has been made in this state in the measure of benefits to the injured workman during this administration. Maximum weekly payment has been raised from $10.00 to $15.00. Basis of payment has been increased from fifty to sixty per cent of weekly earnings. Medical allowance, formerly one hundred dollars is now twice this sum. Burial benefits have increased from one hundred dollars to one hundred and fifty dollars. There is now no escape from payment to the injured workman or his dependents, except only in agricultural and domestic employment, while in earlier years grief was common through non-insurance and other bars to relief. This is by no means to say that we have gone to the limit of equity in affording larger and better coverage to the victims of industrial accident, but it does show that we have made substantial progress in the earnest consideration of their misfortunes and the duty of society in their behalf.

GENERAL RULES FOR ESPECIAL CASES

In most cases of disability it is not difficult to decide as to whether or not compensation payment is required. Clearly the injury did or did not arise out of employment. If the loss relates to an arm, hand, finger, leg or eye, the statutory schedule fixes the number of weeks of payment, but it frequently occurs that injury is elsewhere in the body where general rules must apply. If the disability is permanent, in whole or in part, the measure of function lost must be the basis of calculation. If disability be temporary, then the rule of lost time applies and weekly payment must be made during the period of such loss, less the waiting period, which is absorbed at the end of the fifth, sixth and seventh weeks of incapacity if it shall last so long.

With many adjusters, however, and with many claimants the most difficult thing to decide is as to whether or not in certain cases the law requires payment at all. Workmen die or suffer loss of earnings from acute diseases such as pneumonia, influenza and erysipelas. Then is often indulged the hasty conclusion that the employer is relieved, but the law especially covers death or disability from disease resulting from injury, and in these cases such result is not uncommon. Then, death not infrequently results from

heart failure, from tuberculosis or perhaps from some other chronic trouble. In such cases much stubborn resistance to compensation payment has been made where obligation clearly exists. If it may be shown that the chronic ailment was lighted up, hastened in development, with definite injury as a contributing factor, the law demands relief.

Most confusion, perhaps, is occasioned by hernial development. It is a biological fact, not at all obscure, that many men are predisposed to hernia. Doctors have quite commonly agreed that no recognition should be given for what is known as traumatic hernia unless it results from localized violence. In nearly all compensation jurisdiction, however, it is officially held that where such development, with a definite incident of employment as proximate cause, results in disability and requires operation, industry must recognize obligation. In this connection the question is suggested, did the hernia in this instance arise out of employment? Perhaps the workman was doing his regular work in the usual way. Possibly there was at the time of alleged injury little in the way of accident to account for the development. In such cases the employer or insurer is justified, of course, in investigating as to just what did happen, and why. There should be corroboration, circumstantial or otherwise, sufficient to suggest and to support the element of inherent probability. But where it may be found that at a definite time owing to some peculiar strain, which may mean only that the regular job is in itself suggestive of unusual strain, and that good faith on the part of a claimant is manifest, our advice to adjusters is, Put the man through an operation without delay and return him to usefulness. The cost is rarely in excess of $225.00 in surgical and hospital expense and in compensation required, and this is better than litigation which usually results in defeat when arbitration discloses evidence of good faith. I am able to state, and I state with real satisfaction, that this counsel is usually adopted, and it is my impression that first and last insurance or employment is not a loser by this process.

In compensation administration smooth and successful, it seems necessary to spare no effort in the endeavor to inculcate the principle that in all cases of injury, involving questions more or less obscure, this is the real test: Is this disability or death due to an incident of employment, but for which death or incapacity would not have resulted? Sane reply to this question almost always suggests itself and such reply should decide as to obligation.

For the benefit of all concerned, it may be further advised: Don't cavil over technical terms or trivial defenses based on the kind of thing that happened, if actual disability resulted. The word "accident" common in some states is subject to much qualification, but it should be remembered that it does not occur in our compensation law. All obligation is based on injury and anything of traumatic origin arising out of employment that deprives the workman of life or of earnings must be regarded as lawful charge on industry. This rule is successfully applied in Iowa. It is reasonable and just and easily understood. And if our eyes and ears do not deceive us, no other administration in the country is better respected or more cheerfully complied with by employers and insurers.

While in this line of consideration, it may be well to express department satisfaction over the tendency to reasonable regard for obligation under the law on the part of representatives both of labor and of employment. It is more than their right, it is the bounden duty of labor to insist upon all the law provides for the relief of injured workmen or their families. Employment and insurance is not organized for purposes of philanthropy. The exercise of business principles is necessary to success, and hence, these interests are justified before the law and the public when they squarely meet obligation imposed by statute. In the experience of this department it is rare, indeed, that any attempt has been made to dodge responsibility where obligation is plainly manifest. In fact, in many cases insurers and employers give their workmen the benefit of the doubt, and for complying with requests of the Commissioner for sympathetic consideration where authority does not exist and where doubt may well be entertained, though not as to good faith, we express sincere appreciation.

PREVENTION BETTER THAN RELIEF

This department is intensely interested in every movement, enterprise or method developed for the purpose of reducing the peril of industrial employment. Personal bereavement and physical suffering is, of course, of first importance and such sacrifice cannot be reduced to demonstration. The loss of earnings which so frequently results in distress may be more definitely expressed. Deaths from industrial accident reach the number of about twenty thousand annually in the United States. It is estimated that the annual loss of working time in the industries of the United States

amounts to three hundred million working days valued at more than a billion dollars.

Experience emphasizes elements of danger, and careful consideration and sympathetic treatment work wonders in safety provision. It is observed with much satisfaction that many of the larger employers are making a creditable record in accident prevention which grows in excellence with experience and endeavor. It is found that persistence along this line is profitable as well as humane in that it is important in its bearing upon insurance rates or expense of self insurance.

The Lehigh Portland Cement Company has in seven years reduced fatalities to the extent of twenty-five per cent, and in time lost and permanent disabilities the saving is about fifty per cent.

The Bethlehem Steel Corporation, with its seventy thousand employes, during eight years of highly organized safety work has scored a reduction of forty per cent in time lost accidents, a salvage amounting to two and one-half million dollars.

Speaking of fatalities in a recent bulletin of the Lehigh Portland Cement industries, it is very well said:

"Certainly we owe to the men who died a debt on which in some measure we can make a small payment by carefully studying the causes and thus prevent repeated recurrence of the same type of accidents."

In safety provision the workman has a distinct part to perform. He has the larger interest as he and his dependents suffer more in case of disaster. The employer who seeks to promote safety should have his earnest and enthusiastic co-operation. He should cheerfully and untiringly conform to any and all regulations and instructions issued for this purpose. Only in cases where there is practical mutuality of purpose and performance between employer and employe can the best prevention results be expected.

In Iowa provision on the part of the state for safety promotion is in charge of the Department of Labor Statistics. From time to time we have urged upon the General Assembly the importance of more liberal support to that department in its inspection division. Adequate service is necessarily denied by that department because of lack of funds and the state assumes serious moral responsibility in this denial. To make provisions for relief to the injured workman or his dependents in case of accident is noble, but it is of far greater importance to save life and to prevent disability than to offer the comparatively meager restitution of compensation in cases where accident is avoidable by due sense of responsibility on the part of the state or the employer.

MORE COMPLETE COVERAGE

Legislation and court decision have finally brought all workmen not in excluded employment under compensation protection. Where insurance is not carried the employer becomes personally liable to the limit of statutory payment afforded if he is financially responsible. This complete coverage provides just relief to many workmen and their dependents that were formerly without benefit in cases of personal injury in employment.

PROMPT SERVICE ESSENTIAL

Employers are again urged to place their compensation insurance with companies maintaining efficient adjusting agencies at convenient points within the state. In paying for coverage they owe consideration to their employes as well as to themselves, and they should have due regard for the vital matter of settlement prompt and adequate in case of injury. In dealing with agencies without the state there is much occasion for complaint on the part of claimants because of delay and difficulty in arrangement of details of adjustment. Among the various substantial claims made for the compensation system is that it affords prompt relief in case of industrial misfortune, with little annoyance and expense to the workman. This claim is largely justified, but it can not be fully sustained where long-range methods must be relied upon for settlement and payment. Prompt and intelligent adjustment is of the first importance in compensation administration. Employers and insurers substantially serve their own interests in avoiding irritation of delay in meeting obligation.

LEGISLATION

While disposed to be by no means indifferent to such appeal, members of the General Assembly have not all along seen eye to eye with the Industrial Commissioner in matters of compensation legislation. Of course, it is the duty of each department of state to exercise its own judgment in the discharge of its own public duty, and the direct representatives of the people are expected to move with care and deliberation in matters involving levy upon commerce or industry. It may be said, it ought to be said, in this

connection, however, that representatives of workmen most concerned have moved with rare decorum and reasonable method in the endeavor to increase compensation benefits. In this connection the department may well say for itself that in no case has it asked for increase of statutory relief without the most careful and definite calculation and consideration as to cost to employment involved, and the general equity of the request. It has frequently occurred to us that legislators decide adversely in the belief that the cost of a certain amendment will be vastly in excess of actual experience which has impressed us and which we are always pleased to submit for consideration. It has been observed that representatives of the employer or insurer are not in the habit of under-estimating costs in their opposition to such amendment.

WAITING PERIOD

Our two weeks waiting period is the source of much irritation in administration experience. Many workmen with families have little, perhaps no reserve whatever to draw upon, and every working day which does not produce support is apt to mean personal discomfort. Many states have reduced this waiting period, and it is recommended that Iowa fix one week as the limit of disability without relief.

CARE OF DEPENDENT CHILDREN

In accordance with our law the dependency due in case of the death of the head of a family is payable wholly to the surviving spouse. Usually, this provision works well, but it sometimes happens that the beneficent purpose of the statute as to the care of dependent children is defeated through the indifference of a surviving spouse to parental obligation. Remarriage sometimes develops such misfortune. Appeal is occasionally made to the department in behalf of neglected children, but there is no law for such needful interference. Amendment that will permit the exercise of discretion on the part of the commissioner as to special allowance to such children to be deducted from the spouse dependency would afford substantial relief without any measure of injustice.

STATUTORY DEPENDENCY OF CHILDREN

Under the holding of our supreme court in Double vs. Iowa-Nebraska Coal Company, 201 N. W. 97, it would seem our law requires that children entitled to dependency upon the death of a parent may successfully claim payment for the full period of three hundred weeks even if at the date of the parent's death such children are only slightly under the age limit of sixteen years. Of course there is no reason why payment in any case should be made beyond the age limit that applies to the child of ten years at the time he sustained parental loss, and this fact should have plain statutory basis.

WEEKLY PAYMENT TO PEACE OFFICERS

In the peace officer statutory coverage, it is provided that in all cases of compensable injury or death maximum payment shall be made regardless of previous earnings. There is no apparent reason why such payment should not be based on earnings as in case of injury in industrial employment, and the State should not be charged with excess payment due to such discrimination. The law should be so amended as to place both classes of unfortunates upon the same footing.

CLERICAL EMPLOYMENT

In its list of definitions the statutes say certain persons "shall not be deemed as 'workmen' or 'employees' " among which are:

> A person engaged in clerical work only, but clerical work shall not include anyone who may be subject to the hazards of the business.

Reasoning in the only litigated clerical case—Kent vs. Kent, 208 N. W. 709—leads us to admonish employers to cover with insurance their clerical employes. In this employment the peril is remote and the premium charge is consequently nominal. Better for both parties to be in the clear in case of injury in this field of employment. And there is really no good reason why an employe should stand to lose in case of any injury arising out of employment in gainful occupation.

RELIEF FOR UNUSUAL HEALING PERIOD

It is our duty again to urge amendment which will afford additional payment for temporary disability in cases of permanent injury where time lost extends beyond the usual healing period. In a number of states the limit of payment is the duration of temporary disability. It is recommended that our law provide such additional payment for a definite period, say not to exceed twenty-five

weeks. There are not many cases to which this provision would apply, but occasionally there is grievous need of such relief.

OUR MEDICAL COUNSEL

I am submitting to the director of the budget a request to increase the annual salary of Dr. O. J. Fay from $1,200 to $2,000, for the reason that the present allowance is wholly inadequate to services rendered. The doctor's advice is of much importance in estimating disability. Many of the more obscure cases are submitted to him and his skill and painstaking help in avoiding litigation and in establishing justice through amicable settlement. Every week he is called upon to help us to pass on many medical bills in controversy, service of value in connection with the cost of insurance, as well as enabling us to deal justly with physicians and hospitals. His interest in the compensation service which has inclined him to make a study of compensation problems, together with his sense of responsibility to individuals and to the state are factors of importance. In all office hours Dr. Fay is at the service of the department for the examination of workmen claiming compensation payment and for any assistance he may render to any of our people and in any case under consideration wherein medical counsel may serve. In all fairness, there should be no questions as to the increase of salary to the limit of our asking.

OCCUPATIONAL DISEASE

While the legislature has declined to act upon past recommendation as to coverage of disability due to this source, I would be guilty of conscious neglect of duty if I failed further to urge this act of justice on the part of the state. Amendment to this end has been denied because of opposition based upon the claim of excessive cost. Experience in other states proves this claim to be vastly exaggerated, but even if it were not so, can the refusal of such appealing demand be justified? With occupational disease included in coverage, no award would or could be made except in cases where it conclusively appears that disability arose out of employment. Is there any support in common morality or uncommon philosophy for the policy of taking care of the injured workman if injury comes from one industrial source and of denying it if it is due to another?

AMENDMENTS RECOMMENDED

I. Reducing waiting period to one week.

II. Supplying relief to neglected dependent children.

III. Providing payment for disability or death caused by occupational disease.

IV. Basing weekly payment to peace officers on earnings as in compensation cases.

V. Additional relief for permanent injury in cases of unusual healing period.

VI. Terminating dependency of children at age of sixteen years.

VII. Affording coverage to clerical employment.

FINANCIAL AND STATISTICAL

Herewith appears statement of department expenditure in the past two years, together with estimates submitted to the Director of the Budget as requirement for the ensuing biennium. The Iowa Compensation Service is organized on an exceedingly economical basis. Our people would be interested in a comparison of administrative cost here and in other states of our class in an industrial sense. While such showing would indicate a substantial balance in our favor, it may be fairly stated that Iowa service is not sacrificed to economy.

Our statistical section contains information of interest and value. It is not complete and exhaustive in volume and detail as it might be with larger provision as to official force, but it meets all practical requirement. It will be observed that for several years past the number of accidents reported have been between thirteen and fourteen thousand, but that in the year last past the number is reduced to twelve thousand and twenty-one. Fatal cases are slightly on the increase. Recently settlements have run between five and six thousand annually. The great discrepancy between reported accidents and settlements is due to the fact that the law requires reports of all injuries causing more than a single day of disability, while payment is made only where disability extends beyond the second week.

While there is not much increase in the number of accidents, a very substantial increase of annual compensation payment appears, as follows: 1922-3, 323,159.12; 1923-4, 343,567.99; 1924-5, 448,824.30; 1925-6, 616,057.28. The fiscal year ends with July 1st. The item of reported medical, surgical and hospital expense is very unreliable in a statistical sense, as our data is taken wholly from settlement report, and in many cases medical payment is not shown therein.

ADMINISTRATIVE EXPENDITURES

July 1, 1924—June 30, 1926

	First Year	Second Year
Salaries	$ 15,490.00	$ 15,870.00
Traveling Expense	805.42	744.61
Medical Expense	674.50	660.00
Library	.....	41.00
Miscellaneous	50.00	50.00

ADMINISTRATIVE ESTIMATES

July 1, 1926 to June 30, 1928

	First Year	Second Year
Salaries	$ 15,870.00	$ 16,850.00
Traveling Expense	855.39	1,000.00
Medical Expense	960.00	960.00
Library	50.00	50.00
Miscellaneous	70.00	70.00

Annual appropriation for salaries.....$ 15,870.00
Annual appropriation for other listed items.....$ 1,880.00
Printing, postage and all supplies furnished by Executive Council.

REPORT OF ACCIDENTS AND SETTLEMENTS APPROVED

July 1, 1924—June 30, 1925

Accidents Reported	13,155
Fatal Cases	147
Settlements Reported	5,204
Compensation Paid in Reported Settlements	$448,824.40
Reported Paid for Medical, Surgical and Hospital	$ 81,068.21

REPORT OF ACCIDENTS AND SETTLEMENTS APPROVED

July 1, 1925—June 30, 1926

Accidents Reported	12,021
Fatal Cases	118
Settlements Reported	5,111
Compensation Paid in Reported Settlements	$616,057.28
Reported Paid for Medical, Surgical and Hospital	$115,394.62

HEARINGS

	July 1, 1924 to June 30, 1925	July 1, 1925 to June 30, 1926
Total number of applications filed	234	175
Total number of cases arbitrated	84	65
Total number of cases settled without hearing	112	49
Total number of cases dismissed	26	9
Total number of cases reopened	13	8
Total number of cases decided on review by Commissioner	21	24
Total number of cases appealed to courts	13	15

CASES ARBITRATED DURING BIENNIUM

First Year

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Comingore vs. Shenandoah Artificial Ice Co.	Fatal	Dependency	Disallowed (Re-opening)		Pending	
Karpan vs. Shuler Coal Co.	P. P.	Ext. of Injury	$1200.00	$3000.00	No Appeal	
Casias vs. Scandia Coal Co.	P. P.	Out of Emp.	1181.25	No Appeal		
Aqualani vs. Scandia Coal Co.	T. T.	Out of Emp.	87.50	No Appeal		
Ward vs. Albia Coal Co.	P. P.	Ext. of Injury	3000.00 (Re-opening)		No Appeal	
Edmunds vs. Des Moines Coal Co.	P. P.	Ext. of Injury	1200.00 (Re-opening)		No Appeal	
O'Farrell vs. Wright Const. Co.	Fatal	Dependency	3600.00	Affirmed	Affirmed	No appeal.
Sullivan vs. Carpenter	Fatal	Cause of Death	Disallowed	Affirmed	Pending	
Murphy vs. Shipley	Fatal	Employer	4114.00	Affirmed	Affirmed	Affirmed.
Goad vs. Nelson	T. T.	Out of Emp.	208.93	No Appeal		
Johnson vs. City of Albia	P. P.	Out of Emp.	3375.00	Affirmed	Affirmed	Pending
Burris vs. Swift & Co.	T. T.	Out of Emp.	Disallowed	No Appeal		
Kleih vs. Klauer Mfg. Co.	T. T.	Hernia	Disallowed	No Appeal		
VanPelt vs. Northwestern States Portland Cement Co.	Fatal	Dependency	171.00	Reversed	No Appeal	
Hruska vs. Hawkeye Oil Co.	Fatal	Employer	Disallowed	No Appeal		
Van Gorkans vs. O'Connell	P. P.	Coverage	Disallowed		Reversed	Affirmed.
Voracek vs. Quaker Oats Co.	P. P.	Ext. of Injury	714.60 (Re-opening)		Affirmed	No Appeal
Horn vs. O'Brien County	P. P.	Employment	Disallowed	Affirmed	Pending	
Gardner vs. Scandia Coal Co.	T. T.	Ext. of Injury	15.00 Wkly	Affirmed	No Appeal.	
Backman vs. American Railway Express Co.	T. T.	Out of Emp.	Disallowed	No Appeal		
Powell vs. Huttig Mfg. Co.	P. P.	Out of Emp.	Disallowed	No Appeal		
Pahl vs. Matthes Coal & Construction Co.	T. T.	Hernia	Disallowed	No Appeal		
Butler vs. Norwood White Coal Co.	P. P.	Out of Emp.	300.00 (Re-opening)		Affirmed	Pending
Morris vs. Fowler & Wilson Coal Co.	T. T.	Out of Emp.	Disallowed	No Appeal		

Radovich vs. Fowler & Wilson Coal Co.	T. T.	Hernia	Disallowed	Affirmed	No Appeal	
Conner vs. Eagle Coal Co.	T. T.	Out of Emp.	Disallowed	Reversed	No Appeal	
Lewis vs. Smoky Hollow Coal Co.	P. P.	Out of Emp.	2000.51	Affirmed	No Appeal	
Paskvan vs. Albia Coal Co.	T. T.	Hernia	Disallowed	No Appeal		
Folansbee vs. Floyd Co.	T. T.	Hernia	87.20	No Appeal		
Robinson vs. Eaves	Fatal	Dependency	4050.00	Affirmed	Affirmed	Affirmed.
Carr vs. Johnson & Sons	T. T.	Out of Emp.	373.50	Affirmed	No Appeal	
Kent vs. Kent	T. T.	Coverage	Disallowed	Affirmed	Reversed	Affirmed.
Pleake vs. Omaha & Council Bluffs Street Railway Co.	P. P.	Out of Emp.	Disallowed	No Appeal		
Sarvis vs. Shelby County	T. T.	Limitation	Disallowed	No Appeal		
Heinen vs. Motor-Inn Corporation	Fatal	Out of Emp.	4500.00	Affirmed	Affirmed	Affirmed.
Huntley vs. Armour Packing Co.	T. T.	Hernia	Disallowed	No Appeal		
Pippett vs. Cudahy Packing Co.	T. T.	Ext. of Injury	390.00	No Appeal		
Stewart vs. Martin	Fatal	Cause of Death	Disallowed	Affirmed	Pending	
Wang vs. Cudahy Packing Co.	T. T.	Ext. of Injury	$ 300.00	Affirmed	No appeal	
Moore vs. Consumers Ice Co.	T. T.	Hernia	Disallowed	No appeal		
Olson vs. Methodist Hospital	T. T.	Ext. of Injury	84.00	No appeal		
Collier vs. Warfield-Pratt-Howell Co.	Fatal	Dependency	2,424.00	No appeal		
Nelson vs. Loose-Wiles Biscuit Co.	T. T.	Out of Emp.	83.06	No appeal		
Pagano vs. Anderson & Emple	T. T.	Out of Emp.	25.96	No appeal		
Pappas vs. North Iowa Brick & Tile Co.	P. P.	Disability	2,126.00	Affirmed	Affirmed	Affirmed
Jubb vs. Herrick	T. T.	Out of Emp.	Disallowed	No appeal		
Cordary vs. Harbach & Son	P. P.	Out of Emp.	Disallowed	No appeal		
Rasmussen vs. Omaha & Council Bluffs Street Railway Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Olson vs. Des Moines Water Works	T. T.	Ext. of Injury	Disallowed (Re-opening)	Affirmed	No appeal	
Benesh vs. Penick & Ford	P. P.	Ext. of Injury	750.00	No appeal	Pending	
Anderson vs. Macx Milling Co.	T. T.	Hernia	174.70	Affirmed	No appeal	
Johnson vs. Erdice Cadillac Co.	P. P.	Ext. of Injury	302.66 (Re-opening)		No appeal	
Jones vs. Sayre Coal Co.	P. P.	Ext. of Injury	1,200.00 (Re-opening)		No appeal	

CASES ARBITRATED DURING BIENNIUM—Continued

First Year

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Kauzlarich vs. Des Moines Ice & Fuel Co.	T. T.	Ext. of Injury	180.00	No appeal		
Kozial vs. Sayre Coal Co.	T. T.	Hernia	Disallowed	Reversed	No appeal	
Perry vs. Neumann	Fatal	Dependency	1,200.00	Affirmed	Affirmed	No appeal
Dietrich vs. Ficken Furniture & Rug Co.	Fatal	Out of Emp.	Disallowed	Affirmed	No appeal	
Barbee vs. Phelan Construction Co.	T. T.	Ext. of Injury	Disallowed	No appeal		
O'Toole vs. Bettendorf Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Hutchings vs. Beck Coal Co.	T. T.	Ext. of Injury	274.28	Pending		
Simbolo vs. Des Moines Coal Co.	T. T.	Ext. of Injury	15.00 Wkly	Affirmed	No appeal	
Clingingsmith vs. Jackson Dairy Co.	Fatal	Dependency	1,800.00	Affirmed	Affirmed	Pending
Goldsworth vs. Central Foundry Co.	T. T.	Out of Emp.	323.96	No appeal		
VanAusdall vs. City of Keokuk	Fatal	Cause of Death	Disallowed	No appeal		
Heinz vs. Hubinger Bros. Co.	T. T.	Out of Emp.	Disallowed	Pending		
Beni vs. Pershing Coal Co.	T. T.	Hernia	Disallowed	No appeal		
Booten vs. Trans-Mississippi Grain Co.	T. T.	Out of Emp.	Disallowed	Affirmed	Affirmed	No appeal
Kingery vs. C., B. & Q. R. R. Co.	P. P.	Ext. of Injury	99.00	No appeal		
Kirchhoff vs. Town of Hartley	T. T.	Coverage	Disallowed	Affirmed	No appeal	
Tuttle vs. Sioux City Serum Co.	Fatal	Out of Emp.	Disallowed	No appeal		
Linke vs. Cudahy Packing Co.	T. T.	Hernia	Disallowed	No appeal		
Milage vs. Cudahy Packing Co.	T. T.	Out of Emp.	Disallowed	Pending		
Sardowsky vs. Armour Packing Co.	T. T.	Notice	Disallowed	No appeal		
Vandesteeg vs. Western Asphalt Paving Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Heck vs. Key Stone Coal Mining Co.	Fatal	Dependency	$3,000.00	No appeal		
Larson vs. Gold Goose Coal & Mining Co.	P. P.	Ext. of Injury	600.00	No appeal		
Rammer vs. March & Corning Hardware Co.	T. T.	Hernia	200.00	No appeal		

Kasonovich vs. Norwood White Coal Co.	T. T.	Ext. of Injury	363.37 (Re-opening)		No appeal	
Spevach vs. Great Western Coal Co.	T. T.	Hernia	105.00	Affirmed & Modified	No appeal	
Evans vs. Rex Fuel Co.	T. T.	Ext. of Injury	240.00 (Re-opening)		No appeal	
McGovern vs. Prairie Coal Co.	P. P.	Ext. of Injury	1,200.00 (Re-opening)		No appeal	
Ceretti vs. Shuler Coal Co.	T. T.	Ext. of Injury	290.30 (Re-opening)		No appeal	
Flatcliff vs. Radiant Coal Mining Co.	P. P.	Ext. of Injury	663.75 (Re-opening)		No appeal	

CASES ARBITRATED DURING BIENNIUM

Second Year

Title of Case	Injury		Arbitration	Review	Dis. Court	Sup. Court
Steinbach vs. Ford Motor Co.	T. T.	Ext. of Injury	367.00 (Re-opening)		No appeal	
Butler vs. Cement Products Co.	T. T.	Ext. of Injury	816.75 (Re-opening)		No appeal	
Granguilo vs. Decker & Sons	Fatal	Dependency	1,500.00	No appeal		
Patterson vs. Central Iowa Fuel Co.	T. T.	Out of Emp.	15.00 Wkly	Affirmed	No appeal	
McKinney vs. Central Iowa Fuel Co.	Fatal	Cause of Death	4,230.00	Affirmed	Affirmed	Affirmed
Rude vs. Crane Co.	Fatal	Coverage	Disallowed	No appeal		
Voracek vs. Quaker Oats Co.	P. P.	Ext. of Injury	Disallowed (Re-opening)		Affirmed	Pending
Augustino vs. Pershing Coal Co.	T. T.	Ext. of Injury	711.43 (Re-opening)		No appeal	
Sprinkel vs. Iowa Service Co.	Fatal	Cause of Death	4,500.00	Affirmed	Pending	
Gardner vs. Scandial Coal Co.	Fatal	Cause of Death	3,510.00	No appeal		
Wittrig vs. Reschley	Fatal	Out of Emp.	4,500.00	Affirmed	No appeal	
Stahl vs. American Railway Express Co.	P. P.	Ext. of Injury	225.00	No appeal		
Fisher vs. Beck Coal Co.	T. T.	Ext. of Injury	390.00	No appeal		
Graves vs. Des Moines Coal Co.	P. P.	Ext. of Injury	375.00	No appeal		
Swim vs. Central Iowa Fuel Co.	P. P.	Out of Emp.	Disallowed	Affirmed	Pending	
Cowles vs. City of Ottumwa	P. P.	Coverage	500.00	No appeal		
Lincoln vs. Northern Sugar Corporation	P. P.	Employer	Disallowed	Pending		

CASES ARBITRATED DURING BIENNIUM—Continued

SECOND YEAR—Continued

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Martin vs. Huttig Manufacturing Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Hinricks vs. Davenport Locomotive Works	P. P.	Out of Emp.	1,315.00	Affirmed	Pending	
Millington vs. Sturgis Bros.	Fatal	Cause of Death.	4,500.00	No appeal		
Villseno vs. Lavelle & Hogan	T. T.	Out of Emp.	Disallowed	No appeal		
Kekels vs. Federation Construction Co.	T. T.	Ext. of Injury	30.00	Pending		
Tate vs. Cushing	T. T.	Ext. of Injury	330.00	No appeal		
Nichols vs. Great Western Coal Co	P. P.	Ext. of Injury	375.00 (Re-opening)		No appeal	
Bennett vs. C. B. & Q. R. R. Co.	T. T.	Coverage	Disallowed	Affirmed	Affirmed	Pending
Mills vs. Iowa Railway & Light Co	P. P.	Ext. of Injury	389.38 (Re-opening)		No appeal	
Mueller vs. United States Gypsum Co.	P. P.	Notice	Disallowed	Affirmed	Pending	
Roesch vs. Pottawattamie County	P. P.	Coverage	$ 750.00	No appeal		
Bennett vs. Liberty Theater	P. P.	Out of Emp.	Disallowed	No appeal		
Baker vs. Roberts & Beier	P. P.	Out of Emp.	864.00	Reversed	Pending	
Koland vs. Tapager Construction Co.	Fatal	Cause of Death.	4,500.00	Affirmed	Affirmed	Pendisg
Kamas vs. C., G. W. R. R. Co.	T. T.	Notice	Disallowed	No appeal		
Corso vs. Hocking Coal Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Ravera vs. Consolidated Coal Co.	T. T.	Ext. of Injury	293.57	Pending		
Softing vs. Grain Dealers Supply Co.	Fatal	Employer	Disallowed	Affirmed	Affirmed	Settled
Olson vs. Collins Wall Paper & Paint Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Antonio vs. Northwestern States Portland Cement Co.	T. T.	Out of Emp.	Disallowed	Affirmed	Pending	
Trestroet vs. Northwestern States Portland Cement Co.	Fatal	Dependency	1,386.00	No appeal		

Dial vs. Morrell & Co.	P. P.	Out of Emp.	606.00	Affirmed	No appeal	
Hughes vs. Egypt Coal Co.	Fatal	Cause of Death.	4,500.00	Affirmed	Pending	
Howe vs. Egypt Coal Co.	Fatal	Out of Emp.	4,500.00	Affirmed	Pending	
Wittmer vs. Dexter Manufacturing Co.	T. T.	Out of Emp.	Disallowed	Affirmed	Pending	
Boyce vs. Newens Sanitary Dairy Co	Fatal	Cause of Death.	4,500.00	Reversed	Pending	
Cozart vs. Corno Mills Co.	P. P.	Ext. of Injury	Disallowed (Reopening)		No appeal	
Whiting vs. C., St. P., M. & O. Ry. Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Beaubien vs. Orcutt	Fatal	Out of Emp.	Disallowed	No appeal		
Davis vs. Pelletier Co.	T. T.	Out of Emp.	15.00 Wkly	No appeal		
Gregory vs. Gregory	Fatal	Dependency	1,500.00	No appeal		
Palmer vs. Cox	T. T.	Out of Emp.	43.87	No appeal		
Tunnicliff vs. Bettendorf	Fatal	Coverage	Disallowed	Affirmed	Pending	
Thompson vs. Bettendorf Co.	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Lange vs. Crane Co.	T. T.	Ext. of Injury	Disallowed	No appeal		
Sage vs. Kerns	T. T.	Ext. of Injury	47.14	No appeal		
Regenwether vs. Clinton Corn Syrup Refining Co.	T. T.	Out of Emp.	249.50	No appeal		
Ruhsamen vs. Clinton Water Works Co.	Fatal	Out of Emp.	Disallowed	No appeal		
Brown vs. Tresener	T. T.	Notice	Disallowed	No appeal		
Simbolo vs. Des Moines Coal Co.	P. P.	Ext. of Injury	1,140.00 (Re-opening)		No appeal	
Rabourn vs. Maytag Co.	T. T.	Ext. of Injury	122.74	No appeal		
Pratt vs. Pershing Coal Co.	Fatal	Cause of Death.	4,380.00	Pending		
Owens vs. Pershing Coal Co.	T. T.	Out of Emp.	Disallowed	No appeal		
Smith vs. Marshall Ice Co.	P. P.	Out of Emp.	1,500.00	Affirmed		
Johnson vs. Central Iowa Fuel Co.	T. T.	Ext. of Injury	41.42	Pending		
Rocco vs. Pershing Coal Co.	T. T.	Ext. of Injury	270.00	Pending		
Ladianos vs. C., R. I. & P. Ry Co.	T. T.	Ext. of Injury	239.87	Pending		

CASES REVIEWED AND APPEALED DURING BIENNIUM

First Year

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Munson vs. Western Asphalt Paving Co.	T. T.	Out of Emp.	$ 6.00 Wkly	Affirmed	No appeal	
O'Farrell vs. Wright Construction Co.	Fatal	Dependency	3600.00	Affirmed	Affirmed	No appeal
Tyler vs. International Correspondence School	P. P.	Coverage	450.00	Affirmed	No appeal	
Paul vs. Frank Foundries Co.	T. T.	Hernia	220.00	Reversed	No appeal	
Fraze vs. McClelland Co.	T. T.	Out of Emp.	15.00 Wkly	Affirmed	Affirmed	Affirmed
Gardner vs. Scandia Coal Co.	T. T.	Out of Emp.	15.00 Wkly	Affirmed	No appeal	
Murphy vs. Shipley	Fatal	Employer	3114.00	Affirmed	Affirmed	Affirmed
Harn vs. O'Brien County	P. P.	Coverage	Disallowed	Affirmed	Affirmed	No appeal
Kent vs. Kent	T. T.	Coverage	Disallowed	Affirmed	Reversed	Affirmed
Johnson vs. City of Albia	P. P.	Out of Emp.	3375.00	Affirmed	Affirmed	Pending
Heinen vs. Motor-Inn Corporation	Fatal	Out of Emp.	4500.00	Affirmed	Affirmed	Affirmed
Robinson vs. Eaves	Fatal	Dependency	4050.00	Affirmed	Affirmed	Affirmed
Wang vs. Cudahy Packing Co.	T. T.	Ext. of Injury	300.00	Affirmed	No appeal	
Rasmussen vs. Omaha & Council Bluffs Street Railway Co.	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Manning vs. Sinclair & Co.	Fatal	Out of Emp.	Disallowed	Affirmed	Pending	
Newcomb vs. Majestic Theatre	T. T.	Out of Emp.	Disallowed	Affirmed	Affirmed	Pending
Anderson vs. Macx Milling Co.	T. T.	Hernia	174.70	Affirmed	No appeal	
Kozial vs. Sayre Coal Co.	T. T.	Hernia	Disallowed	Reversed	No appeal	
VanPelt vs. Northwestern States Portland Cement Co.	Fatal	Dependency	171.00	Reversed	No appeal	
Simbolo vs. Des Moines Coal Co.	T. T.	Ext. of Injury	15.00 Wkly	Affirmed	No appeal	
Kirchhoff vs. Town of Hartley	T. T.	Coverage	Disallowed	Affirmed	No appeal	

Second Year

Karpan vs. Shuler Coal Co.	P. P.	Ext. of Injury	1200.00	Modified	No appeal	
Radovich vs. Fowler & Wilson Coal Co.	T. T.	Hernia	Disallowed	Affirmed	No appeal	
Perry vs. Neumann	Fatal	Dependency	1054.23	Affirmed	Affirmed	No appeal
Booten vs. Trans-Mississippi Grain Co.	T. T.	Out of Emp.	Disallowed	Affirmed	Affirmed	No appeal
Spevack vs. Great Western Coal Co.	T. T.	Hernia	105.00	Modified	No appeal	
Conner vs. Eagle Coal Co.	T. T.	Out of Emp.	Disallowed	Affirmed	No appeal	
Patterson vs. Central Iowa Fuel Co.	T. T.	Out of Emp.	15.00 Wkly	Affirmed	No appeal	
Clingingsmith vs. Jackson Dairy Co.	Fatal	Dependency	1800.00	Affirmed	No appeal	
McKiney vs. Central Iowa Fuel Co.	Fatal	Cause of Death	4230.00	Affirmed	Affirmed	Pending
Wittrig vs. Reschley	Fatal	Out of Emp.	4500.00	Affirmed	Affirmed	Affirmed
Stewart vs. Martin	Fatal	Out of Emp.	Disallowed	Affirmed	No appeal	
Softing vs. Grain Dealers Supply Co.	Fatal	Employer	Disallowed	Affirmed	Pending	
Bennett vs. C. B. & Q. R. R. Co.	T. T.	Coverage	Disallowed	Affirmed	Affirmed	No appeal
Mueller vs. United States Gypsum Co.	P. P.	Notice	Disallowed	Affirmed	Affirmed	Pending
Koland vs. Tapager Construction Co.	Fatal	Out of Emp.	$4500.00	Affirmed	Reversed	Pending
Diel vs. Morrell & Co.	P. P.	Out of Emp.	606.00	Affirmed	Affirmed	Pending
Swim vs. Central Iowa Fuel Co.	P. P.	Out of Emp.	Disallowed	Affirmed	No appeal	
Hinricks vs. Davenport Locomotive Works	P. P.	Out of Emp.	1315.00	Affirmed	Pending	
Antonio vs. Northwestern States Port. Cement Co.	T. T.	Out of Emp.	Disallowed	Affirmed	Pending	
Baker vs. Roberts & Beier	P. P.	Out of Emp.	864.00	Reversed	Pending	
Sprinkel vs. Iowa Service Co.	Fatal	Cause of Death	4500.00	Affirmed	Pending	
Dietrich vs. Ficken Furniture & Rug. Co.	Fatal	Out of Emp.	Disallowed	Affirmed	No appeal	
Thompson vs. Bettendorf Co.	Fatal	Coverage	Disallowed	Affirmed	No appeal	
Carr vs. Johnson & Son	T. T.	Out of Emp.	373.50	Affirmed	No appeal	

FATAL CASES REPORTED DURING BIENNIUM

First Year

Employer	Employe	Cause	Amount	Dependent	Adjusted
Armstrong Coal Co.	C. A. Stickler	Heart Failure			Pending
Ames Canning Co.	W. F. Kennedy	Caught in Machinery	1,606.09	Parents	By agreement
Armour Co.	J. W. Hunter	Tetanus	2,679.17	Father	By agreement
Automatic Gravel Products	Wm. Tison	Not Given	4,154.00	Widow	By agreement
Amond, J. W.	T. Bolon				Common law
Bettendorf Co.	Nona Paulson	Explosion	4,500.00	Widow	By agreement
Boesch, J., Co.	Hazel Dietz	Fall	600.00	Parents (Partial)	By agreement
Burrus Granite Co.	Gust Linden	Crushed	4,500.00	Widow	By agreement
Boone Coal Co.	John Berg	Fall of Roof	4,500.00	Widow	By agreement
Becker, F. G.	Joe Cahill	Fall	2,500.00	Sister	By agreement
Burlington Basket Co.	Herschel Hand	Struck by Tree			Pending
Bovee Furnace Works	K. V. Whitson	Fall	2,500.00	Widow	Arbitration
Chariton, City of	T. A. Norman	Run Over by Tractor		Widow	Pending
C. & N. W. Ry. Co.	Geo. Schlagenshauff	Tetanus	1,000.00	Widow	Compromise
C. & N. W. Ry. Co.	Geo. Rodgers	Struck by Air Fan	500.00	No dependents	Compromise
Consolidation Coal Co.	A. W. Williams	Run Over by Car	4,500.00	Widow	By agreement
Consolidation Coal Co.	B. McDowell	Fall of Slate	3,420.00	Widow	By agreement
Consolidation Coal Co.	O. Bringman	Fall of Slate	4,500.00	Widow	By agreement
Consolidation Coal Co.	Chas. Hoggsette	Crushed	3,000.00	Widow	By agreement
C. B. & Q. Ry. Co.	C. O. Eggleston	Run Over by Coal Car	3,953.37	Daughter	By agreement
Central Iowa Fuel Co.	W. E. Harnden	Fall of Slate	3,000.00	Children (Partial)	By agreement
Central Iowa Fuel Co.	J. T. Evans	Fall of Slate	4,500.00	Widow	By agreement
Central Iowa Fuel Co.	J. H. James	Fall of Slate	4,500.00	Widow	By agreement
Central Iowa Fuel Co.	J. Kamenisky	Fall of Slate		No dependents	No claim filed
Central Iowa Fuel Co.	Fred Hornick	Fall of Slate	4,500.00	Widow	By agreement
Central Iowa Fuel Co.	Steve Muck	Poisonous Gas	4,500.00	Widow	Arbitration
Consolidated School Dist., Lincoln	J. T. Norton	Thrown from Bus	300.00	Widow	Compromise
C. R. I. & P. Ry. Co.	Ed. Souda	Scalded	4,375.00	Widow	By agreement
Campbell, C. B.	K. Jones	Fall	2,400.00	Mother	By agreement
Consolidated Indiana Coal Co.	L. Condiesp	Fall of Slate	4,500.00	Widow	By agreement

Chase Mitchell Co.	G. M. Steinkamp	Appendicitis			Not compensable
Cherokee State Hospital	J. E. Knebone	Fall	3,549.00	Widow	By agreement
Chandler Pump Co.	C. W. Riddle	Fall	664.80	Widow	By agreement
Darragh, J. W.	A. E. Ward	Smallpox			Not compensable
Des Moines Electric Co.	W. F. Roth	Electrocuted	4,500.00	Widow	By agreement
Des Moines Electric Co.	S. Hackley	Electrocuted	4,500.00	Widow	By agreement
Des Moines Municipal Water Co.	H. L. Munger	Not Given	4,500.00	Mother	By agreement
Des Moines Ice & Fuel Co.	J. L. Clemens	Head and Chest Injury	4,353.01	Widow	By agreement
Dallas Coal Co.	F. Cervetti	Fall of Slate		Not given	Pending
Davenport Concrete Products Co.	H. J. Winckler	Tetanus	3,735.00	Widow	By agreement
Decker, J. E., & Sons	H. B. Fenton	Auto Struck by Train		No dependents	No claim filed
Decker, J. E., & Sons	J. Young	Struck by Drill Handle	4,500.00	Widow	By agreement
Des Moines Union Ry. Co.	C. C. Eibes	Struck by Train			Interstate Commerce
Des Moines Union Ry. Co.	Ben Cortese	Struck by Cars			Interstate Commerce
Des Moines Steel Co.	Joe Smith	Fall		No Dependents	No claim filed
Eastern Iowa Electric Co.	H. Schermer	Electrocuted	4,500.00	Widow	By agreement
Farmers Grain Dealers	Bert Lakke	Not Given	4,500.00	Widow	By agreement
Farley & Loetscher Mfg. Co.	Carl Bonath	Run Over by Auto	4,500.00	Widow	By agreement
Farmers Electric Co.	C. R. Watters	Electrocuted		Widow	Common Law
Farmers Elevator Co.	A. Rasmus	Fall	4,500.00	Widow	By agreement
Ficken Furniture & Rug Co.	A. Dietrich	Tetanus		Widow	Not compensable
Ford Mfg. Co.	H. Mauer	Struck by Board	4,500.00	Widow	By agreement
Ft. Madison St. Ry. Co.	J. E. Warner	Collision			Not compensable
Flanley Grain Co.	A. R. Conkling	Fall	4,168.20	Widow	By agreement
Federal Bridge Co.	Ray Runyon	Caught in Machinery	3,105.50	Widow	Compromise
Field, Henry, Seed Co.	J. Summers	Struck by Conveyor	3,500.00	Widow	By agreement
Fort Dodge, City of	E. Hallenbeck	Hernia	2,500.00	Widow	By agreement
Gould Constr. Co.	Harry Bidwell	Struck by Derrick	3,504.00	Widow	By agreement
Gilmore Portland Cement Co.	J. L. Ellis	Electrocuted	4,095.39	Widow	By agreement
Glassman, Jacob	Van R. Broilliar	Fall from Truck			Pending
Goodwin Tile & Brick Co.	P. Dagnillio	Struck by Bar	3,633.00	Widow	By agreement
Galbrath Motor Co.	O. K. Smith				By agreement
Grand Hotel	H. H. Abell	Fall		No Dependents	No Claim Filed

FATAL CASES REPORTED DURING BIENNIUM—Continued

Employer	Employe	Cause	Amount	Dependent	Adjusted
Heyer, W. H., & Sons	Frank Lemke	Apoplexy			Not compensable
Huttig Mfg. Co.	Frank Faulkver	Tetanus	4,500.00	Widow	By agreement
Hubinger, J. C. Brothers	R. Anderson	Fall		No dependents	No claim filed
Higgins, W. J.	E. E. Hollingshead	Cave in	$3,894.00	Widow	Arbitration
Hardscog, The Mfg. Co.	E. W. Nystrom	Fall		No dependents	No claim filed
Hawkeye Tire & Rubber Co.	Harry Garland	Struck by Tire	2,280.00	Widow	By agreement
Heinz, H. J. Co.	Schmitt, J.	Not given	575.00	Widow	Compromise
Iowa Light Heat & Pwr. Co.	Del Brown	Electrocuted	705.45	Parents	By agreement
Illinois Central Ry. Co.	L. Papanilolous	Struck by Engine			Interstate Commerce
Illinois Central Ry. Co.	C. E. James				Interstate Commerce
Iowa Light Heat & Pwr. Co.	E. Schlachter	Fall		No dependents	No claim filed
Iowa Railway & Light Co.	J. H. Springer	Fall		No dependents	No claim filed
Iowa Railway & Light Co.	L. D. Larson	Electrocuted		No dependents	No claim filed
Iowa Railway & Light Co.	D. E. Smith	Fall	4,500.00	Widow	By agreement
Interstate Power Co.	O. Oehler	Electrocuted	1,608.81	Parents (Partial)	By agreement
Iowa Electric Co.	A. R. Bradley	Electrocuted	3,996.00	Widow	By agreement
Iowa Electric Co.	D. Allamn	Fall	3,252.00	Widow	By agreement
Iowa Southern Utilities	E. R. Payne	Electrocuted			Not compensable
Ideal Heating & Constr. Co.	F. A. Epp	Struck by Train	4,500.00	Widow	By agreement
Iowa Service Co.	F. L. Sprinkel	Electrocuted		Widow	By arbitration
Jackson Dairy Co.	A. Hallock	Struck by Train		Parents	Pending
Johnston Clay Works	J. Ceccatine	Fall	1,725.00	Ch'dren (Partial)	By agreement
Keokuk, City of	T. Van Ausdall	Fall		Widow	Not compensable
Keeney, C. E.	G. D. Menzie	Fall	4,500.00	Widow	By agreement
King, E. A.	E. McCart	Burned	$4,500.00	Widow	By agreement
Klaus & Gadient Coal Co.	L. S. Gadient	Struck by Auto			Not compensable
Klinger, W. A.	A. A. Hauswald	Electrocuted	4,600.00	Widow	By agreement
Logan, Town of	J. W. Armstrong	Shot	4,500.00	Widow	By agreement
Licorice Products	H. Hennessy	Caught in Machinery		No dependents	No claim filed
Lamb Construction Co.	Matt Gist	Struck by Board	1,950.00	Widow	Compromise
Lee Electric Co.	V. Kinney	Skull Fractured		Children	By agreement

Lindsay Mfg. Co.	John Galey			No dependents	No claim filed
Laurens, City of	Alfred Mick	Electrocuted	4,500.00	Widow	By agreement
M. & St. L. Ry. Co.	W. D. Druse	Struck by Handle	2,851.45	Widow	Arbitration
M. & St. L. Ry. Co.	H. J. Snider	Crushed			Interstate Commerce
Missouri Valley, City of	H. C. Reel	Shot	2,209.36	Widow	Compromise
Monarch Mfg. Co.	Harry Reynolds	Electrocuted	4,500.00	Widow	By agreement
Miller, J. G.	John Luloff	Cave in		No dependents	No claim filed
McCoy, A. M.	David Pulver	Kicked by Horse		No dependents	No claim filed
Morrell & Co.	J. Anderson	Bruised Side		Widow	Pending
Northwestern Iowa Pwr. Co.	H. T. Maxon	Electrocuted	4,500.00	Widow	By agreement
Northwestern Bell Tele. Co.	C. A. Bairdsley	Electrocuted			Not compensable
Northwestern States Portland Cement Co.	Joe Sloan	Fall of Coal	70.46	No dependents	No claim filed
Omaha Refining Co.	H. Johnson	Burned	4,206.00	Widow	By agreement
Ogden Coal Co.	S. Currier	Fall of Slate	3,666.00	Widow	By agreement
Ottumwa Coal Co.	John Stacey	Fall		No dependents	No claim filed
Prairie Coal Co.	A. Kruizich				Not compensable
Perfection Tire Distributing Co.	Ed Whalen	Struck by train		No dependents	No claim filed
Peters Brothers	G. W. Peters	Cancer	$1,363.33	Widow	Compromise
Riverview Garage	L. V. Moore	Not given			Pending
Reschley, Wm.	J. H. Wittrig	Fall	3,500.00	Widow	Compromise
Rath Packing Co.	A. Dickenson	Crushed by weights	4,500.00	Widow	By agreement
Rutledge Coal Co.	Jack Smith	Fall of coal	4,500.00	Widow	By agreement
Red Rock Coal Co.	Geo. Jones	Fall of slate	4,500.00	Widow	By agreement
Radient Coal Co.	Ed. Clarkson	Not given	4,500.00	Widow	By agreement
Swift & Company	P. F. Colwell	Hernia	345.00	Widow	Compromise
Swift & Company	M. Pieczynski	Struck by train	500.00	Widow	Compromise
Sioux City Stock Yards	J. L. Jordan	Hernia	4,152.00	Widow	By agreement
Snider Preserve Co.	Theo. Heather	Explosion		No dependents	No claim filed
Smith, R. J.	A. Livingston	Not given	4,500.00	Widow	By agreement
Sinclair Refining Co.	Geo. Barber	Blood poisoning	4,500.00	Widow	By agreement
Smoky Hollow Coal Co.	Matt Teasdale	Fall of slate	4,500.00	Widow	By agreement
Standard Biscuit Co.	T. Wade	Fall	4,320.00	Widow	By agreement
Standard Biscuit Co.	J. Sheehan	Not given	228.40	Widow	Not compensable
Shaver Carriage Co.	James Jennings	Struck by Elevator	4,173.00	Widow	By agreement

FATAL CASES REPORTED DURING BIENNIUM—Continued

Employer	Employe	Cause	Amount	Dependent	Adjusted
Stark, Theo.	L. Lemaster	Fall	4,500.00	Widow	By agreement
Standard Oil Co.	E. L. Gunsalus	Truck overturned	4,500.00	Widow	By agreement
Sturges Brothers	B. Millington	Lockjaw from bruise	4,500.00	Widow	Arbitration
Scandia Coal Co.	Wm. Gardner	Fall of slate	4,500.00	Widow	Arbitration
Three Minute Cereal Co.	J. Carlson	Struck by pole	$4,500.00	Widow	By agreement
Three River Light & Power Co.	C. Lippold	Electrocuted	200.00	Father	Compromise
Thye, John Co.	Fred Smith	Fall	4,500.00	Widow	By agreement
Thye, John Co.	Jack Normand	Fall	4,500.00	Widow	By agreement
Tapager Construction Co.	G. Koland	Fall		Widow	Pending
United States Gypsum Co.	W. Darby	Caught under Car	4,500.00	Not given	By agreement
Union Pacific Ry. Co.	W. L. Vance	Struck by Engine			Interstate commerce
U. G. I. Contracting Co.	G. McGloin	Fall		No dependents	No claim filed
Waterloo, City of	V. Margretz	Thrown from motor-cycle	4,500.00	Widow	By agreement
Waterloo, City of	W. R. Ryan	Struck by auto			Not liable
Warfield-Pratt-Howell	Earl Collier	Punctured lungs	2,424.00	Parents	Arbitration
What Cheer Clay Products	Jasper Farrow	Fall	4,500.00	Widow	Arbitration
Waterloo Gasoline Engine	F. M. Hummell	Struck by bricks	3,738.00	Widow	By agreement
Ware Transfer Co.	T. W. McKay	Strained back	2,100.00	Widow	Compromise
Zimmerman Steel Co.	G. W. King	Electrocuted		No dependents	No claim filed

SECOND YEAR

Albia Coal Co.	Carl Mathew	Fall of coal		Widow	Pending
Alexander, A. A.	R. C. Wright	Fall		Parents (Partial)	Pending
Aurelia, Town of	G. J. Lamm	Electrocuted	$4,500.00	Widow	By agreement
Bell Jones Co.	J. Fuhlendorf	Fall	4,500.00	Widow	Arbitration
Beck	E. B. Edwards	Fall of slate		No dependents	No claim filed
Bailey, C. W.	D. McCartney	Fall	3,114.00	Widow	By agreement
Bishop, C. F.	Sam Smith	Tetanus	4,261.00	Widow	By agreement
Burnett, M. O.	Fred Miller	Electrocuted		Parents	Pending

Benson, J. O., Constr. Co.	A. Freeberg	Electrocuted		Widow	Pending
Bettendorf, J. W.	Cave Tunnicliffe	Caught in machinery		Sister	Pending
Booth & Olson	Fred Carlson	Tetanus		Widow	Pending
Central Engineering Co.	Fred Thomson	Truck overturned	4,405.16	Widow	By agreement
Chickasaw County	F. L. Fisher	Crushed by car	3,093.00	Widow	By agreement
Central Iowa Fuel	D. Reese	Fall of slate	4,500.00	Widow	By agreement
Central Iowa Fuel	James White	Run over by car	4,500.00	Widow	By agreement
Central Iowa Fuel	E. C. Myers	Car struck knee	4,125.00	Widow	Compromise
Cedar Falls, City of	Joe North	Cave in	2,400.00	Widow	By agreement
Chicago Cream Fried Cake Co.	O. K. Smith				Not compensable
Consolidated Indiana Coal Co.	Geo. Matkovich	Explosion	4,500.00	Widow	By agreement
Consolidated Indiana Coal Co.	Geo. Simpson	Fall of slate	4,500.00	Widow	By agreement
C. & N. W. Ry. Co.	Wm. Nicholson	Switching cars	800.00	Widow	Compromise
C. & N. W. Ry. Co.	E. A. Puddy	Fall	4,500.00	Widow	By agreement
Consolidation Coal Co.	Joe Ravera	Suicide		Widow	Pending
Consolidation Coal Co.	J. Whitehead	Bruised finger	4,500.00	Widow	By agreement
Central Ia. Power & Light Co.	D. L. Gulick	Electrocuted	4,500.00	Widow	By agreement
Carbon Coal Co.	P. Dugan	Crushed finger	3,630.00	Widow	By agreement
Clinton Corn Syrup Refining Co.	W. Mitchell	Struck by engine	3,801.00	Widow	By agreement
Citizens Coal Co.	Thos. Parker	Fall of coal		Widow	Pending
Clinton Waterworks	L. Rubsamen	Tetanus		Widow	Arbitration
Central States Electric	R. O. Bonner	Electrocuted		Widow	Pending
Dubuque County	Leo. Hemmer	Shot	4,500.00	Widow	By agreement
Des Moines Ice & Fuel Co.	V. Sandgerb	Apoplexy			Not compensable
Dallas Co. Board of Supvs.	J. A. White	Fall		Widow	Pending
Des Moines Sand & Gravel	P. Orbutina	Drowned			Pending
Dubuque Electric Co.	W. Milligan	Skull crushed			Pending
Des Moines Electric Light Co.	R. H. Wildfang	Electrocuted	4,500.00	Widow	By agreement
Des Moines Gas Co.	J. W. Cunnington	Explosion	4,500.00	Widow	By agreement
Dougherty & Byand	Wm. Dacey	Fall	4,500.00	Widow	By agreement
Elliott, J. & S. A. Co.	Mike Povich	Crushed	4,500.00	Widow	By agreement
Edwards, The Bros.	Joe Holub	Fall	4,500.00	Widow	By agreement
Emmetsburg, City of	Henry Agnew	Struck by truck			No liability
Egypt Coal Co.	L. Hughes	Fall of rock		Widow	Pending
Egypt Coal Co.	L. Howe	Crushed by rock		Widow	Pending

FATAL CASES REPORTED DURING BIENNIUM—Continued

SECOND YEAR—Continued

Employer	Employe	Cause	Amount	Dependent	Adjusted
Folwell-Ahlskog Co.	M Davenport	Struck by plank		No dependents	No claim filed
Great Western Coal Co.	Wm. Raisbeck	Fall of slate		Sister (Partial)	Pending
Hart Parr Co.	A. Schueller	Heart failure			Not compensable
Hart Parr Co.	B. Yarrington	Thrown off saw	3,037.42	Widow	By agreement
Hoggson Brothers	J. P. Manion	Struck by hoist	3,894.00	Widow	By agreement
Hahn Brothers Co.	Fred Bramble	Burned	3,114.00	Children	By agreement
Harrison County	O. L. Case	Shot	4,500.00	Widow	By agreement
Hall Mfg. Co.	M. F. McLaughlin	Struck by handle		Widow	Pending
Iowa Service Co.	Frank Mintum	Electrocuted	4,500.00	Widow	By agreement
Iowa Southern Utilities Co.	H. G. Yast	Heat exhaustion			No claim filed
Iowa Southern Utilities Co.	C. G. Blackburn	Run over by train	4,500.00	Widow	By agreement
Iowa Southern Utilities Co.	C. O. Smith	Electrocuted			Pending
Interstate Power Co.	A. Venom	Electrocuted		Widow	Pending
Independent School District, Waterloo, Iowa	P. F. Eakins	Fall	4,500.00	Widow	By agreement
Iowa Railway & Light Co.	Dan Metcalf	Electrocuted		No dependents	No claim filed
Iowa Railway & Light Co.	C. H. Caldwell	Electrocuted			Pending
Iowa State College	D. C. Cameron	Heat exhaustion		No dependents	No claim filed
Iowa City Light & Power Co.	J. McCann	Tetanus	4,500.00	Widow	By agreement
Iowa State Highway Com.	G. Grimes	Struck by train	2,595.00	Parents	By agreement
Iowa Light, Heat & Power Co.	Harry Layman	Struck by wire		Widow	Pending
Iowa State Fish and Game Department	Will Shear	Auto struck by train	3,375.00	Widow	By agreement
Independent Coal Co.	Wm. Schmickey	Electrocuted	3,375.00	Father	By agreement
Johnson & Moon	E. E. Minor	Kicked by horse	2,883.00	Widow	By agreement
Johnston Clay Works	D. M. McLoud	Struck by flying clay	3,150.00	Widow	By agreement
Kellerton Constr. Co.	Peter Rich	Cave in	3,600.00	Widow	By agreement
Kimball, L. O.	Earl Kissel	Struck by train	4,362.00	Widow	By agreement
Kipper Stoddard Motor Co.	Franklin Rich	Struck by truck		Widow	Pending
Lone Tree Farmers Union	W. Hallenbeck	Fall	3,475.82	Widow	By agreement
Lehigh Portland Cement	P. Valadez	Suffocation		No dependents	No claim filed

Lehigh Portland Cement	R. A. Wyant	Suffocation	4,500.00	Widow	By agreement
Maytag Company	Earl Ackelman	Struck by wheel	4,500.00	Widow	By agreement
Merchants Tfr. & Stg. Co.	C. H. Simmerman	Fall	4,206.00	Widow	By agreement
M. & St. L. Ry. Co.	Lola Paggett				Illinois case
Marshall Canning Co.	Chas. Shoppe	Struck by conveyor	3,933.00	Widow	By agreement
McCagg Coal & Mining	James Rogers	Fall of slate		No dependents	No claim filed
McCoy, H. N.	Noah Strause	Struck by truck	4,500.00	Widow	By agreement
Melman, Dave	M. L. Coyne	Tetanus		Widow	Pending
Melvin Consolidated Independent school	John Poehler	Explosion of gas		Widow	Pending
Northwestern States Portland Cement	Henry Testract	Fall of stone	1,386.00	Parents (Partial)	Arbitration
Newton Lang Motor Co.	R. Vass	Struck by car	4,500.00	Widow	By agreement
Norwood White Coal Co.	Wm. Kovich	Electrocuted	3,000.00	Mother	By agreement
Neuman, A. H. & Co.	Clifford Perry	Struck by brick	1,104.38	Mother	By agreement
Osman, R. T.	Harold Westfall	Struck by tractor	750.00	Mother (Partial)	By agreement
Orr Co., The	C. M. Leidig	Fall	2,700.00	Widow	By agreement
Orcutt Company	C. Beaubien				Claim denied
Pitts.-Des Moines Steel Co.	H. P. Crews	Fall		No dependents	No claim filed
Paulson, O. F., Constr. Co.	F. J. Flaherty	Fall		No dependents	No claim filed
Pershing Coal Co.	Frank Pratt	Not given	4,500.00	Widow	Arbitration
Pershing Coal Co.	A. Kramer	Fall from scaffold	4,500.00	Widow	By agreement
Pershing Coal Co.	Frank Provenzano	Fall of coal	4,500.00	Widow	By agreement
Peoples Gas & Electric	J. Lauzen	Heat exhaustion		Widow	Pending
Poweshiek County	John Fraser	Crushed by auto			Pending
Red Rock Coal Co.	Ed. West	Fall of slate	4,500.00	Widow	By agreement
Riesch & Sanborn	Jack Barry	Struck by hoist			Pending
Sioux City Gas & Electric Co.	H. Buzzer	Burned	4,337.54	Widow	By agreement
Sioux City Gas & Electric Co.	M. Macdonald	Burned			Pending
Smtih, Lafe	J. A. Miers	Not given		Widow	Pending
Seippel Lumber Co.	J. Zimmerman	Overexertion		Widow	Pending
Shuler Coal Co.	H. Walker	Not given			Not compensable
Swift & Company	John Barrett	Run over by wagon	4,500.00	Widow	By agreement
Schilt, John	Adam Brandt	Wall fell in			Pending
Superior Coal Co.	Thos. Garrington	Fall from car			Pending
Superior Coal Co.	Chas. Harris	Fall of slate	4,500.00	Children	By agreement
Sioux City Paper Co.	J. S. Wadhams	Cerebral hemorrhage			Pending

FATAL CASES REPORTED DURING BIENNIUM—Continued

SECOND YEAR—Continued

Employer	Employe	Cause	Amuont	Dependent	Adjusted
Sioux City Serum	C. K. Tuttle	Tetanus		Mother	Not compensable
Shellsburg Creamery Co.	Wm. Montgomery	Struck by train	3,462.00	Widow	By agreement
Stacey Mfg. Co.	Frank Richardson	Fall	4,500.00	Widow	By agreement
Traer, Town of	Frank Mommer	Shot	4,500.00	Widow	By agreement
Union County	N. F. Collins	Gun shot	4,500.00	Widow	By agreement
United States Gypsum Co.	O. Hiram	Fall			Pending
United Clay Products	E. Steven George	Fall	3,633.00	Widow	By agreement
Western Iowa Power Co.	Harry Wilkinson	Electrocuted	4,500.00	Widow	By agreement
Wickes Enginr. & Constr. Co.	H. L. Nelson	Unloading girder	3,150.00	Widow	By agreement
Wakonsa Hotel	H. Eckhart	Caught in elevator	3,489.00	Widow	By agreement
Younker Brothers	J. M. Lamb	Crushed by elevator			Pending

PAYMENTS BY THE STATE TO DATE IN PEACE OFFICER CASES COMING UNDER CODE SECTION 1422

DISABILITIES

Name of Officer	Name of Employer	Cause of Injury	Medical and hospital benefits paid	Burial benefits paid	Compensation paid	Compensation to be paid
O. L. Keagle, Deputy marshal	Town of Prairie City	Shot while in pursuit of robber	$ 127.10		$ 169.30	
A. M. Meade, Deputy sheriff	Woodbury County	Car upset while in pursuit of prisoner	21.10			
David Anderson, Deputy sheriff	Woodbury County	Car upset while in pursuit of prisoner	18.00			
Frank Jipp, Deputy marshal	Woodbury County	Car upset while in pursuit of prisoner	10.00			
Leslie David, Deputy marshal	Town of State Center	Shot while in pursuit of suspicious characters	200.00		30.00	
Geo. Howland, Deputy sheriff	Clinton County	Shot while patrolling highway	200.00		244.29	
F. D. Alexander, Deputy sheriff	Clinton County	Shot while patrolling highway	200.00		717.85	
Ora Jones, Deputy	Appanoose County	Fell from car while after rum runners	15.00		32.14	
L. J. Cameron, Deputy sheriff	Howard County	Thrown from car while after reckless driver	71.00		25.71	
Total for Disabilities			862.20		1,219.29	

DEATHS

Harry Reel, Special officer	City of Mo. Valley	Shot by public officer at fair grounds	.....	$ 100.00	$2,109.36
Frank Mommer, Marshal	Town of Traer	Shot by burglars	$ 200.00	150.00	690.00
Vinton Margretz, Special officer	City of Waterloo	In motorcycle accident	15.00	150.00	$25.00
L. P. Hemmer, Deputy sheriff	Dubuque County	Shot while trying to prevent jail delivery	.....	150.00	555.00
O. L. Case, Deputy Sheriff	Harrison County	Shot by rum runner	171.10	150.00	615.00
J. W. Armstrong, Night marshal	Town of Logan	Shot by bandits	200.00	150.00	420.00
N. F. Collings, Sheriff	Union County	Shot while serving legal papers	bill not in	150.00	240.00
Totals for Death			586.10	1,000.00	5,454.36
Total for All Cases			1,448.30	1,000.00	6,673.65

	3,945.00	.....
	3,885.00	$3,810.00
	4,080.00	3,675.00
	4,260.00	.....
	23,655.00	.....
	23,655.00	.....

PAYMENTS BY THE STATE IN CASES OF INJURY TO STATE EMPLOYES

	Year ending June 30, 1925	Year ending June 30, 1926
Compensation for death	$ 2,717.65	$ 3,137.60
Burial benefits	.....	300.00
Compensation for injuries	7,803.32	7,268.61
Physicians, surgeons and hospital bills	834.59	1,184.00
Totals	$11,355.56	$11,890.21

PRIVATE EMPLOYERS AUTHORIZED TO CARRY OWN RISKS

Amana Society
American Bridge Company
American Railway Express Company
American Telephone & Telegraph Company
American Tobacco Company
Atlantic Northern R. R. Company
Bettendorf Company
Brunswick Balke Collender Company
Burlington Gas Light Company
Carr Ryder Adams and Company
J. I. Case Threshing Machine Company
Cedar Rapids & Marion City Ry. Company
Central Iowa Power & Light Company
Central Iowa Fuel Company
Chandler Pump Company
Chariton Telephone Company
Chicago Bridge & Iron 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. Company
Citizens Gas & Electric Company
Clear Lake Independent Telephone Company
Clinton, Davenport & Muscatine Ry. Company
Dain Manufacturing Company
Davenport Water Company
Denniston & Partridge Company
Des Moines City Ry. Company
Des Moines & Central Iowa Railroad
Des Moines Electric Light Company
Des Moines Gas Company
Des Moines Union Ry. Company
Dewey Portland Cement Company
Dolese Brothers Company
E. I. Dupont De Nemours Company
Eastman Kodak Stores, Inc.
Firestone Tire & Rubber Company
Ford Motor Company
Fort Dodge, Des Moines & Southern Ry. Company
Fort Dodge Gas & Electric Company
Fort Madison Electric Company
French & Hecht
General Electric Company
B. F. Goodrich Rubber Company
Graybar Electric Company, Inc.
Great Atlantic and Pacific Tea Company
Griffin Wheel Company
Guardian Life Insurance Company
Hart-Parr Company
Hocking Coal Company
Home Lumber Company
Illinois Central Railroad Company
International Harvester Company
International Milling Company
Iowa Bridge Company
Iowa City Light & Power Company
Iowa Gate Company
Iowa Light, Heat & Power Company
Iowa National Fire Insurance Co.
Iowa Service Company
Iowa Southern Utilities Company
Iowa Transfer Ry. Company
Jake Lampert Yards, Inc.
Jewel Tea Company
John Deere Tractor Company
Keokuk Electric Company
Lane Moore Lumber Company
Lehigh Portland Cement Company
McClintock-Marshall Company
McDonald, John J.
Manchester & Oneida Ry. Company
Martin's Fireworks Company
Mason City & Clear Lake Ry. Company
Miller Hotel Company
Minneapolis & St. Louis Ry. Company
Mississippi River Power Company
Moline-Rock Island Mfg. Company
Murray Iron Works Company
Muscatine Lighting Company
National Biscuit Company
Noelke-Lyon Manufacturing Company
Northwestern Bell Telephone Company
Northwestern Manufacturing Company
Omaha & Council Bluffs Street Ry. Company
Omaha Steel Works
Oskaloosa Home Telephone Company
Ottumwa Gas Company
Pacific Fruit Express Company
Peoples Gas & Electric Company
Peoples Light Company

The Pintsch Compressing Company
Pittsburg-Des Moines Steel Company
Pittsburg Plate Glass Company
Postal Telegraph-Cable Company of Iowa
Prudential Insurance Company of America
Red Ball Stores, Inc.
Red Rock Coal Company
Riverside Power Manufacturing Company
The Sherwin-Williams Company
Shricker Marble & Granite Company
The Simmons Company
Simpson College, Inc.
T. M. Sinclair & Company
Sinclair Refining Company
Sioux City Gas & Electric Company
Sioux City Service Company
Sioux City Telephone Company
Skelly Oil Company
Standard Oil Company
Stoner's Incorporated
Stoner-McCray System
Superior Coal Company
Transcontinental Oil Company
The Travelers Insurance Company
Tri-City Ry. Company
The U. G. I. Contracting Company
Union Pacific Company
United Light & Power Engineering & Construction Company
U. S. Gypsum Company
U. S. Rubber Company
Vacuum Oil Company
Waterloo Laundry, Cleaning & Dyeing Company
Western Electric Company
Western Electric Telephone System
Western Union Telegraph Co.
Wickham & Company, E. A.
Wisconsin Bridge & Iron Company

SUPREME COURT DECISIONS

CASE	CITATION
American Bridge Co. vs. Funk	173 N.W. 119
Baldwin vs. Sullivan et al	204 N.W. 420
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. 476
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. 384
Des Moines Union Railway Co. vs. Funk et al	170 N.W. 529
Double vs. Iowa Nebraska Coal Co	203 N.W.
Double vs. Iowa Nebraska Coal Co., et al	201 N.W. 97
Eddington vs. Northwestern Bell Telephone Co., et al	202 N.W. 374
Farrow vs. What Cheer Clay Products Co	203 N.W.
Farrow vs. What Cheer Clay Products Co., et al	200 N.W. 625
Fisher vs. Priebe Co	160 N.W. 49
Flint vs. City of Eldon	183 N.W. 344
Franks vs. Carpenter	186 N.W. 647
Fraze vs. McClelland Co., et al	205 N.W. 737
Grant et al vs. Fleming Bros	176 N.W. 640
Griffith vs. Cole, et al	165 N.W. 577
Guthrie et al. vs. Iowa Gas and Electric Co., et al	204 N.W. 225
Hanoon (Royal, Administrator) vs. Cudahy Packing Co	195 Ia. 750
Hanson vs. Dickinson (Rec. of C., R. I. & P. R. R. Co.)	176 N.W. 820
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

Kent vs. Kent, et al	208 N.W. 709
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
Moses vs. National Union Coal Mining Co	184 N.W. 746
Murphy vs. Shipley, et al	205 N.W. 497
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. 895
O'Neil vs. Sioux City Terminal Co	186 N.W. 633
Pace vs. Appanoose County	168 N.W. 916
Pappas vs. North Iowa Brick & Tile Co., et al	206 N.W. 146
Parkinson vs. Brown Camp Hardware Co	192 N.W. 420
Pfister vs. Doon Electric Co., et al	202 N.W. 371
Pierce vs. Bekins Van & Storage Co	172 N.W. 191
Reeves vs. Northwestern Manufacturing Co	209 N.W. 289
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. 184
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
Van Gorkom vs. O'Connell, et al	206 N.W. 637
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

Our statistical section seems to indicate that while injuries are somewhat fewer, litigation is on the increase. The record appears to show that there is less resistance on the part of employers and insurers as precedents are established and the statutes are better understood. Evidently, they usually prefer to settle rather than take a long chance in legal controversy. On the other hand experience seems to justify the belief that latterly more than theretofore claim is made on account of causes more obscure, of effects more speculative, and when coverage under the law is more or less doubtful. It is our policy to encourage amicable settlement in all possible cases, to avoid the waste of litigation, finally borne by the public, though the door of arbitration is always open to any claimant or defendant who feels he has a legal right to establish. It should be understood, however, that in proportion to cases settled without serious controversy suits for recovery are exceedingly rare. The ratio is considerably above one hundred to one.

Earlier in department service it was believed that litigation would in later years develop fewer cases so unique and so valuable in precedent as to justify publication. Experience proves, however, that this expectation was unwarranted. In the decisions following are included no cases which do not involve new and interesting questions that have arisen in compensation controversy within the past two years. Ample assurance is given that these decisons are widely read and are regarded as distinctly helpful in their influence upon important situations.

AMMONIA GAS EXPOSURE—FAILURE TO CONNECT WITH DISABILITY

A. A. Boyce, Claimant,

vs.

Newens Sanitary Dairy Company, Employer, and New York Indemnity Company, Insurance Carrier.

Holly & Holly, for Claimant;

W. W. Scott, for Defendants.

In Review

In arbitration at the department, March 31, 1926, the defendant insurer was held in payment of compensation in the sum of $15.00 a week while claimant shall be totally disabled as a result of injury in the employ of the Newens Sanitary Dairy Company, July 2, 1925.

In the employ of this defendant, July 2, 1925, as engineer, claimant was exposed to ammonia gas poisoning, due to pipe leakage in the refrigerator plant. Without loss of time claimant proceeded with his work as usual from July 2nd until November 4th, when he was seized of sickness, diagnosed as bronchitis.

At the arbitration hearing Mr. Boyce testifies that he had been in the employ of the defendant for a period of nine years. His duties were firing the boiler and running the ice machines, and incidental activity connected therewith. It was necessary to carry ashes a distance of about one hundred feet. Returning from one of these trips, he discovered fumes of gas as he was at the door of the basement engine room. Entering, he shut off one machine and was driven out by the poisonous fumes. Says he vomited as he went out. Responding to an emergency call, a crew came from the fire department, whereupon, putting on masks, the claimant and one of the crew entered the basement and shut off the remaining machine, stopping the gas leakage.

Boyce says the exposure burned his mouth, nose and throat, skin surface exposed of face and hands were made to smart, and his eyes to water. He ate only part of his lunch, which his stomach could not retain. For a period of three months he says he vomited "pretty regular, right along every day." Had little appetite. His sense of smell was diminished. Had not had a good night's sleep since the accident, nor eaten a good square meal. Had a good deal of trouble getting his breath, a difficulty which began right after the accident. Continued to grow weaker all along. Eyes got pretty poor. Got so weak and felt so bad he had to quit; sickness coming on gradually.

Mrs. A. A. Boyce, wife of claimant, testifies that on the evening of the day of the gas leakage her husband came home sort of staggering, with eyes watery and face pale. Said they had a blow-out at the Newens Dairy. Took a few mouthfuls of food but threw it up. During the months following he would eat but it wouldn't stay down. His talk was much affected and continued so more or less ever since. After the accident it was hard for him to breathe. A little exercise left him puffing or panting; slept scarcely any; had little appetite. Testifies as to other evidence of abnormal condition during the months following the incident of July 2nd.

Mrs. Lucille Reeves, daughter of claimant, with much detail, testifies in much the same vein and to the same effect as her mother relative to the condition of claimant in the months following the gas exposure.

Dr. Hugh G. Welpton was first called in this case professionally but it proved not to be and cleared up very rapidly." Says since he was called claimant has been "losing flesh greatly." Goes into detail as to many elements of irregularity regarding the physical condition of claimant as developed in his several examinations. Says that after treating him for several days he learned of the ammonia exposure.

Thinks "it might have been in January before I made up my mind" that disability existing had its origin in the gas incident.

Doctors T. J. Trenary and L. B. Hurt, Osteopath physicians, testify to knowledge of the conditions and circumstances involved in this case, and to the belief that the incident of gas exposure might, probably could, account for existing disability.

Dr. Harry Burns, a graduate of the Iowa State University, testifies to knowledge and experience in connection with ammonia poisoning, reaching a conclusion that the July gas exposure is responsible for the condition of claimant.

Dr. Clarence P. Cook was called by claimant. Had made examination February 14, 1926, and recites various abnormal conditions as developing. Don't know whether or not ammonia gas could produce such conditions.

Called by defendant, the employer, L. Newens, testifies as to details of the exposure occasioned by leakage of ammonia gas, July 2, 1925. Took charge of the situation as soon as advised. Gives details as to circumstances in this connection. Says claimant Boyce assisted in the repair work following the leakage, which was completed about five o'clock the same afternoon. At no time after the incident did claimant ever make any complaint or any mention of feeling sick on account of it. He continued to work steadily. Witness was away thirteen days in July. Got back the 18th. He was also absent part of October. After returning from a trip he learned of claimant's sickness early in November, and with his superintendent, Mr. Barmore, called on him at his home. Says claimant complained of having a very bad cold—bronchitis. Made no mention of gas poisoning. He first learned of the claim upon which this action is based the first week in December through claimant's attorney, Mr. Holly, who called him up to inquire as to certain facts of employment. Says claimant did his usual work in the usual way during all the time he was in touch with the business during the period from July 2nd to November 4th.

Dr. Daniel J. Glomset was called by defendant. March 18, 1926, gave claimant a general physical examination. Recites details as to general conditions. From this examination and from his experience in handling ammonia gas cases, does not think conditions existing due to any relation with ammonia fumes on or about July 2, 1925. They may be due to a number of things. Never heard that ammonia in the blood stream could cause anything of the sort. The fact that claimant was able to work for four months after the exposure is evidence that such exposure is not the proximate cause of disability.

Called by defendant, Dr. Julius S. Weingart states he examined Mr. Boyce in the office of Dr. Martin, in December, 1925. Gives detailed account of this examination. From this information and from his knowledge and experience witness testifies that he does not think existing disability due in any way to inhalation of ammonia gas, giving detailed reasons for this opinion; that it "was impossible that it was the result of ammonia gas poisoning; that it is contrary to all the symptoms of such poison, as I have stated."

Dr. J. W. Martin had made examination of claimant, physical and laboratory, including X-ray, December 22, 1925, and the record contains elaborate details as to conditions discovered. Is positive that existing disability did not have its origin in the incident of gas exposure July 2nd.

The weight of medical testimony very substantially supports the contention of defendants. This advantage, however, might be overcome with evidence showing a continuity of development tending to establish convincing relationship between the gas poisoning incident of July 2nd the sickness of November 4th, the date when claimant quit work. Facts are such stubborn factors that they may not be easily overcome by professional opinion. But does the record afford substantial basis for discrediting this weight of skillful evidence?

The claimant worked every day in the week. In the period intervening between the date of injury and the beginning of disability, he put in full time at full employment for 124 days. In the nature of the situation, he must have been in hourly contact with other employes of the defendant. Lunching every day on his working premises, if he were vomiting his food daily, as alleged, is it not reasonable to assume that some fellow workman would have knowledge of this trouble? If he were short of breath and panting about home all through these four months as claimed, is it possible that no one at the plant should have noticed such conspicuous ailment? If he were staggering around the house, if his vision and hearing were impaired, if he were growing weaker right along, is it possible that such evidence of indisposition should have utterly escaped the notice of other dairy employes? And if these unusual symptoms were within the knowledge of any fellow workman, is it reasonable to suppose that such vital support to this case could have been suppressed? But no workman appeared to testify.

Counsel states that hostility to this case was manifest by Mr. Newens and his employes. Upon what theory can such a contention be founded? The employer was insured. He was evidently on friendly terms with the claimant during all the nine years of his service. No self-serving is involved. In common experience when does an employer fail to stand for a square deal for one of his injured workmen whom he has covered with insurance? Did this employer, of high standing in the community, on good terms with his workmen, so far fail in the obligation of common honor and common justice as to contribute to the defeat of a just claim to the advantage of an insurer paid for compensation coverage? When has it happened that workmen have abandoned an unfortunate employe by suppressing evidence in their possession necessary to the establishment of a just claim? No process has been devised to restrain the average American workman when he may conscientiously serve a workman pal out of luck. Yet, counsel devoted and untiring,

was unable to bring forward a man to testify in behalf of this claimant. This silence is significant and ominous.

At the review hearing the testimony of Mrs. Edna Croskey, whose employer had quarters in the Dairy Building, is to the effect that she noticed that Mr. Boyce was losing flesh in the period after the gas exposure and before October 17th. She thinks he lost about forty pounds in these three and a half months. Claimant says he lost fifty-four pounds from about July 1, 1925, to March 1, 1926, a period of eight months. Dr. Welpton states that after he was called November 4th, claimant was "losing flesh greatly," and there was from this date to the date of second weighing referred to by claimant four months in which to continue this great loss. So Mrs. Croskey must have made a liberal estimate in her statement as to the loss of forty pounds before October 17th. This witness mentions no other evidence of debility—no staggering, no eye or ear trouble, no paleness, no failing strength. This evidence, slightly significant as it is in corroboration, is the only shread of independent support given the claimant as to indications of illness or failing powers between the gas exposure and November 4th.

Something has evidently ailed Mr. Boyce. He has been and apparently still is without earning capacity. His case evidently baffles medical skill. Nevertheless, the tendency of claimant and counsel to ask that the defense solve the perplexing situation by acceptable diagnosis, or admit the gas incident as its source, has no basis in law or practice. The burden is on the claimant to establish his claim. He must submit a preponderance of evidence in his support. He must make a case which to a reasonable mind proves that after four months of usual service, without complaint as to indisposition, without revealing by word or act, outside of his own home, during a period of one hundred and twenty-four days of service without loss of an hour, he is suddenly prostrated and put out of commission by the incident of July 2, 1925. This, the record fails to show. No substantial corroboration of the family story is in evidence. The working record and the plant relationship during this long and uneventful period affords no support to this family story.

In this record, as claimant's Exhibit "F", appears the report of the workman and of Dr. Welpton to verify a claim for sickness insurance. The workman gives his infirmity as "lagrippe," under date of December 8, 1925. The doctor names ailments involved as "acute lagrippe—bronchial pneumonia form—gas poisoning." The doctor's report is made to appear as of November 4, 1925. This is the first day of the claimant's sickness, and the day the doctor was first called. In the arbitration hearing Dr. Welpton testifies that he "didn't know for the first two or three days he had inhaled ammonia fumes." (Tr. p. 150) He further states that "it might have been in January before I made up my mind" as to the connection between gas exposure and existing disability. (Tr. p. 152) Exhibit "F" is a copy of the original report.

Though self-serving, with a tendency to bias, the testimony of a claim-

ant and members of his family must be carefully weighed and fairly considered. Its value, however, must depend upon the essential elements of inherent probability. Where definite corroboration is not available, such evidence must depend for its successful appeal upon its general consistency. It must to a reasonable extent square with facts and circumstances and conditions involved in case history. It may, with little support afford adequate basis for award, but it must not be inconsistent with definite essential facts and common human experience. To assume that this workman was so vitally and conspicuously afflicted as described during the long interim of one hundred and twenty-four days without the knowledge or notice of any one of his fellow employes, or that all these should have ruthlessly conspired to conceal such knowledge, is taxing credulity beyond the limit. This glaring inconsistency gives additional weight and consequence to the testimony of the three doctors of very high standing who gave this case thorough scrutiny in personal examination, reaching the conclusion that science and experience afford no support to the contention that existing disability had its origin in the gas exposure of July 2, 1925.

Wherefore, finding must be for the defendants, and the decision of the arbitration committee is accordingly reversed.

Dated at Des Moines, this 25th day of June, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

HORSEPLAY—AWARD DENIED

Arnold Wittmer, Claimant,

vs.

Dexter Manufacturing Company, Employer, Employers Mutual Casualty Company, Insurance Carrier, Defendants.

Ralph H. Munro, For Claimant.

John Hynes, and C. W. Conner, For Defendants.

In Review

In the course of his employment by the defendant company, Arnold Wittmer sustained serious disability by the breaking of his left leg above the knee.

In arbitration at Fairfield, March 9, 1926, it was held that the injury sustained by claimant September 24, 1925, did not arise out of employment.

The defendant denies obligation on the ground that the injury and resulting disability was caused by sportive act, the circumstances of which afford a bar to compensation recovery.

The accident upon which this claim is based occurred while Arnold

Wittmer was on his way to punch the time clock at the close of his day's labor. At the arbitration hearing he testifies that: "Just as we are going to the clock to punch out, Charley Steele took hold of my arm and kept pulling back. He said I wasn't to go any faster than he was. Just before I got to the clock I gave a jerk to get loose that overbalanced us someway, and we both fell down and he fell on top of my leg." The leg was broken at this time and in this manner. He later testifies: "I tripped over his leg;" that the tripping was accidental.

In advising the arbitration committee as to details of the incident, Charles Steele testifies: "Well as near as I can tell it, it was on pay night; the horn blowed; me and him were upstairs together; we was acting the fool. There is two rooms, you know—a partition—that you have to go through; and by the time we got to the door we really wasn't acting the fool. He was trotting along. I was too. What his intention was, I don't know, but my intention was to beat him to the clock. I punched the same clock, and he fell in front of me and I fell on him." States he did not trip claimant.

In cross-examination this testimony was developed:

Q. When you were going up the steps to the last room at that time which was before the accident, you and Mr. Wittmer had been sort of scuffling?

A. Not particularly scuffling; just kidding one another along.

Q. By kidding, what do you mean? Do you mean you were talking?

A. Yes sir.

Q. Pushing each other?

A. We wasn't pushing one another—not particularly scuffling—just like a couple fellows would.

There appears in this record as Exhibit 1, a statement of Arnold Wittmer, made at the time he was in the hospital, duly signed and identified, in which circumstances of the injury are related, as follows:

After the whistle blew I started to go to the time clock to punch out. The men are usually in a hurry to punch out and sometimes try to get ahead of each other. Chas. Steele tried to get ahead of me and kept pulling me back but I kept pretty well even with him until he stuck out his leg and tripped me. As I fell he fell on top of me and broke my leg. We were not fighting and he did not mean to injure me but we were only jostling each other to get to the time clock first. He was trying to hold me from the time we started up the steps from the machine shop until we got on the next floor part way to the clock. We were not fighting but were only on our way to punch out and he was holding me back. I do not think I held him from going by, and if he had had wanted to pass me he could of. I do not remember whether I had my hands on him or not but I might have had my hand on his shoulder. We were talking together and he was holding and saying "what's your hurry." I told him I wasn't in any hurry. He kept kidding and said that my check would be there and I didnt have to hurry. He punched out on the same clock I did I guess so I supposed he intended to go ahead of me or he would not have pulled on me.

At the arbitration hearing claimant seeemd to object to no part of this statement except that in which he is quoted as saying that Steele tripped him, which he corrected with the statement, "I tripped over his leg."

Wittmer testifies that no fooling or crowding or anything of that kind occurred in the first room referred to, and that "we were just walking along." Steele says "the fooling occurred in the first room and by the time we got to the door we really wasn't acting the fool. He was trotting along. I was too."

The testimony of a number of other witnesses seems to add no material weight in the development of this case.

In a number of jurisdictions throughout the Union court holdings serve to deny compensation coverage to any injury resulting from horseplay or sportive acts. It is therein assumed that injury does not arise out of employment. This department, however, has been disposed to hold with decisions elsewhere to the effect that the victim of a sportive act who has not himself actively or passively participated in disastrous horseplay is entitled to recovery for disability sustained. Consistent with this attitude it is necessary to decide as to the relation of Arnold Wittmer to the circumstances of his accident.

Thorough consideration of the entire record does not sustain the assumption that he was blameless in this affair. Had the breaking of his leg resulted from a sudden and intended tripping, coming as a matter of surprise, had he been injured by an unprovoked mischievous attack of which he had no previous knowledge, if this injury were due to circumstances wherein he had no chance to invite or to repel mischievous proceeding, there could be no question as to coverage under our usual holding. As a matter of fact, however, there was no surprise involved; there was no violent mischief-making. Some time elapsed between the time of beginning this proceeding and the resulting fall. Evidently, no protest was made by Wittmer to the alleged purpose of Steele to detain him from punching the time clock. Wittmer would seem to have participated in the contest suggested by Steele as to which should first reach the clock. There may have been active participation. There certainly was passive acquiescence.

The compensation law requires employers to meet any obligation developed from injuries arising out of and in course of employment. The various tribunals administer the compensation service with charitable consideration toward victims of industrial misfortune.

It seems proper to hold that a workman is afforded protection in cases where without notice or knowledge he becomes a victim of mischievous prank, in which he neither directly nor indirectly participates. But when he in any degree contributes to, assents to or acquiesces in such skylarking, there is no ground in logic or in equity for the construing of the law to the burden of industry and of society in case of resulting injury.

The record before us plainly denotes that claimant was not taken by surprise. Steele may have initiated the "fooling," but his pranks

were evidently not resented by Wittmer, who manifestly joined in the "kidding" and was not averse to accepting the challenge as to which should first reach the time clock. As a contributor, at least, to this misfortune, Steele evidently was a sympathetic witness. The desire to aid his unfortunate fellow is apparent. But his testimony as to mutual contribution to the "fooling" and "kidding" is most significant, and the evidence of claimant does not show him by any means a blameless victim of this proceeding.

The elaborate brief of counsel is carefully considered. Many of the cases submitted are believed to be not in point. No citation, however, can be regarded as affording support to award, in view of irresistible conclusion based upon searching analysis of the circumstances as developed in this record.

The arbitration decision is affirmed.

Dated at Des Moines, this 2nd day of August, 1926.

A. B. FUNK.
Iowa Industrial Commissioner.

Pending in district court.

DEATH FROM MOSQUITO BITE NOT DUE TO EMPLOYMENT

Louise E. Dietrich, Claimant,

vs.

Ficken Furniture and Rug Company, Employer.
Fidelity & Casualty Company of New York, Insurer, Defendants.
Hoffman & Hoffman, for Claimant;
Cook & Baluff, for Defendants.

In Review

This action is brought by the dependent widow of August Dietrich, who apparently lost his life in the employ of the defendant company, August 18, 1924, from the bite of a mosquito by infection.

In arbitration at Muscatine, March 25, 1925, holding was for defendants.

On Monday, August 18, 1924, the deceased was going from point to point about the city of Muscatine delivering goods and making collections for his employer. The mode of transportation was a truck driven by John Truitt, a fellow employe. Truitt testifies as follows:

"We was collecting on West Second street. I stopped on top of a hill; it is kind of a bad hill, I did not want to go down to the house to collect and when he come back, just as he went to get in the car, he slapped his hand like that, and he said: 'That damn mosquito bit me on the hand,' and he rubbed it, and that was the last place on the hill. We went down to the store and Gus went and got the turpentine bottle and rubbed some on his hand."

Scrutiny of the record seems to justify the conclusion that the insect

bite occurred as stated, and as a result of infection occasioned thereby, August Dietrich died five days later.

It is observed that this incident of the insect bite occurred near the hour of eleven in the forenoon on a city street. Manifestly, it occurred in course of employment, but in order to establish this claim it is necessary to hold that it also arose out of employment.

The best definition of this requirement in the English language was developed by the eminent Chief Justice Rugg, of Massachusetts, in the *McNichol* case, 102 N. E. 697. Quoting:

"It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It arises 'out of' the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence."

Is it "apparent to the rational mind" that this insect bite and its dire consequences establishes a "causal connection between the conditions under whhich the work is required to be performed and the resulting injury?" Did it follow "as a natural incident of the work?" Was it "occasioned by the nature of the employment?" Does it now "appear to have had its origin in a risk connected with the employment, and to have flowed from the source as a rational consequence?"

There was in this employment nothing to suggest peril from insect contact. A city street is not to be regarded as an insect infested area. The incident of the insect bite occurred toward noon of an August day, on top of a hill, a time and place by no means suggestive of mosquito activity. Had the employment of the deceased at this time been in swampy territory where mosquitos are supposed most to abound; had his exposure to mosquito bite from his peculiar employment been in excess of that of the average laborer of the community, or had any peculiar requirement or condition of service developed such exposure, this case would be on an entirely different footing.

Counsel submits in support of his contention for award a number of cases which speak for themselves in justifying favorable action on the part of the several courts. It seems probable that in no case identical with those submitted would compensation payment be denied by this department, or by our Supreme Court. But they are by no means com-

parable with the case at bar as to conditions precedent to the requirement "arising out of employment."

The case of *Globe Indemnity Company vs. Industrial Accident Company*, 171 Pac. 1088, is especially emphasized. In this case the workman was carrying letters of his employer for posting in a mail box. While on the street in this service he was struck by an automobile. There can be no question as to the wisdom of award in this case. Probably no jurisdiction in the United States would have denied such award. The only trouble with this citation is that it does not tend in any degree to support an award in the case at bar.

"The victim of this tragedy" counsel says, "would not have been at this dangerous point on the road on the fatal morning if he had not been required by his employer to collect this bill." On this point our Supreme Court in *Griffith vs. Cole Brothers*, 165 N. W. 577, quotes approvingly from *Craske vs. Wigan*, 2 B. W. C. C. 35:

"It is not enough for the applicant to say 'the accident would not have happened if I had not been engaged in this employment, or if I had not been in that particular place.' The applicant must go further and must say 'the accident arose because of something I was doing in the course of my employment, and because I was exposed by the nature of my employment to some peculiar danger.'"

Counsel says Mrs. Boyd, from whom the collection was sought, lived in "a ravine infested by poisonous insects." The record does not show that this debtor lived in a ravine, and it contains no suggestion that her place of residence was "infested by poisonous insects." Admitting, however that it was in a ravine, and so infested, the record discloses that the deceased had escaped from this perilous area to be attacked by the mosquito on top of the hill as he was about to mount the truck.

All in all, it becomes necessary to hold that there was nothing peculiar in the employment of the deceased subjecting him to the hazard of insect infection. Injury and death was in no sense or degree due to an incident inherent in the employment. The record fails to suggest any peculiar exposure on account of the nature of his employment. The injury and death of August Dietrich did not arise out of employment.

Wherefore, the arbitration decision is affirmed.

Dated at Des Moines, this 28th day of May, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

FATAL HEART TROUBLE DUE TO ELECTRICAL INJURY

Leah D. Sprinkel, Claimant,

vs.

Iowa Service Company, Employer,
London Guarantee & Accident Company, Insurer, Defendants.
H. L. Robertson and Sampson & Dillon, for Claimant;
Tinley, Mitchell, Ross & Mitchell and Chandler Woodbridge, for Defendants.

In Review

This claim is based upon injury sustained by Fred L. Sprinkel, husband of claimant, in the employ of the Iowa Service Company, August 25, 1923. Defendants admit such injury, but contend that the deceased fully recovered from the effects of said injury, and that his death was in no way due to accident arising out of and in course of employment.

It was found in arbitration that the death of Fred L. Sprinkel, January 23, 1925, was due to the accident of August 25, 1923, as a contributing factor.

According to the testimony of I. L. Brown, line foreman for the Iowa Service Company, an electric current of 16,500 volts passed through the body of the deceased, in service as line worker. Describing what happened immediately after the shock, the witness says he saw Sprinkel "hang by his belt on this pole." "He was hollering—'shut it off; take me down'." The power was shut off and the workman was lowered to the ground "by a rope, on his belt around his body." He was helped to an automobile and taken to Dr. Williams, of Logan.

Dr. Williams testifies that claimant came into his office with the help of "two or three men. One got under each shoulder and brought him in." "He had a severe burn on the abdomen, I thought it was a couple of inches below the navel on the right side, about three inches transversely by one and one-half inches perpendicularly, and it was burned so badly it had a leathery appearance. * * * Part of the tissue had been destroyed so that there was a depression. Then the left hand was burned in about four places, one at the base of the thumb, index finger, and at the back part of the hand, and at the base of the small finger, and also the little finger was badly burned and was contracted down, but the contraction wasn't complete at that time, it was just simply beginning, and extended up into the palm of the hand, and then he had one burn on the outside of the right thigh about midway, about an inch in diameter." The wounds were dressed, and the patient was taken to Omaha for hospital treatment that night or in a short time, in an ambulance, the doctor says.

At the Swedish Mission Hospital he was met by Dr. R. W. Bliss, who had been notified of his coming. The doctor says: "He was lying in the ambulance; didn't look greatly sick, but seemed greatly alarmed. I took him into the examining room and examined him, and he seemed to be more or less in a state of shock, however, he had a normal pulse and normal temperature." Dr. Bliss' description as to burns is substantially in accord with that of Dr. Williams. "He was greatly agitated and was unusually nervous at this time, which I ascribed either to the accident itself or his reaction following the accident." Thinks the nervousness naturally and probably due to the injuries. After a week, or perhaps more, the patient was sent home for treatment by local doctors.

Between the time of the accident and the date of death the deceased did some carpenter work. The record does not disclose how much. From the fact that it is evident he was suffering more or less from enervation

and incapacity, he would not seem to have been a full man in service at any time during this period.

At the arbitration and the review hearing seven doctors testified more or less positively in hypothetical inquiry that the history of the case does not justify the conclusion that the death of Fred Sprinkel was due to the accident of August 25, 1923. None of these doctors had ever seen the deceased in his lifetime. One of them attended the autopsy. From personal knowledge none of them was advised as to his condition from the time of his injury until the date of death.

In the record it is thoroughly substantiated and nowhere denied that prior to the injury in question the deceased was a man of unusually sound and robust physical character. His age was forty-two years. His weight was about one hundred and sixty pounds, and he was particularly well developed in a muscular sense. It seems established in evidence that within the memory of all his family and friends and physicians no sickness was recalled except hernial development some two years previously, when he was operated on by Dr. Bliss, who testifies that with this exception up to the time of his injury, he seemed to be a well man. We now consider development between the date of injury and death.

Dr. C. S. Kennedy, of Logan, was well acquainted with Fred Sprinkel. Was not his family physician, but in the absence of Dr. Williams he gave workmen first aid at the time of injury. Says that after his injury he was "changed from a man who was doing active work, and around, to a man that was showing sickness, or effects of sickness." Answered affirmatively the question "whether he gradually got worse from the time of that injury down to the time of his death."

Q. Now what in your professional opinion was the cause of his death, explain fully to the Board?

A. It was the condition brought about by reason of the electrical shock sustained at the time of his injury some months previous.

Dr. Kennedy discovered no evidence of any other cause.

Dr. Williams is the physician more than any other in close contact with this case. He says after the injury Sprinkel "wasn't the same man that he was before. Never did seem right after that. Always had a lack of spirit; seemed to think there was an impending doom of some kind; didn't have confidence any more."

Q. What is your professional opinion as to whether or not these injuries you have described that he got in August, 1923, caused or contributed to the cause of his death?

A. Knowing the circumstances and the man, I believe, and it is my professional opinion, that that was the primary cause.

Dr. Bliss testifies conservatively as to the cause of death. He says it was immediately due to the rupture of the aorta into the pericardium. Furthermore:

Q. Now, did you find in this autopsy any cause of that, anything that would bring about that according to the teaching of your profession, other than this injury that he received on August 25, 1923, did you find anything else that would cause that, or that made you think would cause it?

A. Of course we had a cardiac hypertrophy, that is, increase in the size of his heart larger than we would expect in a man of 42, with

changes in the aorta not any greater than we find, than we would expect to find, or we do find in a man in the early forties, with no evidence in the history of the case clinically, or in the findings pathologically which would indicate that the common cause of death at the time of life from such a condition, without syphilis, it would indicate to me that there had been some process which produced a weakening of the vessel wall, and it was my judgment that the man's coming in contact with an electric wire with high voltage, that it was altogether possible that that factor, or that injury, or that agent, could have been,—I could not say it was, and no one could say that it was—but could have been a factor in the abnormal weakening of this vessel wall in a man of this age.

Q. You didn't find any satisfactory cause for the enlargement of the heart other than this injury either, did you?

A. Not satisfactory, either in the history or in the physical examination or death.

Dr. Bliss adds, (Transcript, page 57):

"I can say this that from my knowledge of electricity and from medicine we get force, that an extra dose of that force produces changes in the heart sufficient to produce a ventricular fibrillation. I would say in lesser doses would very probably not. I don't care what your authorities say on that, it is very probable that a lesser injury could effect the heart to a lesser degree, not enough to kill, but sets up changes which would produce hypertrophy, atheroma, that is my knowledge of pathology, not knowing anything about electricity."

Dr. A. A. Johnson, of Council Bluffs, testifying for plaintiff, says: "I hold that the injury was of possible, quite a probable factor, in the production of his aortic condition." "That in all probability it contributed to it." Asked: "As I understand you as a physician, this death was caused, or contributed to this electric injury," the reply was: "It is my opinion, yes sir."

Nine witnesses, including three doctors, testify to a marked change in this man, temperamentally as well as physiologically after his injury. Before, he was cheerful, jovial, energetic and muscular. Subsequently, he was morbid, apprehensive, lacking in strength and working capacity, easily fatigued and short of breath. The record may be searched in vain without the discovery of any cause other than the accident for this change—for failing powers and final death.

In the array of medical evidence there appears continually endeavor on the part of the defendant to create the impression that this death was due to syphilis. All these doctors testify that syphilis is the frequent cause of such heart conditions as were present at the death of Sprinkel. There is not in this record a single fact or suggestion upon which can logically be based the conclusion that syphilis had anything to do with this case. This condition was foreign to the character and habits of the deceased. It is grossly unjust and fairly ruthless to assume the theory hinted at by defendants, in the utter absence of any foundation for such conclusion in the record, and its only excuse is the frequent death from heart trouble from this vile social disorder and the meager basis of reasonable defense. When disclosure so plainly indicates definite injury as the source of disability and death, a much more plausible negative theory is necessary to successful defense.

There is suggestion on the part of defendant that the autopsy performed was due to an intention to prejudice the case in favor of claimant.

In department experience we would say it is a case in which autopsy should have been naturally suggested, and which should have been performed in justice to all concerned. We have experienced stubborn resistance to the suggestion of autopsy on the part of interested parties in doubtful cases, and the tendency is to obscure real conditions and to avoid important development.

Summing up, it must be said: Here was a man with a record of perfect health for many years prior to the electrical accident. By every practical test he was an unusual example of physical excellence and vitality. Superior physical structure may account for the fact that he survived for months the current of 16,500 volts passing through his body. Surface indications afford substantial basis for the serious change in physical and moral conditions following the accident. The "recovery" featured by defendants is so limited and so temporary as to be negligible as an element of defense. Aside from the demoralization of physical forces, it is distinctly in evidence that claimant was seriously impaired in his nervous organization by this injury, a fact that doubtless contributed to his physical deterioration and final death.

Why this claimant lived on in impaired health and strength, gradually to develop through the malign influence of the deadly current the proximate causes of death is among the paradoxes of physical organization. Be this as it may, this record cannot be deliberately and fairly considered with any result other than the conclusion that but for this electrical accident Fred Sprinkel would not have died when he did and as he did.

We are admonished by counsel that we should not base an adverse decision in this case on surmise or conjecture. True enough, but in cases where conclusion in definite detail as to cause and effect is difficult, the test of inherent probability must be intelligently exercised, and in such exercise it must be justly held that the claimant in this case is entitled to the relief afforded by the compensation statute as in case of death arising out of employment.

The arbitration decision is affirmed.

Dated at Des Moines this 21st day of May, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

PALMER ABSCESS HELD NOT DUE TO EMPLOYMENT

V. Antonio, Claimant,

vs.

Northwestern States Portland Cement Company, Employer,
London Guarantee & Accident Company, Insurance Carrier, Defendants.
George R. Ludeman, For Claimant,
Chandler Woodbridge, for Defendants.

In Review

Claimant appeals from the arbitration decision which held that he had

failed to discharge the burden of proving that the disability from which he seeks to recover arose out of and in course of his employment by the defendant Cement Company.

From the record it would appear that claimant began an engagement with the defendant, May 26, 1925. In his employment of shoveling coal on the 10th day of June he testifies his hand was a little heavy, a little sore." Next day it was swollen. Reporting to the employment office he was sent to Dr. W. J. Egloff for treatment. Claims he was unable to work because of this condition until August 1st.

Dr. Egloff testifies that he examined the injured member June 13th; found it swollen, with a deep palmer abscess as the inciting cause. From the history given him by claimant, the doctor attributed the abscess to compression of the palm of the hand while shoveling, admitting, however, that "it might not have been that; it might have been something else."

In this record appears no suggestion whatever as to any accident or incident of employment as the proximate cause of the abscess developed. Asked at the employment office at the time he reported how he got hurt, his report was: "No hurt, no hurt, just sick, may be boil."

Admitting that the palmer abscess was due to bruising caused by the process of shoveling, the New York case of Woodruff v. R. H. Howes Construction Company, et al., N. E. 270, seems definite in point. The Industrial Commission found for claimant on the ground that "in using a screw driver he bruised the palm of his right hand which developed into a frog felon, as a result of which he was disabled." Claimant testified he did not know definitely just what caused the pain or injury, but he believed it was caused by the constant use of a screw driver. The pain was several days coming on. At no time did he get a splinter in his hand or particle of grit or anything that was ground into his hand from the screw driver, but he thought it was just from its continued use.

The court held adversely, reversing the arbitration decision making award.

Claimant himself does not testify to any accident nor any focalized incident as the origin of his disability. He frankly describes the gradual development of physical distress and disabling conditions. It may not be at all unlikely that his injury was due to his employment of coal shoveling, but if so, it does not suggest conditions precedent to compensable injury. If this injury occurred in employment it was in the nature of ailment gradually developing from occupational conditions, a situation to which the compensation law of Iowa does not afford coverage.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 19th day of May, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

PNEUMONIA—INJURY AS PROXIMATE CAUSE OF DEATH

Mrs. Ingeborg Koland, Claimant,

vs.

Tapager Construction Company, Employer,
Employers Mutual Casualty Company, Insurance Carrier, Defendants.
E. H. Estey, for Claimant,
John F. Hynes, for Defendant.

In Review

In arbitration at Clermont, February 4, 1926, it was held that the injury sustained by Gunder Koland, November 11, 1924, in the employ of this defendant was a contributing factor to his death, which occurred March 16, 1925, and that this claimant is entitled to compensation payment in the sum of $15.00 a week for a period of 300 weeks, as his dependent widow.

Gunder Koland was a carpenter, fifty-six years of age. The injury upon which this claim is based was occasioned by a fall from a ladder resulting in a fracture of the left femur bone.

Dr. L. L. Carr, of Clermont, was in charge of the case from the date of injury to the date of death, March 16, 1925. He testifies substantially as follows:

"The leg was completely immobilized for a period of about three weeks. After that it was absolutely necessary that we change the position of the patient, and his position from a complete rest on his back was partially changed to permit him to sit up a little bit with the aid of a back rest and sand bags at the sides of the leg. We did that really because of his lungs. He developed a congestion of the lungs, what we term hypothetic pneumonia.

Q. What was the cause of that pneumonia?

A. Merely from remaining in one position too long on his side.

Q. Is that something that you would expect to have occur in a man injured and treated the way this man was?

A. Yes sir, it is one of the complications that a physician has to watch out for in a patient of middle age placed flat on his back."

The Doctor further testified that this pneumonia "lowered his vitality and decreased his resistance, and seriously complicated the whole case. He was extremely sick for about ten days, returning then to practically about the same condition as he was when we put him to bed."

The workman made gradual gains, so far recovering as to walk on crutches and in this manner even to walk down town, a distance of several blocks. Death came suddenly. Dr. Carr is of the opinion that it was due to embolism, caused from the fracture of the femur. That a "particle of bone marrow or the soft structure on the inside of the bone marrow or the soft structure on the inside of the bones escaping into the blood stream or into the circulation or lodges in the brain and produces sudden death." He is of the opinion the fracture he received in November was a contributing factor to the death in March.

The widow testifies that down to the date of this accident her husband's health was good. John Halverson, stepson of the deceased, had known him for many years, and states that his health was perfect. Dr. Carr states that he had been the family doctor for a period of ten years, and during all this time he had never been called to doctor Gunder Koland.

The case of claimant is based upon a very severe accident, followed by pneumonia and other complications and death a few weeks later.

The defendants introduce no evidence to disturb the contentions of claimant. It is not denied that Gunder Koland was a man in uniformly good health up to the time of the accident in November of 1924, and no circumstance or condition tending to afford any explanation of the death of this workman other than from this injury arising out of and in course of his employment is suggested.

Careful consideration of the record would seem to afford no escape from the conclusion that the death of this workman was due to the injury of November 11, 1924, and complications directly due to said injury.

The arbitration decision is affirmed.

Dated at Des Moines, this 31st day of March, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme court.

INJURY ON WAY TO WORK NOT SUSTAINED ON PREMISES OF EMPLOYER

M. L. Thompson, Claimant,

vs.

The Bettendorf Company, Defendant.
Henry B. Witham, for Claimant,
Cook & Balluff, for Defendant.

In Review

This claim is based upon the allegation of the claimant that he sustained disability resulting from a fall on the premises of the defendant as he was on his way to his employment, July 14, 1925.

The arbitration holding is for the defendant.

It is the contention of the defendant employer:

1. That the fall resulting in disability was occasioned by slipping on a public sidewalk;
2. That if claimant fell, as he alleges, on grounds owned by the employer, the injury was not sustained on the premises of the employer within the meaning of the compensation statute.

This accident occurred as claimant was proceeding from the street car on State street in the town of Bettendorf, to the Bettendorf car shops.

The plant of the Bettendorf Company is situated some five hundred feet south of State street. Between these points is located a large lot entirely unoccupied and growing up to grass and weeds at the time of the injury. East of this vacant lot is a private road running from State street to the plant. Along the west side of this private road is a cement walk three feet wide leading from State street to the working premises.

Between this vacant lot and the working premises of the defendant company is the right-of-way of the Clinton, Davenport and Muscatine Railway, also the main track of the D. R. I. & N. Railway Company, and at least one switch track south of the main line, and that south of the switch track last referred to, is the main entrance to the car shops of the Bettendorf Company, and the distance from the north line of the Interurban Company's right-of-way to the shop entrance is approximately one hundred feet. These facts, important to intelligent understanding of the situation, are clearly outlined upon a blue print introduced in evidence as defendant's Exhibit No. "1." (Also see stipulation trans. p. 45.)

On the day of his injury claimant Thompson left the electric car on State street in a heavy rain storm. He testifies that he crossed the sidewalk on State street and was proceeding by a path cutting the corner between the cement walks, public and private, above referred to, when he slipped and fell on the vacant lot, to which reference is made. This fall resulted in the disability for which compensation is sought.

Called by claimant, Pat Rowen testifies that he was a passenger on the car with Thompson. He remained while Thompson departed. Through the car window he saw claimant fall. "Could not say whether he slipped on the sidewalk, but he fell inside of the little path, three or four feet from the sidewalk."

Edward Litzrodt, called by plaintiff, testifies that while he did not see claimant fall, he saw him after he was down from the fall in question. Says he was lying about four or five feet from the walk running east and west, and about two or three feet from the walk running north and south to the plant.

Testifying for defendant, Charles Gallagher, qualified as Assistant Employment Manager of the Bettendorf Company. He says that some time prior to the arbitration hearing he went to the intersection of these sidewalks with Mr. Thompson. He says claimant "pointed out to me where he climbed off the street car and how he ran and jumped across the street and how he slipped and fell." Says claimant related how he "jumped across the running water here on the street and as he got to the curb there was a puddle of water outside here on the street and he jumped across it. * * right in the middle of the four-foot sidewalk; just about the middle of it. He said at that point his feet slid from under him and the momentum of his run carried him over into the mud here beside this iron post, and as he landed his left shoulder was up against the post."

In the direct examination of claimant appears this testimony:

"Q. Do you know for sure that you fell on this pathway?
A. Yes, I know I fell in the pathway. I know where I picked myself up off of this sidewalk.
Q. Isn't it a fact that you thought that you had fallen at a different place than where these witnesses whom you have just heard testified you had fallen?
A. I thought I had fell on the east side of the post, instead of on the west side, but it was raining that morning and I started across this path, and I don't know whether on the east or west side of the post.
Q. Had you told anyone you had fallen on the east side of the post?

A. I said I thought I did, but I could have been mistaken. Mr. Gallagher, there, he was out with me.
Q. You showed him the place?
A. I showed him the place where I thought I had fell, but I said to him I could have been mistaken, but it was raining and, of course, I didn't look."

In the cross-examination of Thompson, appears the following:

"Q. Did you take Mr. Gallagher and Mr. Wallace and show them where you fell?
A. I took Gallagher, but Mr. Wallace didn't go out with me. I told him I might have come across here (indicating on plat), or might have crossed here, but I knew I fell.
Q. Didn't you say you got off the street car and fell in the rain and jumped over a puddle of water and slipped on the sidewalk?
A. No, I slipped on the ground after I crossed the sidewalk.
Q. Did you jump over some water?
A. No, I waded through it.
Q. Didn't you tell Gallagher and Wallace that you jumped over some water?
A. No."

In this record appears no positive evidence to the effect that claimant's fall was occasioned by slipping on the property of the defendant, except that of Thompson himself. His testimony is considerably weakened by the evidence of Gallagher and the admission of claimant, which justifies the statements of Gallagher as to where the fall occurred, and that he (Thompson) had subsequently changed his mind as to just how and where the fall had occurred.

The testimony of Rowen and Litzrodt, the only eye witnesses, is not at all conclusive as to the accident having occurred from a slip on the property of defendant.

The record shows that the little cut-off path was from the sidewalk intersection about fifteen feet one way and seven feet the other, which would indicate that the path in question was not to exceed eighteen feet in length.

The record does not show that the claimant has met the burden of proof in his endeavor to establish the contention that his disability is due to slipping on the property of the defendant employer.

If, however, it could be assumed that upon the evidence submitted claimant did fall in the cut-off path on the vacant lot of the employer, could it be said that this property is to be considered the premises of the employer within the meaning of the statute?

Speaking broadly, the "premises of the employer" might extend for miles from the situs of employment, as in the case of a railway right-of-way. Sometimes the plant located, as was the Bettendorf Company, outside of city limits, might occupy a tract of land including many acres. It might occur that the property limit extended half a mile from the factory. Injured at this distance on his way to work, an employe could hardly contend that in a legal sense his injury occurred on the premises of employer, though it did occur on land belonging to the employer. If this property were all contiguous, it might be difficult to establish the limits of the "premises" on which a workman can be afforded coverage.

In this case, however, Thompson was injured at a distance of probably

five hundred feet from the entrance to the car shops. (See Stipulation, trans. p. 48). Exceedingly liberal construction would be required to say that at this distance he would have been under protection on his way to work with no intervening limits of segregation. It is clear, however, that the property on which claimant claims to have been injured is separated from the premises on which the plant is located by two railway rights-of-way, affording a distinct line of demarcation. The lot in question was not used in connection with the operations of the employer, or for that matter, for any purpose whatever, merely growing up to weeds and grass, as the evidence shows.

The record in this case makes it necessary to hold:

1. That claimant has not met the burden of proving that the slip which occasioned his fall, July 14, 1925, occurred on property belonging to his employer;

2. That if it should be held that he did slip and fall on property owned by the defendant company, he was not injured on the premises of the employer in a statutory sense.

The arbitration decision is affirmed.

Dated at Des Moines, this 2d day of June, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

FAILURE OF PROOF AS TO ALLEGED ASSAULT—IF PROVED RELIEF BARRED BY STATUTE

Harry Bennett, Claimant,

vs.

Chicago, Burlington & Quincy Railroad Company, Defendant.

R. Brown, for Claimant,
Elmer L. Hunt, of Counsel,
J. C. Pryor, E. L. Carroll, for Defendants.

In Review

Compensation claim in this case is made upon the allegation that the claimant was injured due to an assault by an unknown person occasioned by ill-feeling arising from a strike situation. Claim based upon such premises must be and is denied. The Iowa statute excludes from coverage injuries due to "the wilful act of a third person directed against an employe for reasons personal to such employe, or *because of his employment.*"

Such was the finding in this case in arbitration at Creston, January 20, 1926.

Claimant was in the employ of the defendant in the month of January, 1924, at turn table work at the Round House in Creston. Near the hour of midnight on the 14th he was found in an unconscious condition not far from the depot where he had fallen while on his way to work.

Claimant alleges that the condition in which he was found was due to a blow on the head by some person to him unknown. There is support

in this record for this allegation. There is also substantial denial as to any such incident of assault.

It is the contention of claimant that an employees' strike, terminating some time previously, engendered so much bitterness as to create an extra hazard to all the employes who took the place of those striking; that the alleged injury and disability existing is due to assault by an unknown assailant because of this spirit of animosity.

In the first place the claimant has failed to establish in this record his allegation as to such assault. Only as a mere conjecture or inference can this theory be considered. It is no more reasonable than the theory that his collapse January 14, 1924, was distinctly due to another cause. The burden of proof is by no means discharged.

Claimant resists the arbitration decision, contending that the alleged assault was "not personal to this claimant, or personal to his employment."

The statute expressly says that "personal injury" shall not include injury caused by the wilful act of a third person directed against an employe for reasons personal to such employe, or because of his employment."

Assuming the theory of plaintiff to be established, which can be by no means admitted, there seems no escape from the conclusion reached in the arbitration decision. If this claimant suffers from assault due to a spirit of animosity, engendered by strike conditions, such assault is reasonably held to be "because of his employment."

The arbitration decision is affirmed.

Dated at Des Moines, this 22d day of March, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court, pending in supreme court.

DEPENDENCY OF MOTHER BASED UPON ACTUAL CONTRIBUTION ONLY

Daisy Clingingsmith, Claimant,

vs.

Jackson Dairy Company, Employer,
Iowa Mutual Libility Insurance Company, Insurance Carrier.
Ray P. Scott, for Claimant,
Sampson & Dillon, for Defendants.

In Review

In the employ of the defendant Dairy Company, Albert Halleck lost his life October 28, 1924, under coverage of the Workmen's Compensation statute.

In arbitration at Marshalltown, April 8, 1925, Daisy Clingingsmith was found to have been dependent for support upon contributions of this deceased son in the sum of $10.00 a week. Accordingly, award was made in the sum of $6.00 a week for a period of 300 weeks.

Claimant appeals from this arbitration decision on the ground that since the deceased, Albert Halleck, was her minor son, she is entitled to award of total dependency on the basis of conclusive presumption under statutory provision.

Before the Code of 1924 was effective, in the list of those conclusively presumed to be wholly dependent upon a deceased employe was included

"A parent of a minor entitled to the earnings of the employe at the time when the injury occurred, subject to the provisions of subdivision (f), Section 10, (9) hereof."

The qualifications noted in subsection (f) provides:

"Where injury causes death to an employe a minor, whose earnings were received by the parent, the compensation to be paid the parent shall be two-thirds of the amount provided for payment in subdivision (d), Section 10 (9)."

In the new code as paragraph 3, subsection (c), Section 1402, the following is enacted in lieu of the provision above quoted relating to conclusive presumption:

"A parent of a minor who is receiving the earnings of the employe at the time when the injury occurred."

No reference in this statement is made to the qualifying provision which as subsection 2, Section 1392 is made to read, as follows:

"When the injury causes the death of a minor employe whose earnings were received by the parent, the compensation to be paid such parent shall be two-thirds the weekly compensation for an adult with like earnings."

No reference to any qualifying provision appears. The change in definite terms would seem to be important. All parents are entitled to receive the wages of a minor son, except in case of emancipation. Few parents actually receive such wages. If in this case language has its usual significance this language cannot mean that a parent who receives any measure of contribution from the earnings of a minor son, said earnings to be entirely controlled by himself, can be said to receive the wages of said minor son. It must mean that in order to qualify as one conclusively presumed to be wholly dependent under the statute, a parent must actually receive from the employer or from the son the wages earned, and assume himself the support of the said minor son.

This change in the statute was not the result of accident or caprice. The Commissioner's compiled code left wholly undisturbed the provisions of the old code, relating to dependency as from a minor son. The changes in both paragraphs were made by the Legislature with evident intent to substantially modify the conditions under which conclusive presumption shall apply to parental dependency as from a minor son. The change was wholly consistent with the spirit and purpose of the compensation system—to confine compensation payment to those who actually lose support through industrial misfortune.

In the case of a spouse or of young children, the rule of conclusive presumption merely recognizes the obvious. Common human experience supports such presumption. It is a matter of common knowledge, however, that parents are not in these days wholly dependent upon minor children, except in rare cases, and in such cases no reasonable interpretation of the statute could deny the maximum of benefit under the law. The old law definitely couples the provisions quoted in separate sections while the statute now in force completely ignores such connection. To assume that the General Assembly made these amendments without intent to change the process of adjustments in such cases is a serious imputation upon legislative intelligence and legislative method.

The defendants appeal from the arbitration decision on the ground that the record does not afford support to the committee conclusion that the contributions of deceased to his mother amounted to as much as $10.00 a week and because in making the award of $6.00 a week the committee did not comply with the statutory provisions for the computation of compensation payment.

The transcript of evidence is carefully scanned to support or to deny the first contention. In the first place it would appear that the claimant had meager and desultory income from her own labors for a considerable period prior to the death of this son. Her earnings would seem to have been confined to such washing as she did for neighbors and from this source income was wholly inadequate to family support. She had no assistance from other children. A daughter of eighteen years at home had some earnings in odd time telephone work, but this would seem to have been needed in putting her through school.

It is in evidence that Albert Halleck, as a member of the household made substantial contribution. Just before his death he paid meat and grocery bills where he was by dealers evidently expected to meet these family charges. He had just made a payment of $8.00 on the winter's coal bill. He regularly paid the family milk bill. Claimant says he paid the light and gas bills. He had just made the last payment on a stove, costing $45.00.

In cases of partial dependency it becomes necessary to take into consideration the general situation—the sources of support, the extent of family needs, and the probabilities of contribution as well as the definite figures produced. The grievous emergency is always wholly unexpected. Naturally, no care has been taken to keep account of contributions. Checks are rarely used in such cases. Even when large contribution has been made, little may be available in the way of documentary evidence of payment. Here and elsewhere, the rule is to get all the figures possible and then to rely to some extent upon inherent probability developed in the inquiry.

The general tendency of contribution is to an important degree manifest in the interest taken and the measure of obligation realized. The practice of young Halleck indicates a realization of responsibility and a purpose to help. He had not bought gewgaws or movie tickets, nor other personal gifts, but had purchased systematically, food and fuel and other necessaries. He had been so solicitous of family safety as to insure his life for the benefit of his mother, and at his death she actually collected $1,000.00 upon this policy.

The earnings of the deceased were $25.00 per week for seven days of service. This formula was adopted by the committee: Daily earnings

$3.57; 300 x $3.57, daily earnings, = $1,071.00 (statutory computation); $1,071.00 annual earnings ÷ by 52, the number of weeks in a year, shows weekly payment of $20.60. 60% of $20.60 = $12.36 full statutory weekly compensation. Dependency contribution of $10.00 a week equals $520.00 a year. The weekly compensation must be the amount which bears the same proportion to $12.36, full weekly compensation, as $520.00, the annual contribution, bears to $1,071.00 the annual earnings, and this is 48½%. 48½% of $12.36 equals $5.99, the weekly compensation rate established. In this computation it has been necessary to use the grossly unjust legal rule which makes compensation payment substantially less in case of seven day service than where only six days labor is performed. The most careful consideration of this matter seems to justify the computation method adopted by the committee.

The amount of weekly contribution is more likely to have been in excess of $10.00 than otherwise. The alleged offset for board and lodging is not overlooked, but this could be considered only to the extent of actual outlay for the use of the deceased, as in such cases one member of a household is not permitted to charge another member for personal service in adjustment of domestic relations.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, this 10th day of September, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

SUPPLEMENTAL DECISION

The review decision in this case, filed September 10, 1925, affirmed the arbitration decision in its several findings. Later reflection develops the conclusion that the arbitrator and the Commissioner in part erred in such findings. Therefore, the review decision in that portion beginning paragraph three on page five thereof with the words: "The earnings of the deceased" etc., and all statement thereafter, is hereby withdrawn and the following is substituted in lieu thereof:

The earnings of the deceased were $25.00 per week. The correct formula in this computation is as follows:

Daily earnings, $3.57. 300x$3.57, daily earnings, $1,071.00. (Statutory computation, subsection 3, section 1397). $1,071.00 annual earnings divided by 52, number of weeks in a year, shows weekly payment of $20.60. 60% of $20.60 equals $12.36, full statutory weekly compensation. Dependency contribution of $10.00 a week equals $520.00 a year. Under subsection 3 of Section 1392 the weekly compensation must bear the same proportion to $12.36, full weekly compensation, as $520.00 the annual contribution bears to $1,300.00, the actual annual earnings, and 40% of $12.36 equals $4.94, the weekly compensation rate established.

The alleged offset for board and lodging is not overlooked, but this should be considered only to the extent of actual outlay for the use of the deceased, as in such cases one member of a household is not permitted to charge another for personal service in the adjustment of

domestic relations. The amount of weekly contribution is more likely to have been in excess of $10.00 than otherwise.

With the modification herein specified the arbitration decision is affirmed.

Dated at Des Moines, this ... day of October, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Modified and affirmed by district court, pending in supreme court.

WIDOW DENIED AWARD—CONCLUSIVE PRESUMPTION AS TO DEPENDENCY OF STEPCHILDREN

Mrs. Laura Robinson, Claimant,

vs.

Charles Eaves, Morey Clay Products Company, and Employers Mutual Casualty Company, Defendants,

Leo Chapman, Intervenor.

E. E. Smith, Gilmore & Moon, F. C. Huebner, for Claimant and Intervenor, Miller, Kelly, Shuttleworth & McManus, for Defendants.

In Review

This case is based upon the death of Ed. Robinson, as arising out of his employment by Charles Eaves, March 11, 1924.

The issues are as to whether or not compensable coverage existed at the time of this death, and if so, what, if any, dependency arises in this connection.

Defendants contend that the relationship of the deceased to Charles Eaves was that of partnership rather than employer and employe.

The Morey Clay Products Company are engaged in the manufacturing business at Ottumwa. An important part of their enterprise is the delivery of clay from a pit owned by them some distance removed from their factory.

February 17, 1923, this company entered into contract with Charles Eaves for the loading of cars of clay at the pit. This contract appears in the record as Exhibit C-7. It prescribes the obligations of each party to the contract, including the furnishing of tools, material, labor and the stipulated priced per car for loading the clay.

In the record, as Exhibit C-2, appears an agreement entered into by and between Charles Eaves and six workmen, in which it is stipulated each of the subscribers is to receive a given share of the remuneration per carload of clay and share certain expenses of operation.

It is held herein that this does not constitute a partnership of such character as to exclude from compensation benefits the men associated with Eaves in clay production.

This holding is based upon the terms of the contract between Morey Clay Products Company with Eaves, clearly denoting relationship with the latter, and with no one else, in connection with this employment of clay production.

It is further supported by the agreement between Charles Eaves and the other workmen, of whom Ed. Robinson was one. In this agreement the term "employe" is repeatedly used as applying to these workmen. The right to discharge is conceded and the inference is plain that hiring and discharging is a function to be exercised by Charles Eaves, and other testimony supports this inference. Manifestly, these workmen other than Charles Eaves, considered the latter their employer during their mutual relationship. The very form of signature is suggestive in that Charles Eaves signs in one column by himself while six other workmen sign opposite in another column, which does not indicate mutuality of interests to the extent of legal partnership.

Moreover, the Employers Mutual Casualty Association issued to Charles Eaves July 13, 1923, a policy of compensation insurance covering the workmen, signing this agreement as parties of the second part. Claimant's counsel contends that in this issue of coverage, with evident understanding as to all relationship involved, the defendant insurer is estopped from denial of liability. Be this as it may, these exhibits referred to consistently establishes the relationship of employer and employe between Charles Eaves and Ed. Robinson, and this conclusion is abundantly supported by testimony of various witnesses at the arbitration hearing.

The defendants contend that this claimant is not entitled to compensation payment as the widow of Ed. Robinson for the reason that at the time of his death she had given such evidence of desertion as to eliminate her from consideration because she had "wilfully deserted deceased without fault of the deceased."

There would seem to be more or less of substantial basis for this contention. The husband was killed on Tuesday, March 11, 1924. On the Saturday previous, Mrs. Robinson with two small children, and some of her belongings, went from Ottumwa to Fairfield. She alleges that this departure was for the purpose of assisting in the care of a sick grandchild at Fairfield. She also testifies that while she intended to return to the Ottumwa home, it was rather for the purpose of securing a divorce from Ed. Robinson than for any other. Testimony appears to prove that she left a note for Robinson apprising him of this conclusion. Other witnesses testify to this intention, as disclosed by Mrs. Robinson to them. The claimant had given information that she was resolved to divorce her husband because of her discovery of an attempt on his part to violate the person of one of her little daughters.

Ed. Robinson appears in this record as a patient burden-bearer. Claimant had lived with him for some time previous to her divorce from John Adler, a former husband. As soon as she was legally authorized, these twain were married. During the period of something like a year in which they lived as man and wife, Robinson supported in evidently comfortable condition not only his wife, but several of her children and grandchildren, who seemed to regard him as a substantial meal ticket.

Taking all circumstances appearing in the record, there is ground for the conclusion that this claimant had deliberately planned to leave Robinson, probably to re-establish the old Adler home, and she may have trumped up the charge of assault, against a man highly esteemed by his neighbors, and giving evidence of great kindness of heart and conspicuous regularity of conduct, in order to afford a basis for the consummation of this plan. She had so far developed this intent as to justify the conclusion that separation was a fixed purpose on her part, only lacking in details rapidly developing.

When Ed. Robinson married Mrs. Adler he became the stepfather of Mearl Adler and Leona Adler, aged respectively nine and twelve years.

This relation was more than technical in actual circumstance. These children were taken into the Robinson home and supported during all the time of the marriage relation, even unto the last day of the life of the stepfather. The money upon which Laura Robinson went to Fairfield came from the wages of her husband. All the comforts of the home, including the support of these children, were produced by the rugged toil of Robinson.

In view of all the circumstances involved, and as to imminent probabilities, the claim of these children may not be appealing as a matter of sentiment, but of this we are not permitted to take judicial notice. They were in deed and in fact the stepchildren of Ed. Robinson, and the statute specifically provides that "stepchildren shall be regarded the same as issue of the body." The contention of claimant that this mother legally alienated these children, as she did herself, from compensable relationship is wholly untenable. It was not within her power so to do, and there is no statutory support whatever to any such conclusion.

In its deliberation the arbitration committee found for the existence of compensation coverage; found that the claimant had wilfully deserted deceased without fault on his part, and that the stepchildren, Mearl and Leona Adler, are entitled to compensation as their dependency rights may legally appear, also imposing other statutory obligations upon defendant.

The arbitration decision in all its terms is hereby affirmed.

Dated at Des Moines, Iowa, this 25th day of February, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed in district and supreme court.

AWARD DENIED—FAILURE TO PROVE STATUTORY NOTICE

Henry F. Mueller, Claimant,

vs.

United States Gypsum Company, Employer,

Hartford Accident & Indemnity Insurance Company, Insurer, Defendants.

Mitchell, Files & Mulholland, for Claimant,

Healy, Thomas & Healy, for Defendants.

In Review

At Fort Dodge, January 22, 1926, it was held in arbitration that:

The record does not justify the conclusion that the defendant employer had the statutory notice or knowledge of the alleged injury for

which recovery is sought within ninety days after May 22, 1924, the date of its alleged occurrence.

In this record Henry F. Mueller testifies that in the employ of the defendant, Gypsum Company, May 22, 1924, he sustained an injury in the nature of a bump on his leg, on the axle of the truck with which he was wheeling cement; that he continued painfully in service until the 26th day of June, 1924, when it became necessary to quit work; that he shortly afterward sought medical aid and advice; that an operation was performed at Fort Dodge and subsequently he made two visits to the hospital of the State University at Iowa City for operation and treatment, and that as a result of the injury of May 22nd, it became necessary to amputate his leg at a point several inches above the knee.

Claimant further testifies that Jacob Greenway, in the employ of the defendant as warehouse superintendent at the time this accident is alleged to have occurred, saw him limping after this alleged injury and while still at work; that he told the superintendent that he bumped his leg on the truck. He later states he did not mention injury to Greenway until after he quit work. Testifies that at his (the workman's) home the superintendent mentioned "me getting hurt out there."

Mrs. Mueller, wife of claimant, states that because of her husband's complaint she examined the injured leg the evening of the date of the alleged accident and found "it was kind of bruised like"; that she applied home treatment for relief; that injured member continued to grow worse until claimant quit work the latter part of June. Testifies to conversations with Greenway in which the superintendent gave evidence of knowledge that the existing disability had its origin in the injury of May 22nd.

Called by claimant, B. L. Balcom testifies to two conversations with Greenway in which the superintendent indicated knowledge as to the injury complained of arising out of employment.

Joe Hahn testifies that he was in the employ of the Gypsum Company in the month of May, 1924; that he saw Mueller limping on the date he gives of alleged accident, and that claimant told him at that time he "bumped his leg on a truck in the car."

In deposition, J. O. Vedder states that he was employed by defendant in May, of 1924, in the department in which claimant was engaged. Says he saw him limping and that as stated, he "bumped his knee on the truck." He says that during the time claimant remained in service "we talked about it almost every day."

In an affidavit of Warren D. Stickle, appearing in this record as Exhibit "A", affiant states that on or about the 22nd of May, Mueller told him he injured his shin "by the bucking of a truck sometime during the forenoon of that day." States that during the weeks he remained in service he continued to limp.

Called by claimant, Dr. A. H. McCreight states that he attended Mueller at his home at a date soon after he quit work, when he found him running a temperature and complained of severe pain in his right knee. In direct examination the doctor states claimant gave a history of having received

an injury which did not at that time seem to be severe enough to justify the condition he was in. In cross-examination this testimony appears:

Q. What did he tell you about any accident?
A. I don't remember that he described the injury at that time. He merely told me how long his leg had been hurting him.
Q. Did he say he had hurt his leg on a truck?
A. No, I don't recall that he did.
Q. And you assumed, without an information coming from him that he had discontinued his work because something had happened there?
A. Because he was not able to work, than because any immediate accident within the few days before I saw him.
Q. Yes. And there was no statement made to you by Mueller, that he had hurt his leg while working at the mill?
A. No.
Q. Did he at any time, or any of those visits, tell you about an accident at the mill?
A. No.

Dr. McCreight diagnosed the case as rheumatism.

Claimant states that Dr. Martin, Dr. Smith and Dr. Knowles all gave him examination shortly after his alleged injury, but none of these doctors were called to testify.

C. B. Pooler, manager of the Fort Dodge plant of the United States Gypsum Company was called by defendant. Says he has personal acquaintance with eighty-five per cent of the six hundred employes of this company. Knew Mueller as a kid; "couple kids." Has always maintained friendly relations with him; that the first intimation he had that Mueller had sustained or claimed to have sustained an injury at the plant May 22, 1924, was some time in March or April, 1925. At this time the company carried Workmen's Compensation insurance in the Hartford Accident Indemnity Company.

Called by defendant, Sam Horn testified that he had been in the employ of the defendant company about five years; that at the time of the alleged accident he lived not far from claimant; that between the dates May 22nd and June 26th he rode back in the evening with Mueller in his car, ten or fifteen times. Says he saw him limp around the plant; that he never said anything about any injury; says he visited him at his home several times after he quit work; that at no time did he say anything about any accident.

W. A. Mailander, called by defendant, was timekeeper for the Gypsum Company in May and June of 1924. Was acquainted with the claimant. Says he saw him "possibly every day, occasionally saying 'hello' something like that, as I passed by." Claimant never said anything to him about an accident that happened out there, at any time.

John Timmons had been in the employ of the Gypsum Company for twenty-two years. At the time of the alleged accident in May, 1924, he was Safety First supervisor. It was his duty to make accident reports. Testifies he never made an accident report in case of Henry Mueller. Never had occasion to O. K. a report on him. He was in every department of the plant every day. Saw Mueller every day. Never saw him limping. It would have been his duty to look after him if he had. It was his "business to go through the departments all the time to see that

all safety devices were in shape and machinery protected. If a man had a little rag on his finger it was my duty to see that he went immediately to the office and have an antiseptic put on and taken care of in the proper way."

Jacob Greenway testified in behalf of the defendants. He is identified as warehouse superintendent in May and June of 1924. He says that neither through any statement of Henry Mueller or Mrs. Mueller, nor through any information from any other source was any intimation given him tending to indicate that the disability and suffering of claimant was due, directly or remotely, to any injury arising out of employment. He states that if any accident occurred in his department and he had failed to report it, he would have been subject to discharge.

It is not alleged that prior to March or April in 1925, this employer had any formal notice of injury to this claimant on or about May 22, 1924, arising out of employment. Actual knowledge, however, on the part of an employer, or one authorized to represent him fully meets the requirements of the statute. If such knowledge was obtained, it could not have been otherwise than through superintendent Jacob Greenway. Greenway lived in the block next to Mueller. It is in evidence that he visited claimant Sundays and nearly every evening while he was at home after the accident, often remaining till eleven o'clock in order to help the unfortunate workman, and to relieve his weary wife. Evidence of feeling most solicitous and sympathetic through weeks of time is testified to by both Mr. and Mrs. Mueller. While claimant was at Iowa City the superintendent visited him twice, taking along with him in his automobile the wife of claimant. This eight hundred miles of travel with attendant expenses must have cost Greenway a substantial sum, not to mention time employed.

On three separate occasions collections were taken among the men who usually subscribed a dollar each when sums aggregating several hundred dollars were contributed, evidently under the inspiration of this friendship. If Greenway had any reason to believe that the disability and suffering experienced by Mueller was due to compensable injury, he was guilty of gross misconduct in his dealings with a worthy workman, and for such conduct there could be no other explanation than that he visited outrage upon a man for whom he gave every evidence of friendship, merely to favor an insurance company, for which he could have no sentimental regard and in which iniquitous proceeding it is not intimated that he received any benefit whatever. It is utterly inconceivable that he was guilty of any such hypocrisy and injustice while giving such remarkable evidence of kindness and sympathy.

In taking each of the several collections referred to for the relief of this workman, it was necessary under the rule of the establishment to secure the approval of the manager to such proceeding. Manager Pooler testifies he gave his consent with the understanding that Mueller was disabled as result of rheumatism and he had no information whatever leading him to suspect he was suffering from injury arising out of employment.

It is in evidence that witnesses Balcom, Hahn, Stickle and Vetter, who testified to knowledge of compensable injury on the part of claimant, each contributed to all of these subscriptions. It seems unreasonable to assume such knowledge as they alleged as to compensable circumstances of injury was in their possession, and that scores of their fellow workmen joined in this charitable movement without any expression of protest or any demand for justice on account of the neglect of the defendant employer and his insurer to meet obligation imposed by statute. In plants of this kind, employing six hundred workmen, there is common knowledge as to the general purpose and character of the compensation system and among workmen so associated it is fairly violent to assume that the flagrant neglect suggested would not be bitterly resented.

It is not necessary to suggest that if the Gypsum Company, Jacob Greenway, or any other man in authority planned to defeat compensation relief for Mueller it was with deliberate intent and without any possible advantage, since not a dollar this workman would have claimed as compensation or as medical, surgical and hospital relief would have been paid by the employer, but would have been charged against coverage of an insurance policy carried at enormous expense to the company for the specific purpose of avoiding liability from accident, and for the humane purpose of affording statutory benefits to unfortunate workmen.

Under such circumstances it is absolutely unbelievable that the employer or his representatives should conspire to rob a workman who had given seven years of faithful and satisfactory service merely to relieve an insurance company from an obligation assumed under contract with said employer for a valuable consideration.

Deliberate scrutiny and consideration of this record leads to the conclusion that this claimant for months after his injury did not believe that existing disability was due to any incident of employment. He did not serve notice nor satisfy himself as to knowledge on the part of the employer because of this state of mind. At a time beyond the statutory limit of ninety days he may have conceived the idea that his injury had its inception in the truck incident to which he refers. There may be basis for such conclusion, but the record is by no means conclusive as to such conclusion.

Defendants expressly deny that the employer or his representative had actual knowledge of the occurrence of any injury to claimant on or about May 22, 1924, within a period of ninety days following that date.

Section 1383 of the Code relates wholly to limitation as to notice of actual knowledge. The only portion of said section available in connection with this record is found in the last three lines of said section where it is stated: "but unless knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed." Statutory notice is not alleged by claimant.

Under the state of facts recited it must be held that no representative of the employer had knowledge of any injury as alleged.

Claimant's counsel submits the unique contention that notice on the part of the employer in this case should be presumed; that it is reasonable to assume that in a plant of this character knowledge is obtained in

case of accident, and that whatever the record may show it is incumbent upon the employer to accept without question any obligation created by statute, with or without regard to the time limit prescribed.

To recognize this contention as valid, it becomes necessary to ignore the mandatory legislative injunction quoted above, and to assume that the specific enactment as to the ninety day limit is mere idle legislative vaporing.

If this contention is true, the language quoted is wholly unnecessary and all provision for limitation as to notice or knowledge is without force or effect. The fact that *actual* knowledge is required must be taken seriously, since under standard definition "actual" is said to mean "existing in act or reality; really acted, or acting, or being; in fact; real;—opposed to potential, possible, virtual, speculative, conceivable, theoretical, hypothetical, or nominal."

In his petition for review one of the grounds of resistance to the arbitration decision is alleged misconduct on the part of the Deputy Industrial Commissioner. In support of this plea an affidavit of M. J. Fitzpatrick appears in this record. This arbitrator states that "the said Ralph Young persistently reiterated the statement and argument that it was useless for the board of arbitration to make a finding and award of compensation in favor of the claimant Mueller, because the said award would not stick; that an award to the claimant, if made, would be reversed on review by the commissioner."

In this record also appears the affidavit of Clyde C. Gustlin, the other arbitrator in the case, who says that during deliberation of the committee he expressed the hope that he could find testimony upon which a decision in favor of the claimant could be based, as his sympathies were with the claimant who had lost a leg. He further says: "Mr. Young in reply to my statement stated as follows:"

"We cannot permit our decision to be based upon our personal feelings or sympathy for the claimant, as we have undertaken to render a decision in this case based upon the evidence. It would be useless for us to render a decision in favor of the claimant if the evidence is insufficient to warrant such a finding, because it would have to be reversed by the Commissioner as a matter of law."

The affidavit of Gustlin would seem to be amplification of the statement of Fitzpatrick as to expression of the Deputy Commissioner, and it indicates that he merely stated the obvious. Neither affidavit affords any substantial basis for a charge of misconduct on the part of Deputy Commissioner Young, whose fidelity to the service in which he is engaged and his efficiency and fairness, so much a matter of common knowledge throughout the state, serve to discredit any allegation as to misconduct or partiality. Moreover, it should be understood that in review the Commissioner reaches a conclusion and writes a decision wholly based upon the entire record of evidence submitted in arbitration.

The arbitration decision is affirmed.

Dated at Des Moines, this 23d day of March, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Reversed by district court. Appeal pending.

EMPYEMA—DEATH NOT DUE TO EMPLOYMENT

Muriel Ida Stewart, Claimant,

vs.

T. S. Martin Company, Employer,

London Guarantee & Accident Company, Insurance Carrier.
Snyder Gleysteen, Purdy & Harper, for Claimant;
Chandler Woodbridge, for Defendants.

In Review

In this case appeal is taken from the arbitration holding in the hearing before the Deputy Industrial Commissioner at Sioux City, December 10, 1924, that claimant failed to sustain the burden of proving that the death of her husband, Elwin B. Stewart, November 19, 1924, resulted from injury arising out of and in course of his employment by the T. S. Martin Company within the meaning of the Compensation statute.

At the review hearing, October 1, 1925, Dr. P. E. Keefe, of Sioux City, was introduced as a witness and his evidence appears as a part of this record.

At the close of this hearing leave was given counsel to submit written briefs and arguments before the record should be taken up by the Industrial Commissioner for the purpose of reaching a decision. The final reply of counsel was filed with the department December 3, 1925.

During the first half of 1924, the deceased workman was in the employ of the defendant Martin Company as automobile mechanic for the repair of its delivery trucks and cars.

As a basis for this compensation claim, it is alleged that on or about the 15th of May, 1924, Elwin B. Stewart sustained an injury to his lip by contact with some metallic substance which resulted in infection; that on the 13th day of April following, he cut or bruised his right index finger, infection ensuing; that on June 26th he strained himself lifting the frame of a car.

In the first arbitration application it is alleged this later injury resulted in varicocele, and that the infection from the cuts and bruises developed into septicemia. Later amendments modified these claims.

Claimant testifies that the deceased was in ill health during the fore part of the year 1924. Dr. Cremin, attending physician, says he "saw the man in April and again in June and he was in good health."

August 13th and subsequently, two operations were performed at which considerable deposits of pus were found about the kidneys and in the pleural cavity. Stewart died December 10, 1924.

It is the contention of claimant that disability and death in this case resulted from the three injuries recited, together with the effects of bad air arising from automobile exhaust in a poorly ventilated room by the lowering of resistance and the accumulated effect of infection and physical strain.

It is the contention of the defendant insurer that these alleged accidents were of such minor and unimportant character as to afford no substantial

basis for the disability and death, which must have resulted from causes in no way related to the employment.

The record shows that the deceased workman along in July after a turkish bath taken down town, went home on a street car, and this experience was immediately followed by a cold and chills with pleurisy and perhaps pneumonia complications. It is the further contention of defendants that in this experience is found the most probable solution of the rather difficult problem of finding the source of this continued disability and ultimate death.

Dr. R. Q. Rowse in testifying for claimant states that he was called in this case about July 10, 1924, and that he operated on the 13th day of the month following. He says: "I thought it was a perinephritic affair, but it was in the pleural cavity. We treated it as an empyema."

In direct examination this witness seemed positive that the death of this workman was due to exhaustion caused by effects of the injuries recited herein, together with the exposure to gas exhaustion in the poorly ventilated room. In cross-examination he very much modified his positive attitude, replying to the question: "It is all theory and speculation as to whether or not the strain or possible blow in the back had localized his death?" The reply was: "Absolutely." The Doctor later said the same as to the finger injury in April.

Dr. Schwartz, practicing with Dr. Rowse, and in intimate relation with this case, testified for claimant. In direct examination when questioned as to whether or not the strain or possible blow in the back had localized infection into the abscess, the doctor stated: "Well, I didn't know as to that whether it did or not." As to his opinion, he said, "Well, it could have been."

In cross-examination appears the following:

"Q. Now as to whether or not these previous experiences that he had had anything to do with his condition in July, no one can tell, can they?
A. I don't think so.
Q. You can speculate and conjecture about it yourself not knowing whether you guess right or not, isn't that true?
A. Absolutely."

In re-cross-examination Dr. Schwartz stated that Stewart never recovered from the cold resulting from the turkish bath, and gave it as his professional opinion that Stewart developed pleurisy as a result of the cold right after that turkish bath and that pleurisy developed into this empyema. Later, he said he did not think empyema could have developed if it had not been for the cold he got from the turkish bath.

Dr. William J. S. Cremin was called by defendant. He had treated Stewart in connection with the injuries to his lip and to his hand. He was also consulted after the back strain, which has been recited. He declared that all symptoms of general infection were cleared up shortly after each accident to the lip and to the finger and that disability and death following could not have been due in any measure to these causes. It is his opinion that the empyema developed from pleurisy or pneumonia, resulting from the exposure following the turkish bath.

Dr. P. E. Sawyer was called into the case when consultation could

be of no value. It is his opinion that the pleurisy or pneumonia resulting from the turkish bath developed into empyema. In cross-examination when questioned as to this point, he replied: "Absolutely, that is the only thing that could cause it."

Testifying for claimant at the review hearing, Dr. P. E. Keefe in direct examination was disposed to answer all hypothetical questions to the satisfaction of counsel. In cross-examination, however, he made admissions somewhat disturbing to his direct testimony. He admitted that it was reasonable to assume that empyema was the result of the pleurisy which developed from the bath experience and that it could have happened without any of the injuries recited; that it was purely speculative as to whether these injuries had anything to do with his condition from the time of the bath.

It would not appear from the record that any of the injuries assumed to afford basis for this claim were of a serious character. The lip injury and the finger injury caused no loss of time, and yielding to treatment, were soon completely healed. The alleged back injury seems to be vague and indefinite as to incidental details. It was witnessed by nobody else. The workman released himself without assistance. It does not appear that he called for help. There was no discoloration upon his person following this experience. He first complained of pain in his groin, locating distress later in his back.

The weight of medical evidence does not sustain this claim. Doctors Rowse, Schwartz, Cremin and Sawyer all make statements or admissions which afford basis for the conclusion that evidence favorable to the contention of claimant as to the source of disability and death are based upon conjecture and speculation which is not admissible to consideration in reaching a judicial conclusion.

The lip and finger injuries were mere incidents in mechanical service. The record shows that while infection appeared, each in turn completely healed within a few days. To include these in alleged support of this claim would seem to suggest lack of affirmative confidence in other causes more plausibly plead. Evidence in support of the poison gas allegation is in the nature of conjecture. These incidental matters do not afford substantial basis to the claim of lowered resistance and extreme susceptibility. The squeezing incident under the car in so far as the record discloses is by no means suggestive of prolonged disability and ultimate death. Such occurrence *might* result thus seriously. To this incident *may* be due subsequent disability and death, but without the vigorous exercise of inference and conjecture the fact cannot be assumed.

It must be understood as elemental that the burden is on the claimant in cases of controversy, and that a successful claim must have the support of a preponderance of the evidence.

In *Griffith vs. Cole 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."

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 10th day of December, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

HERNIA—DURATION OF DISABILITY AFTER OPERATION

Albert Spevack, Claimant,

vs.

Great Western Coal Company, and United States Fidelity & Guaranty Company, Defendants.

Clarkson & Huebner, for Claimant;
Comfort & Comfort, for Defendants.

In Review

In arbitration in this case at Des Moines, June 8, 1925, finding was for plaintiff in the sum of $15.00 a week for a period of seven weeks.

Plaintiff appeals on the ground that award for ten weeks is justified by the abitration record.

The arbitration finding is consistent with usual experience in hernia cases. Counsel for defense is well within the record in calling attention to the fact that this department requires six weeks of compensation payment where settlement is made for compensable hernia in cases where an operation is inexpedient or undesirable. This estimate is based upon a large measure of compensation experience.

In this record, however, appears the deposition of Dr. O. J. Fay, department medical counsel, in which he says he operated upon Albert Spevack, October 9, 1924, and that he advised his return to service February 16, 1925. Allowing a day or two for preparation for the operation, the days intervening cover a period of ten weeks. The fact that this term seems unusual, and perhaps unreasonable in view of common experience, does not justify disregard of the only evidence of record fixing the period of disability in this case.

Some time after the injury developing hernia upon the left side of claimant, a right inguinal hernia appeared which was operated upon in connection with the surgical relief afforded the left side. Defendants claim this fact extended the period of disability, but since the only medical evidence produced is to the effect that the healing period in case of a double operation is no longer than where a single hernia operation occurs, this claim must be ignored in reaching a conclusion.

The arbitration finding is modified by increasing the period of disability sustained by Albert Spevack from seven weeks to ten weeks, to conform with the record submitted.

Dated at Des Moines, this 24th day of July, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA AS ARISING OUT OF EMPLOYMENT ESTABLISHED

Nick Radovich, Claimant,

vs.

Fowler & Wilson Coal Company, Employer,
Bituminous Casualty Exchange, Insurance Carrier.
Clarkson & Huebner, for Claimant;
Bates & Dashiel, for Defendants.

In Review

Arbitration proceeding at Centerville, November 11, 1924, resulted in finding for defendant.

It is alleged by claimant that while in the employ of the defendant coal company heavy lifting of a huge chunk of coal produced inguinal hernia. In his testimony before the deputy commissioner, Radovich first alleged the injury to have been sustained on the "19th or 18th of June or May," later asserting it to have been the 18th. Still later, he thought the month might be June. He worked till quitting time loading cars. Next day he saw Mr. Miller, who later operated for hernia.

There is little in the way of corroboration or affording basis for inherent probability as to accidental injury arising out of employment.

The statement that he told his foreman, Roy Harbor, of his injury the second or third day thereafter is not only lacking in corroboration, but seems inconsistent with his account of his general movements on those days. The support given by doctors whom he consulted and by whom he was operated is by no means reassuring. The history, vague as to dates and circumstances, submitted in evidence, does not afford basis for the presumption that the hernia developed arose out of any specific incident of employment by defendant coal company. The claimant distinctly fails to maintain the burden of proving any such necessary precedent to compensable injury.

The arbitration decision is affirmed.

Dated at Des Moines, this 2d day of July, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA HELD COMPENSABLE—CLAIMANT ORDERED TO SUBMIT TO OPERATION OR FORFEIT AWARD UNLESS REFUSAL IS JUSTIFIED BY REPORTS OF TWO REPUTABLE SURGEONS

George Anderson, Claimant,

vs.

Macx Feed Milling Company, Employer,

Southern Surety Company, Insurance Carrier.

A. W. Wallkier, for Claimant;

P. G. Risher, for Defendants.

In Review

In arbitration at Clinton, January 23, 1925, the finding was for claimant.

The application for arbitration avers that on the 23rd day of October, 1924, George Anderson sustained injury in the nature of hernia arising out of his employment by the Macx Feed Milling Company.

At the time of injury, as alleged, claimant was handling sacks of cotton seed, weighing about one hundred pounds. In passing these sacks, about seven feet, to an upper floor through a narrow opening, two men boosted from below while a man above caught the sack by the ears and landed it on his floor.

Claimant states that while boosting from below he felt a sharp cramp or pain in his abdomen. Though suffering considerably, he continued to work an hour or so until the close of the day.

Edward Young, who was not assisting in this work, but who shortly came to where it was being performed testified that claimant complained to him of a catch in his side a little previously, which he said continued to give him distress.

Carl Anderson testified for defendants as the man who stood on the floor above to pull the sacks from below as they were handed to him. He says he heard claimant complain to Fisher, the man who was assisting him on the lower floor, and that about ten minutes afterward claimant told the witness of a sharp pain and cramps from which he suffered.

About 5:30 claimant went home. The next morning he took the matter up with the superintendent, and went from him to Dr. Kershner, who said he was ruptured and advised operation.

From the testimony, this case would seem to bear the imprint of good faith on the part of the claimant so far as the fact of injury is concerned. His task at the time of alleged injury was particularly trying. The lifting of a heavy burden a considerable distance above his head would readily suggest just such injury as is said to have occurred, and especially if there were tendency to hernial weakness such as so frequently exists. There is substantial corroboration in the testimony of fellow workmen. The record strongly supports assumption of inherent probability that the rupture discovered a few hours later arose out of the employment at the time and in the manner as alleged.

Common experience in connection with operation for hernia does not justify refusal of operation except as it might possibly, but rarely does, appear that operation involves risk of life. It is one of the simplest operations known to abdominal surgery, and one of the most successful. Furthermore, it is against public policy as well as emphatically against the interests of the workman to go through life, impaired in working capacity, or perhaps classified as human junk because of unwise denial of relief so surely and safely afforded.

The arbitration decision is modified to this extent: Defendants are ordered to tender operation and to assume expense of same, together with the payment of compensation during consequent disability. Refusal on the part of claimant to submit to such terms shall work forfeiture of his claim to award. Provided, however, that in the event claimaint shall, within thirty days, from the date of this review decision file with this department the statements of two surgeons of wide repute and experience, to the effect that such operation would for reasons peculiar to conditions in this individual case largely increase the usual risk of hernial operation, then, and in that case the option provided in the arbitration decision, together with all its other terms is hereby affirmed.

Dated at Des Moines, Iowa, this 21st day of April, 1925.

A. B. FUNK,

Iowa Industrial Commissioner.

No appeal.

AWARD FOR HERNIA ON INHERENT PROBABILITY DEVELOPED IN EVIDENCE

Iowa Loan & Trust Company, Trustee for Roy Kozial, a Minor, Claimant,

vs.

Sayre Coal Company, Employer,

Maryland Casualty Company, Insurance Carrier.

Clarkson & Huebner, for Claimant;

John E. Amos, for Defendants.

In arbitration at Des Moines, March 3, 1925, recovery in this case was denied.

In Review

In support of the claim of Roy Kozial, the record discloses circumstances substantially as follows:

September 18, 1924, claimant was in the employ of defendant coal company as trapper, a technical term applied to employes who open and close doors placed in mine runways for the purpose of regulating air drafts as required in mine operation. William Grylls was in service of defendant as driver of a coal car. On the date in question as this driver was passing near the doors in charge of claimant, two wheels of said car left the track. In meeting recognized obligation to his employer Kozial took hold with Grylls and with very heavy lifting and

with aid of the mule, the wheels were raised a distance of some five or six inches and returned to the rails.

In denying obligation defendants stress the fact that claimant mentioned no injury to Grylls at the time of the lifting, and that no report of hernial existence is shown to have been made to anybody for a period of some four days after the lifting incident. This circumstance is significant and might be conclusive, but not necessarily.

Roy Kozial testifies that at the time of the lifting he felt a "burning, stinging pain on the left side." That while he was able to continue work the rest of the day, it "hurt quite a little bit, but didn't say anything." Asked why he had said nothing, he replied: "Because I was scared I would have to go to the hospital." Witness further says that that night when he examined himself he found a lump in the left groin about the size of an egg. From the 18th to the 22nd, he did not return to the mine because work was shut down.

On the morning of the 22nd he exposed his injury to driver Grylls, who advised him to go to Wm. Murray, a fellow workman, and Murray informed him he was ruptured, as he believed, because of knowledge of such injury he had acquired when his brother sustained a hernia.

Claimant worked for several days between the 22nd and 30th at his usual work as trapper. He claims that during all this time he suffered more or less pain except when he was lying down.

F. J. Kozial, father of claimant, says that for several days following the incident of lifting Roy complained of pain in his side. He says that on the 22nd when the son told of his rupture he looked at the injury and found a protrusion about the size of an egg. He says Roy gave as excuse why he had not mentioned it that he was afraid he would have to go to the hospital and be operated upon. The father made the boy some sort of a truss which he used while he continued at his work before the operation.

Mrs. F. J. Kozial says that on the 18th, the day he lifted that car, Roy came home complaining of cramps. She advised him to take a physic, when Roy replied: "No, this is something different. It feels different." She says Roy told her that after he found out he had the rupture that he kept the fact to himself because he was scared about going to the hospital. Both the father and mother state that the days between the rupture incident and the time they acquired knowledge of the rupture Roy was moping around and complaining; that he seemed to be lying down most of the time when he was not attending to the few chores he had to do.

Dr. R. R. Morden testifies that when claimant was brought to him for examination October 1st, he gave a history of injury sustained while lifting a coal car. The doctor says that the sensations reported were entirely consistent with traumatic hernia.

Years of experience in this service have developed the knowledge that hernia is produced from many causes and is attended by various symptoms and developments. Sometimes the workman breaks down immediately and is necessarily hurried to the hospital. More frequently,

the development following injury is more gradual and it sometimes happens that light work may be continued for a period longer or shorter.

With all the philosophy that has been developed in all compensation jurisdictions, it seems necessary to get back to first principles in dealing with hernia—to judge as to whether or not the injury arose out of and in course of employment. If this be true, the same rule must be applied as to other cases of compensable disability.

The case under consideration is based upon a definite, actual account of lifting or unusual straining character. The car returned to the track by claimant and the mule driver, contained coal weighing about 2,600 pounds. This weight, together with the weight of the car suggests very heavy lifting even with the expert method adopted under such circumstances, and with the aid of the trained mule.

The record leaves no doubt as to the case up to this point. It must be conceded that it was unusual for a workman to so long conceal an injury of this character after its occurrence. But there are in this case extenuating circumstances. The claimant is only seventeen years of age, and in accordance with the record he is of a very retiring disposition. Moreover, it is not unassumable that the motive that he gave to his parents and to which he testified for concealment of his hernial development—that he was afraid he would have to go to the hospital—may reasonably be taken as explanation of such concealment.

In order to deny relief in this case it is necessary to wholly discard the testimony of the claimant, together with that of his father and mother. Their appearance and manner does not justify the denial of credence. Their evidence is straightforward and by no means shifty. If it were assumed that they were bearing false witness they must needs be charged with such lack of ordinary shrewdness in the concoction of plausible tales as is wholly inconsistent with their manifest character.

In *Buncle vs. Sioux City Stock Yards Company*, 185 N. W., 139, speaking for the Iowa Supreme Court, Justice Weaver announced conclusions of a sweeping character which cogently apply ot this case. Speaking as to corroboration in the establishment of a claim for disability based upon hernia, this rule is stated:

"It ought to go without saying that it is still possible for a claimant of compensation to be an honest man, and that his testimony may be so candid and so inherently probable as to commend the confidence of a fair minded court or juror, even though he is unable to produce any other witness to corroborate him. To turn such a party out of court for no better reason than his inability to offer corroboration, would be a perversion of the forms of legal justice."

In the case of claimant there is so much of direct as well as circumstantial corroboration as to establish an impression of inherent probability.

While the case is lacking in some elements of clean-cut support, it is so far sustained by all the circumstances involved as to justify the conviction that it is far more probable that injury sustained and disability produced was due to the instance of lifting the car of coal on

September 18th than that it occurred from any other reason capable of development.

The arbitration decision is reversed. The defedant insurer is ordered to pay to the claimant the sum of $15.00 a week for disability existing from October 1st to November 24, 1924, and to meet statutory obligation for medical, surgical and hospital services required in this case.

Dated at Des Moines, this 6th day of May, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA NOT DUE TO EMPLOYMENT

Walter Paul, Claimant,

vs.

Frank Foundries, Corp., Employer,

Iowa Mutual Liability Insurance Company, Insurance Carrier.

Cook & Balluff, for Claimant;

Bollinger & Black, and Sampson & Dillon, for Defendants.

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 corroborates 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 testicle. 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 of 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 statements 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.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

AWARD DENIED FOR INJURY DUE TO ACT OF THIRD PERSON FOR REASONS PERSONAL

Matthew J. Newcomb, Claimant,

vs.

Majestic Theater, Employer,

Employers Liability Assurance Corporation, Insurance Carrier.

Johnson, Donnelly & Lynch, for Claimant;

Carl F. Jordan, for Defendants.

In Review

On the 28th day of January, 1923, this claimant was in the employ of the Majestic Theater at Cedar Rapids as ticket taker and superintendent. On this date he is alleged to have sustained more or less serious disability arising out of physical encounter with a theater patron, named Frank Carey.

March 26, 1924, an arbitration committee found for defendant.

Claimant testifies that on the date above stated, Ray Tanner and Frank Carey came into the theater, and as they passed they applied to him an insulting epithet. He says they were drunk. Says he told them to keep quiet, and they continued to make disturbance so serious as to suggest to him the expediency of putting them out. As he started to give their money back before expelling them, the manager came out and passed them in; that they went up to a balcony seat. When they came down, after the performance, claimant testifies that they again made an insulting remark and created considerable disturbance in the lobby of the theater. He says he told them "to go out of here and stay away. Don't come back any more when you are drunk." He followed them to the north exit, as he says, and after they went out, and as he was barring the door they returned, and forcing an entrance, Carey viciously assaulted him.

In construing the terms "injury" or "personal injury" the compensation law in paragraph b, subsection 5, section 1421, declares:

"b. They shall not include injury caused by the wilful act of a third person directed against an employee for reasons personal to such employee, or because of his employment."

If disability exists as a result of assault on the part of Frank Carey, without provocation on the part of claimant unnecessary to the performance of his duty to his employer, then the arbitration decision must be reversed.

If, however, this assault was due to offensive personal conduct on the part of claimant unnecessary to the performance of his duty, the arbitration committee is not in error in finding for defendant.

Called by claimant, Ernest Hahn, aged fourteen years, testified substantially as follows, to the circumstances he witnessed in connection with the personal affray. He says: "They came down the steps and then they went right out the side door. As they passed Newcomb he told them to get out and stay out." Asked:

"Q. Did they make any reply?
A. They mumbled something."

Said Matt followed them to the door and was proceeding to bar the same when the two men returned and the altercation occurred.

LeRoy MacFarland, aged fifteen, testified for claimant. Says he was a witness to the departure of Tanner and Carey.

"Q. Did you hear any conversation between these men and Matt Newcomb?
A. Well, Matt Newcomb told them to go out and stay out.
Q. What did they say, if anything?

A. They never said at all. They went out and came back in again and knocked claimant down."

Tanner and Carey both testify that after stepping out into the street Newcomb shouted a vile epithet at them which was the cause of the return and the assault.

J. C. Kuderna, called by defendant, qualified as a police officer. He testified that he remembered seeing Tanner and Carey enter the Majestic Theater to attend the performance, just preceding the trouble.

"Q. Did you note their appearance, as to whether they were orderly in their actions or not?
A. They were orderly to my notion.
Q. Where was Mr. Newcomb at that time?
A. Standing right aside of me.
Q. What did he say?
A. He said: 'There goes two upstairs.' I said: 'What do you want me to do?'
Q. What did he say?
A. 'As long as they behave, leave them alone.'"

There is no corroboration whatever to the statement of claimant that Tanner and Carey used any offensive language, or made any sort of disturbance in entering the theater and proceeding to their balcony seats. In fact, the testimony of officer Kuderna would seem to seriously discredit such statement.

Claimant states that when these men came down into the lobby they twice called him a "son-of-a-bitch" and were otherwise offensive.

The two boys testifying for claimant state that Tanner and Carey went directly to the door of exit in a quiet and orderly manner. These boys say that while thus passing out Newcomb told them to go out and stay out. Claimant himself says he said to them: "Listen, you go out of here and stay away. Don't come back any more when you are drunk."

It clearly appears from the evidence that Newcomb is of a very nervous temperament. The conclusion is justified that he exaggerated in his own mind any actual offense that may have been committed, and that in bawling out patrons of the theater as they were quietly leaving, he was not serving the interests of his employer but was, in fact, acting quite to the contrary.

The record justifies the conclusion that this assault was "the wilful act of a third person directed against an employe for reasons personal to such employe."

The decision of the arbitration committee is affirmed.

Dated at Des Moines, this 18th day of March, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court, pending in supreme court.

NO COVERAGE FOR LIFE LOST IN RECKLESS EXPOSURE APART FROM EMPLOYMENT

Mrs. Minnie Manning, Claimant,

vs.

T. M. Sinclair & Company, Defendants.

E. A. Fordyce, Johnson, Donnelly & Lynch, for Claimant;
Trewin, Simmons & Trewin, for Defendant.

In Review

Clifford Manning, son of this claimant, an employe, was accidentally killed on the defendant's premises at Cedar Rapids, April 9, 1923. The situation and circumstances attending this accidental death are substantially as follows:

The packing plant of defendant is so arranged that workmen after checking in are required to cross two or three loading tracks to reach the working quarters. April 9, 1923, Clifford Manning punched the time clock ten or fifteen minutes before one, the time work is resumed. He had crossed the tracks referred to and was on a platform on the working side when he stepped away from the working quarters to the top of a box car, standing on the track beneath the said platform. There he joined a fellow workman named M. W. Reed.

Reed testifies he had been on the top of the freight car, perhaps ten or fifteen minutes when joined by Manning; that a very few minutes later a switch engine in the usual way bumped into the string of some seven or eight cars, of which the car occupied by Manning and Reed was one, and the process of moving was on. Straightway Reed, without especial effort, stepped back to the platform toward the site of employment. Manning continued to keep his place until the car had moved a distance of about four car lengths. In the meantime the top of the car was sinking farther and farther below the platform level. In his final endeavor to grasp the top of the platform as he leaped from the car, his hand slipped off and he dropped to his death beneath the moving cars.

This situation and these circumstances do not justify the conclusion that the death of Manning arose out of his employment.

The transcript of evidence in large measure relates to conditions under which workmen more or less frequently crossed the tracks, climbing over, or under, or between cars in order to reach their work. There would seem to exist orders against this proceeding, but they may not have been sufficiently well enforced to constitute a bar to coverage in the event of accident under such circumstances.

It is a waste of time, however, to give this phase of the case any consideration whatever. The deceased had not been required to take any chances crossing the track. As a matter of fact, he had passed safely over by a usual and safe method, and any showing of peril that might necessarily attend an emergency in track-crossing are of no importance at all in reaching conclusion as to coverage in this case.

The only question to decide is as to whether or not, having reached the vicinity of his work, the circumstances of stepping back on the top

of the freight car and then remaining on the same with increasing peril at every car length because of increasing distance, from the top of the car to the platform level, protection was afforded to himself or dependents in case of accident or death.

Much space is devoted to the technicality as to whether or not the accident occurred within working hours. It was contended that working time began at the punching of the clock. This contention would seem to be wholly untenable. Working time evidently began at one o'clock, and the accident occurred while workmen were waiting for this time to arrive.

In most jurisdictions much liberality is exercised in the application of compensation coverage. It has been found to exist where the workman was seeking shelter, quenching thirst, taking refreshment, and even warming himself or resting in the shade. It will, doubtless, be found in all such cases personal indulgence was reasonably necessary to nourishment, to safety, or to protection from physical ills. While justified in seeking warmth when the freezing of members is imminent, the workman is not justified in going out of his way to absorb heat when the temperature does not suggest peril or even serious discomfort. While he should seek relief in the shade for the peril of heat prostration, he would not be justified in seeking protection from the sun on an ordinary summer day.

It would appear from the evidence that Reed and his fellow workman stepped down to the top of the car to sun themselves on a spring day when the sunshine is wont to be inviting. No citation is submitted, and probably none can be found to prove that workmen have been given award for accidental injuries arising out of the process of taking a sun bath on a balmy spring day.

Reed had no difficulty whatever in getting back on the platform from whence he came in stepping on the car. Manning might as easily have negotiated the transfer without serious peril or effort. He remained on the car, however, with the level of the platform continually arising until he had proceeded four car lengths before he attempted to leap to the platform. This is not mere thoughtlessness, nor ordinary negligence. It was sheer foolhardiness indulged in a spirit of audacity wholly unreasonable. The record shows that as he moved away he waved to Reed, with the jovial remark: "Good-bye, I will see you in Omaha," which merely emphasizes his spirit of recklessness. He could have remained on the car in entire safety for a few additional car lengths. There was nothing overhead to interfere, and he could then have climbed to safety without any risk whatever.

The accident was not founded upon any element of service to the employers. It was not caused by any incident of self-serving within the range of ordinary need or reasonable indulgence. The workman was where he had no right to be, and he challenged extraordinary peril by rash presumption. He actually threw his life away in freakish folly. However lamentable this accident may be in a sentimental sense, industry must not be penalized and society must not be burdened by idle prank or reckless adventure.

The arbitration finding for the defendant is hereby affirmed.

Dated at Des Moines, this 16th day of March, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

HORSEPLAY—DISABILITY NOT COMPENSABLE

L. D. Baker, Claimant,

vs.

Roberts & Beiers, Employer,

Federal Surety Company, Insurance Carrier, Defendants.

E. H. Estey, for Claimant;

H. A. Hodges, and W. H. Antes, for Defendants.

In Review

In the employ of these defendants, November 15, 1924, L. D. Baker fell from a dray in the lumber yard of Webster Brothers, sustaining serious physical injury. He relates the circumstance substantially as follows:

Driving in at the lumber yard at the date of injury, he went to hit the blind horse on the right hand side "with a whip or lines because he was a little laggy." Harlow W. Hunerberg and Selim Sullivan were near the team as he was driving along. Sullivan caught the lines and "I lost my balance and fell off the west side of the wagon." He has not been able to perform manual labor since that time.

In cross-examination claimant declares he was not trying to hit Sullivan with the line. Was not trying to play with him nor to attract his attention or play a joke. Says it was not customary with him to joke with Sullivan; that there never was anything of that kind between them.

Called by defendant, Selim Sullivan testifies that on November 15, 1924, he was employed at the Webster Lumber Yard as second man; that he was present when the accident to Mr. Baker occurred; that as claimant drove into the yard he asked him what he wanted, and this comprised the only conversation between them. Proceeding:

"Baker was driving—drove in the yard and Hunerberg and I were walking by the side of the wagon and the wagon was in the yard quite a little distance, not very far either, and Baker was a little bit ahead of us and this line just happened to be along by me and I reached up and grabbed the line a second and Baker fell off the wagon backwards." "Couldn't say whether or not Baker pulled the line." "Don't know what caused him to fall." "I was there carrying on a conversation with Hunerberg and this line happened to come around and then I grabbed it." "Did not jerk it to play with him." Declared he had never been in the habit of engaging with Mr. Baker in "playing jokes and pranks previous to the accident." Doesn't know whether or not Baker playfully snapped the line at him.

Harlow W. Hunerberg was called by defendant. Met claimant just

outside the lumber yard and went in at the same time, walking "right along opposite." In substantial explanation witness said:

Q. Will you tell the court fully, explain all that you saw take place at the time this accident occurred?
A. Well, as the team was passing into the yard down the alley Mr. Sullivan and I was walking along by the side of the wagon and Mr. Baker swung the loose end of one of the lines and as it swung around it came around nearer Mr. Sullivan than it did me because he was nearer the wagon and he just reached up and grabbed the line and I was under the impression that Mr. Baker naturally jerked back and Mr. Baker went right over.
Q. Knowing all the facts and circumstances and details of this accident, state to the Court what your impression was as to what Baker was doing or intending to do at the time or just before the accident?

Strenuous objection to this question was submitted and discussion of counsel appears in the record. The objection being overruled, the answer was:

A. Well then, damn it, to tell the truth I thought he was codding Baker a little.

At this point defendant introduced as Exhibit "3" an affidavit signed by this witness before a Notary Public January 9, 1925. The affidavit follows:

STATEMENT

My name is Harlow Hunerberg and I am forty-eight years of age and reside at Waucoma. I am a carpenter by occupation. I ordered Roberts & Beier to haul some lumber from Webster Bros. Lumber Yard.
I was waiting at this Lumber Yard for Roberts & Beier's dray to come. Baker did arrive, driving their dray and as Baker was driving into the lumber yard, Selim Sullivan and I walked along side of the dray wagon. Baker was standing up in the front of his wagon, driving his team, which were moving at a walk.
I saw Baker in a joking manner snap the loose end of one of his reins at Sullivan. I don't think that Sullivan saw the act quite in time to grab the rein but he did make an effort to do so. Baker evidently thought that Sullivan had hold of this rein and Baker suddenly jerked back on the rein and as Sullivan did not have hold of same, Baker in jerking the rein, fell over backward off the wagon and fell on his head, where he remained in a helpless condition. Sullivan and I went to the aid of Baker and picked him up. It is a well known fact in our town that Baker and Sullivan always try to pull a joke over on one another whenever they chance to meet.
I have read the above and foregoing statement of facts which are true and correct to the best of my belief and knowledge.

H. W. Hunerberg.

Attested.

Asked by Deputy Commissioner Young if he said that "Baker and Sullivan always tried to pull a joke over on one another whenever they chanced to meet" the answer was: "I didn't word it just that way."

Q. Did you tell him that in substance?
A. I did.
Q. Is it a fact or isn't it a fact?
A. Well, I expect, to a certain extent, it is.
Q. Did you see Baker flip this line towards Sullivan?
A. I saw him flip it over, yes."

The affidavit of Selim Sullivan, appearing in the record as Exhibit "2" is as follows:

STATEMENT

My name is Selim Sullivan and I am twenty-three years of age and I am employed as yard man at the Webster Bros. Lumber yard.
On November 15th, 1924, Leroy Baker, driving a wagon for Roberts & Beier, was driving into the Webster Bros. Lumber Yard; that Mr. Hunerberg and myself were walking along side of Baker's dray wagon, when Baker in a joking way, took the end of one of the loose ends of the reins of his driving line which extended five or six feet beyond his hands, and snapped it to strike or hit me. Baker no doubt thought that I would catch hold of the rein and hold it, but I did not get a hold on the rein. Baker thought I did have a hold of it and suddenly jerked back and fell over backwards off the wagon and fell on his head.
I have heard the above and foregoing statement, all of which is true and correct to the best of my belief and knowledge.

Selim Sullivan.

Attested.

Recalled, Sullivan says he signed the affidavit. To the question by Mr. Young:

Q. The substance of the statement is what you gave the man to whom you gave this statement, is that so?
No answer.
Q. What is there in this statement you don't agree with?
The answer was:
A. Quite a few things in there I don't agree with.

Says he objected before the Notary Public when he signed the statement; that the agent taking the statement wouldn't make the changes he suggested but he signed it after he had read it.

Leo Stone, the notary, before whom the objection is said to have been made, was not called to testify.

J. H. Gorman represented the defendant insurer at the time the affidavits in question were made. Called to testify, he said Sullivan read the statement before he signed it; that representations in the testimony of Sullivan relative to promised relief for the injured claimant are without foundation; that the signing was voluntary.

In cases of horseplay where workmen are injured in participation in sportive acts, it is uniformly held that such injuries are without compensation coverage. It is the contention of defendants that this case comes definitely within this exclusion, and has no basis as arising out of employment.

It will be observed that the material witnesses as to circumstances of injury are called by defendants; that their testimony at the arbitration hearing is adverse to the defendants and favorable to the claimant. If the affidavits submitted, and all reference thereto are expunged from the record, the case of claimant is made and the arbitration decision must necessarily be affirmed.

If, however, these affidavits and relating evidence of record are given consideration, the case of claimant fails.

Claimant strenuously resists the consideration of these affidavits, con-

tending that in their introduction counsel seeks to impeach his own witnesses, and that courts of record deny this proceeding.

Under the provisions of Section 1441 of the Code this department has statutory authority for ignoring common law or statutory rules of evidence and technical or formal rules of procedure. We are admonished herein "to conduct such hearings and make such investigations and inquiries in such manner as is best suited to ascertain and conserve the substantial rights of all parties thereto." Under this mandate we are not only authorized, but commanded to develop all substantial facts relating to circumstances of injury that just conclusion be reached unhampered by technicality and formality. To ignore these affidavits and the admissions relative to their veracity, drawn from unwilling witnesses, would be to conceal, rather than to reveal the actual circumstances attending the origin of this disability.

In the affidavits, made within a few weeks, it is manfest these witnesses stated what they believed to be the actual situation at the time of injury. They flatly contradict these statements at the arbitration hearing, but on close inquiry by the deputy commissioner they admit the substantial truth of their affidavit recital. In view of these admissions and of other evidence developed, credence cannot be given to the claim that Sullivan and Hunerberg were at the time of signing mislead by the representatives of the insurer. They are evidently men of intelligence and strength of character. They are not easily duped. It is evident that under the inspiration of sympathy for an unfortunate workman and friend they are at the arbitration hearing endeavoring so to shade the facts as to aid in compensation recovery.

Deliberate scrutiny of this entire record leads to the conclusion that the injury to L. D. Baker on November 15, 1924, and disability resulting, were occasioned by his participation in horseplay or sportive acts, and hence did not arise out of and in the course of his employment by defendants.

Wherefore, it becomes necessary to reverse the arbitration decision awarding compensation, and such reversal is hereby ordered.

Dated at Des Moines, this 20th day of May, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

LOSS OF SIGHTLESS EYE—AWARD DENIED

W. E. Swim, Claimant,

vs.

Central Iowa Fuel Company, Employer,

United States Fidelity & Guaranty Company, Insurance Carrier.

McCoy & McCoy, for Claimant;

Comfort & Comfort, for Defendants.

In Review

This case is unique in its history and contention. The department

record first notes controversy as involving the payment of medical, surgical and hospital services in connection with the enucleation of an eye. No claim was then made for compensation payment. Obligation was denied on the part of the insurer on the ground that said services were not due to any injury arising out of employment. In this proceeding claimant was represented by Clarkson & Huebner, attorneys for the United Mine Workers. Further proceeding under this claim was abandoned. October 13, 1925, notice of arbitration was given this department in a letter from McCoy & McCoy, attorneys, of Oskaloosa.

In a decision filed March 23, 1926, it is held by the deputy industrial commissioner "that the claimant has failed to discharge the burden of proving that he suffered any compensable loss as a result of injury arising out of and in course of his employment by defendant employer."

At the first session of the arbitration hearing, November 12, 1925, W. E. Swim testified to an eye injury from a foreign substance May 5, 1924; that the foreign substance was removed shortly thereafter by Dr. D. Q. Storie; that the doctor treated him but the one time; that the eye didn't seem to get any better at the time the injury occurred, until he had it removed by Dr. Gutch, of Albia, in July of 1924; "that there was nothing the matter with his eye before the accident" on May 5th; that he had good vision until that time. Never noticed there was anything the matter with his eye. Never had experienced any difficulty of any kind or character with his right eye up to that time; that so far as he knew he had "the full vision of his right eye up until May 5, 1924."

In cross-examination claimant testified that under the direction of Dr. Storie he called on Dr. Sollis, an eye specialist, July 12, 1924. Admits he had an injury to his right eye in July of 1918, when he consulted Dr. Brittell, but insists he never went to him but "once in my life." Declares he never told Dr. Storie that he went swimming in Burlington lake; that he never was out in the lake until after his eye was out; that the water of said lake is clear, fed by springs, with sand and gravel bottom; that he never spoke to Dr. Gutch or Dr. Storie about getting compensation for his eye injury. Met Dr. Storie frequently after the accident of May 5th, but never discussed his troubles with him, though Dr. Storie would remark: "How are you coming, Billy," and he would say: "Pretty fine." It never cost him anything to see Dr. Storie because the doctor was in the employ of the miners on the monthly payment basis.

The wife of claimant, Mrs. W. E. Swim, testified she never heard her husband complain of any trouble with his right eye prior to the injury of May 5th.

Recalled as a witness in his own behalf, claimant testified that he never had any other doctor except Dr. Storie because he was the family doctor. Cross-examination, said he counselled Dr. Brittell at one time in 1918.

Testifying for claimant, Frank Elrod, working with claimant at the time of the injury of May 5th, said that he had known him for eight

or nine years; that he had seen him with his left eye bandaged and he went about without difficulty.

At a second session of the arbitration hearing held at the department January 16, 1926, the arbitration record was completed.

Claimant was recalled to reaffirm the fact that there was nothing the matter with his right eye for years prior to the incident of May, 1924.

Bill, Swim, son of claimant, says the right eye was doing business all right before the May injury; that his father could get around the house and read as usual when the left eye was bandaged for temporary injury.

Called as a witness by agreement of both parties, Dr. Pearson, of Des Moines, read into the record the following report he made to Mr. Clarkson relative to this case. "Dr. Brittell, of Chariton, Iowa, brought to my office on January 20, 1925, W. E. Swim, of Chariton, who was an employee of the Central Iowa Fuel Company, and says that he noticed the vision of the right eye was blurred in 1917, and he was annoyed with tears flowing over his cheek. In May, '18, Dr. Brittell removed a piece of coal from the right eye, and he thinks that the vision has been gradually failing since that time. In 1924, according to his statement, Dr. Storie, of Chariton, Iowa, removed a piece of coal from this eye. He also stated that in May, 1924, in coming out of the mine something entered this eye. Dr. Storie removed a foreign body at this time. He stated that at that time there was no vision. The eye became inflamed and painful, and on July 18, 1924, the eye was removed by Dr. Gutch, of Albia. In discussing the matter with Dr. Brittell, he states that when he saw him in May, '18, the eye had a cataract; that he could not distinguish between light and dark."

There is considerably more in the testimony of Dr. Pearson, but it relates to whether or not the cataract contributed to the condition of this eye, but it would not seem important as to what happened and as to what condition existed before May of 1924, in view of the history given Dr. Pearson by claimant and the credence he gave to the recital of Dr. Brittell when he brought the claimant in for examination.

The deposition of Dr. Delmar B. Sollis, of Chariton, an eye, ear, nose and throat specialist, was taken December 31, 1925. He says claimant was referred to him by Dr. Storie, who said "Swim had had a lick in his eye, and asked me to examine him and make a report to him on Mr. Swim's case." July 12, 1924, he found a cataract. The lens was white. In test it was shown that the right eye did not respond to any light whatever. Claimant returned July 13th and 14th. Examination was the same. Atropin had had no effect. "There was no inflammation in the eye whatever, so I attributed his present condition to an old injury, which he said he had received in 1922. Dr. Storie also stated the same. I knew the eye had been injured at that time." Thought Mr. Swim's case was of much longer duration than from the date of the May injury. Did not advise enucleation. Did not see any call for it.

A deposition of Dr. C. L. Brittell, of Chariton, contains this evidence:

Had known Mr. Swim over ten years. Treated him for his eye in 1918. Noticed white substance through the pupil, and while he did not make any minute examination, took it to be a cataract. Claimant could then distinguish between light and dark. "Could see my hand." Considered at that time vision of the eye so limited as to be practically useless. Dr. Brittell is a physician and surgeon, but not an eye specialist.

Mrs. Rose Brittell, wife of the doctor, in deposition states that she has at various times attended patients of the doctor. States that in July of 1922, she removed a foreign substance from claimant's right eye. There "was a sort of a milky film, I would call it, over the pupil of the eye."

In deposition, Dr. Gutch states: That on or about July 15, 1924, he enucleated his right eyeball. Stated that "as medical director of the Interstate Casualty Company, a report was submitted to me by Dr. Brittell, stating that in 1918 or 1919, the man had lost the vision of his right eye by reason of a cataract;" that Swim told him he had received a blow on the eye about May 5th or 6th.

Defendant's Exhibit "A" is a letter from Dr. D. Q. Storie to the United States Fidelity & Guaranty Company, insurer, in which he assumes to give a history of this case. Says, "W. E. Swim states that he began to gradually lose the sight of his right eye during 1918, and that the sight has been completely lost since 1922. During 1922 Dr. C. L. Brittell, of Chariton, tried on different occasions to have Mr. Swim go to Iowa City for operation on right eye, which he claimed he could not afford. During 1922, 1923, and 1924, I have removed at least seven or eight foreign bodies from the eye, the last one on May 5, 1924. This was a small piece just stuck in the ball, slightly below the center. * * * He worked every day the mine worked. I saw him on the street almost daily afterward for a month and never mentioned any trouble with his eye. On July 12th, which would be sixty-nine days later, he came to me at my office and his right eye was red and inflamed and he complained of considerable pain in the eye. I examined it—by inspection only—and fearing serious eye lesion, I advised him to go to Dr. Sollis, an eye specialist, now located at Chariton, whom I believe is a very competent man. Dr. Sollis saw him on July 12th, 14th and 15th. He then went to Dr. T. E. Gutch, at Albia, where the case was removed. I have been dressing it daily since his return from Dr. Gutch. As far back as 1922, Mr. Swim has repeatedly asked me if I could not aid him in receiving compensation for this loss of vision. I have explained to him that this insurance company is in no way responsible to him for the loss of his eye, as he was totally blind in the right eye before the U. S. F. & G. Company carried the insurance for the Central Iowa Fuel Co., in 1922, September 30. When Mr. Swim came to me on July 12th he stated that he had caught cold in his eye or that it was caused by getting dirty water in it while in swimming at the Burlington lake. I do not believe there is any connection in any way between the foreign body in eye on May 4th, 1924, and his subsequent trouble which begun sixty-eight days later, or on July 12th."

Claimant strenuously resists the admission of this letter into the record of this case. It is admitted and given credence such as would not be given under ordinary circumstances because of a peculiar situation existing. For some ten years prior to the incident of May, 1924, Dr. Storie had been the physician of claimant under a monthly payment plan which released him from all charges for special medical service. In June of 1925, Dr. Storie was klled by accident, hence knowledge vital to this case may be obtained only through this communication introduced as Exhibit "A."

In the endeavor to conform to statutory requirement which provides that this department shall "make such investigation and inquiry in such a manner as better suited to ascertain and conserve the substantial rights of all parties thereto," it is held that Exhibit "A" cannot be ignored pending proceeding herein. The signature to the letter of Dr. Storie, referred to as Exhibit "A," is identified in the record by claimant.

Claimant relies on two contentions:

1. That he lost a perfectly good eye from the incident of May 5, 1924; that it had never given him any trouble, and was good for any requirement;

2. That in a legal sense he insists that whether or not he had previously lost all vision in this member, he is entitled to one hundred weeks of compensation for the loss of an eye.

Did claimant lose a good eye? In the testimony of Dr. Pearson, Dr. Storie, Dr. Sollis, Dr. Brittell and Dr. Gutch, we find hardly a remote statement which justifies any such assumption, while this testimony in its chief and substantial character makes such assumption distinctly untenable. The evidence of these skilled men cannot be overcome by the self-serving testimony of claimant and his family, or any rambling statement made by others.

There is evidence of lack of good faith on the part of the claimant. He flatly disputes the statements of all those who gave evidence inimical to his claim. He and his family protest too much as to the absolutely complete vision in the right eye. He might have invited more confidence by admission as to even some measure of loss of vision prior to the May incident. But his insistence upon a perfect eye that had not given him any trouble for a long time prior to May of 1924 is so grossly improbable as to discredit all statements in support of his claim, and particularly in flat contradiction to the evidence of those who were in position to know the condition of the eye at the time to which he refers.

Our statute says there shall be paid "for the loss of an eye compensation for one hundred weeks." Counsel contends that vision has nothing to do with this obligation; that payment is required for the eye, not for the eyesight; that when the eyeball is removed full obligation accrues. If this is true, it naturally and inevitably follows that when vision is lost and enucleation does not occur, the workman has nothing coming, because he has not lost an eye.

Our cases are full of files relating to eye injury and loss, and in our experience enucleation is rare, indeed. It is likely that in cases of complete loss of vision removal of the member does not occur in more than five cases out of one hundred. To adopt this rule would be hard on many workmen who sustain a real eye loss, in the usual sense of the word "loss."

Claimant submits decisions from Michigan and Illinois in support of his unique contention as to the compensation value of a dead eyeball. He relies chiefly, however, upon four Michigan decisions, and he particularly features *Purchase vs. Grand Rapids Refrigerator Company*, 160 N. W. 391. This decision was filed December 21, 1916.

December 10, 1924, eight years later, the Michigan Supreme Court in *Rye vs. Chevrolet Motor Division of General Motors Corporation*, 201 N. W. 226, reaches these conclusions in reversing a commission decision awarding compensation for physical eye loss without loss of vision. Quoting:

"The language of the Compensation Act, in providing for an award in such cases, is : 'For the loss of an eye, 50 per centum of average weekly wages during 100 weeks.' C. L. 1915, Sec. 5440.

In using the words 'the loss of an eye' the legislature evidently intended the loss of the sight or vision of an eye rather than the loss of the physical eye. That this was the meaning intended by the legislature is made apparent by the fact that if the physical eye is seriously injured and the sight is not appreciably affected, there would not be the loss of an eye, whereas if the sight or vision is destroyed without a destruction of the physical eye, the loss of an eye, under the act, would be conceded.

If this be the proper construction, the plaintiff had no left eye to lose when he began work for defendant. If he had no left eye within the meaning of the Compensation Law he suffered no compensable loss when the physical eye was removed. He sees now as well as before, and the accident which occurred does not interfere with his work.

The idea back of the Compensation Law is compensation for a loss to the employee by accident. To award plaintiff a sum of money when he has lost nothing is placing a burden upon industry which was never contemplated by the statute. The award made by the Department of Labor and Industry should be vacated and set aside. No costs will be allowed."

On the same day, to-wit, December 10, 1924, this court filed another decision, *Liimatta vs. Calumet & Hecla Mining Company*, 201 N. W. 204, which also reverses a commission decision making an award for loss of a sightless eye. Herein the court makes this significant statement:

"The eye is an organ of the body which furnishes the mechanism by which the sense of sight or faculty of vision is exercised. When it ceases to function for that purpose it is in common understanding lost, although the organ may yet remain. Such unquestionably is the purport of our brief statutory provision which fixes compensation 'for the loss of an eye' in an industrial accident without any qualifying provisions as to percentage of sight left or condition of the other eye, except by another and distinct provision in the schedule that the loss of both eyes shall constitute total and permanent disability."

In numerous cases in various jurisdictions denial as in these decisions has been recorded. While in most of these states the statute differs slightly from our own, the reasoning in all these decisions strongly supports the conclusion that compensation payment is not consistently charged against alleged loss where no actual loss of function has oc-

curred. To hold that the statutory "loss of an eye" means nothing more nor less than the loss of useful function in the member is only plain judicial morality. It simply assumes integrity of legislative and statutory intent in charging industry only with legitimate obligation created by loss actually sustained.

It is plainly observed that citations submitted by claimant are based upon statutes differing from the Iowa law in an important particular. Subsection 20 of Section 1396 of the Code, following the schedule of compensation for permanent disability in loss of members or loss of function, provides:

20. In all other cases of permanent partial disability, the compensation shall bear such relation to the periods of compensation stated in the above schedule as the disability bears to those produced by the injuries named in the schedule.

All through our compensation statute is definitely manifest the general purpose to base compensation payment upon disability, incapacity, loss of earnings, loss of support. Where the schedule is lacking in specific provision as to partial disability Paragraph 20 is always regarded as affording ample direction. The application of this rule, if a sightless eye is removed, suggests no compensation whatever, as there is no disability involved in the removal of an eye which is without any use or benefit in earning capacity.

In this jurisdiction it has from the beginning been assumed that in the schedule of permanent injuries the term "loss of" includes the loss of use. In all cases it has been held that value is inherent only in useful function regardless of physical survival.

The Iowa Supreme Court has in *Jennings vs. Mason City Sewer Pipe Company*, 174 N. W. 785, in *Pappas vs. North Iowa Brick & Tile Company*, 206 N. W. 146, and a number of other cases definitely justified this department holding. Speaking through Justice Stevens in *Moses vs. National Union Coal Mining Company*, 184 N. W. 746, the court makes this emphatic declaration: "The statute contemplates but one compensation for the severance of, or of the loss of use of a single member."

This vital statement fits snugly into the conclusion that this claimant cannot recover for disability due to accident occurring years prior to the date of injury upon which this claim is based.

Upon the record in this case and the law applicable to conditions developed, it is therefore held:

1. At the time of the accident of May 5, 1924, claimant was without useful vision in his right eye;
2. The eye enucleated being without vision, the compensation statute providing for the loss of an eye affords no basis for this claim.

Wherefore, the arbitration decision is affirmed.

This decision does not assume to foreclose against recovery in any amount that might be justified as obligation for temporary disability. Defendants deny that enucleation was necessary, or if necessary it was not due to the accident of May 5, 1924. The record contains little evidence for or against this contention, the issues in controversy being chiefly based on a claim for permanent disability.

Dated at Des Moines, this 4th day of May, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

CATARACT CAUSING LOSS OF VISION HELD DUE TO INJURY

Henry Hinrichs, Claimant,

vs.

Davenport Locomotive Works, Employer,

American Mutual Liability Insurance Company, Insurance Carrier, Defendants.

Newport & Steffen, for Claimant;

Lane & Waterman, and Ed. Kurt, for Defendants.

In Review

It is agreed in the record that an injury to the left eye of this claimant occurred in the course of his employment with the defendant Locomotive Works on or about the 28th day of March, 1923.

Arbitration hearing at Davenport resulted in an award to claimant of $13.50 a week for a period of 100 weeks.

Henry Hinrichs testifies that while chipping steel with an air hammer a piece flew off and hit him in the left eye. He was sent by the employer to Dr. Hoffman. He says the eye always pained him, and sometime later began to lose vision, which finally was entirely lost. In the meantime he had counselled Dr. Rinehart, of Moline, Illinois, and Dr. Hands, of Davenport, both eye specialists, who are witnesses in this proceeding.

Dr. Rinehart testifies that he examined claimant in September of 1925. Says he found a cataract. "His lens was undergoing swelling and the eye was red and inflamed and some pain in it. Says: "I assumed it was due to an injury."

Dr. Sidney G. Hands testifies that he examined Mr. Hinrichs November 11, 1925. Found a cataract of the left lens. Sight was reduced entirely to light projects. Is of the opinion that the condition existing could have been caused by a blow to the eye from a piece of steel.

Dr. William P. Hoffman says Hinrichs came to his office about March 28th. Doesn't remember very much about the case. "It is so long ago. Saw him two days later. Never saw him again until the middle of October," evidently of 1925. Says he didn't notice anything wrong about the eye at the time of the first examination. At the later examination he found claimant had chronic iritis. Had a cataract and tension thirty degrees. Gives it as his opinion that the condition of the eye was not due to the injury upon which this case is based.

Subsequently to the arbitration hearing, Dr. Martin testifies at length in depostion. The doctor's memory seems to be particularly weak as to facts and circumstances other than those unfavorable to claimant.

At the review hearing claimant introduced as Exhibit "1" a letter of Dr. W. W. Pearson, of Des Moines, based upon examination at that date. From this letter we quote:

"In the left eye I find present a cataract with a posterior synechia to the temporal side. We are justified in concluding that a foreign body entered this eye and injured the iris resulting in the adhesion of the iris to the anterior capsule at this point."

Defendant resisted the introduction of this exhibit on the ground that claimant had not complied with the provision of Section 1447 relative to notice as to introduction of additional evidence at the review hearing. This objection is overruled for the reason that this exhibit is introduced as rebuttal to evidence submitted at review hearing by the defendant.

The record in review contains the testimony of Doctors H. C. Schmitz and Robert J. Lynch, both of whom testified hypothetically to the opinion that claimant's loss of vision could not be due to the injury of March 28, 1923.

Medical evidence produced by hypothetical inquiry is of little value in the endeavor to discredit the testimony of qualified physicians in actual contact with the conditions and treatment. Such evidence on either side of any case seems always available to persistent counsel. Doctors work wonders in diagnosis, but the highest medical skill is frequently baffled by mysterious physical development. We do well in dealing charitably with mistakes that must inevitably occur but criticism may be sometimes invited by cock-sureness of statement where in common experience knowledge is necessarily speculative.

It is difficult to reach a conclusion in this case. It is frankly admitted to be of the border line variety. On the face of the printed record the balance is so even that doubt is resolved in favor of the claimant because of the arbitration finding, based more or less upon the bearing of witnesses and other evidence of good faith.

The arbitration decision is affirmed.

Dated at Des Moines, this 5th day of May, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

LOSS OF VISION—HELD DUE TO INJURY

Thomas Dial, Claimant,

vs.

John Morrell & Company, Employer,
London Guarantee & Accident Company, Insurer.
Leonard Simmer, for Claimant;
Chandler Woodbridge, for Defendants.

In Review

At Ottumwa, March 3, 1926, it was found in arbitration that personal injury sustained by this claimant in the employ of John Morrell & Company, July 6, 1921, resulted in the loss of vision in the right eye, which entitles him to the sum of $12.12 a week for a period of fifty weeks.

Stipulation of record establishes the fact of injury: "that said injury was caused by being struck in the eye by a wire."

Claimant testifies there was no trouble with this eye until this accident occurred. He was examined for service in the army in April of 1917, and accepted.

Dr. Welstead of Ottumwa, testifies that he examined claimant for insurance July 1, 1921, and "gave him credit for having normal vision in each eye at this time." The witness is an M. D., but gives detailed statement as to the searching test administered in examination.

Dr. F. D. Pedigo appeared for claimant. Says: "My profession is confined to fitting of glasses and detecting any disease so that I can send them over to a specialist." Says he is equipped for the discovery of diseases if it appears in the patient's eye. Is a graduate of an institution of optometry. Examined the claimant February 27, 1926. Found his right eye practically blind. Detected no evidence of disease in this eye.

Dr. D. E. Graham, testifying for defendant, qualified as an eye, ear, nose and throat specialist. Says he treated Mr. Dial at the time of his eye injury in 1921. He describes a condition of the eye as a "tear to the conjunctiva, a slight abrasion to the sclera under it." The wound was in what is known as the white of the eye, about one-fourth of an inch from the iris. He says probably two days later the vision was less than 22/100, which is useless for practical purposes. Says there was no atrophy of the optic nerve in evidence at this time, but in October, of 1925, such atrophy was manifest. In cross-examination testifies that he does not know what caused the atrophy in this case. There was no evidence of what frequently causes such condition, such as wood alcohol, syphilis, brain tumor, etc. There was no infection indicating disease. Does not believe loss of vision due to injury of July, 1921. Says the left eye is defective now. "Might be from sympathetic reasons or reaction, and might be caused by an injury to the other eye."

The record in this case is by no means satisfactory. The testimony of Dr. Welstead is reassuring as to at least a fair degree of vision in the injured eye only a few days before the accident. While not an eye specialist, evidence as to the test applied substantially supports the contention that the condition of claimant's eye four days before the accident bore little resemblance to that found by Dr. Graham two days after the same.

The nature of the injury of this eye affords weight to the support of claimant's case. It was so serious as to send him to the hospital and cause him to lose nearly four weeks of time from employment.

While it is admitted that evidence given by Dr. Graham as a specialist, in charge of the case at the time of the injury must be given serious consideration, careful scrutiny of the same does not exclude plausible presumption that the decision of the committee may be consistent with the record. While he seems to believe that the loss of vision is not due to accident, when questioned as to the cause of defective sight in the left eye, he says: "It might be from sympathetic reasons or reaction, and it might be caused from an *injury to the other eye.*" This conclusion is hardly consistent with his statement that he did not believe loss of vision in the right eye to be due to injury.

The defendant urges with some measure of consistency improbability as to compensable injury, based on the fact that the claimant waited so long after the injury to press his claim for compensation. Such delay is always unfortunate, and the claimant is not wholly excusable for his laxity in this connection. The record in this case, including the department file, however, affords some measure of extenuation. Claimant testifies that after his injury "a man came down to my place and wanted me to sign papers, and I told him I would not sign papers until I knew the paper was all right, and he never came back." A letter from him in the file of this case, dated September 30, 1925, says Mr. Walters, representing the insurance company, "told me that at the end of six months I should have a final examination, which I didn't get." In view of the serious nature of the injury, reported by the employer as "wire puncture in the right eye", an injury that put the workman out of commission for a period of nearly four weeks, the conclusion is justified that the insurer should have given this case more attention in the nature of a follow-up. The examination claimed to have been promised by Mr. Walters was wholly consistent with the usual course in such cases.

The arbitration committee, in close contact with the evidence submitted, united in an unanimous report. While not in the record, it is a matter of common understanding and knowledge that F. L. Nelson, one of the arbitrators, is an eye specialist, who was chosen by the defendant as one especially qualified to sit in judgment on the evidence developed.

While this record is not satisfactory in its various details, it would seem to support the theory of inherent probability as to the compensable character of this claim.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, this 13th day of April, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

AUTOMOBILE SALESMAN—IDENTITY OF EMPLOYERS—DEATH HELD TO HAVE ARISEN OUT OF EMPLOYMENT

Josephine Heinen, Claimant,

vs.

Motor Inn Corporation, and Stanley Olmstead, Employer,

Employers Mutual Casualty Company, Insurance Carrier.

Molyneux, Maher & Meloy, for Claimant;

John Hynes, for Defendants.

In Review

The claim of this plaintiff is based upon the death of her husband, Theodore Heinen, January 28, 1924, at a railway crossing near Meriden, as having arisen out of and in course of his employment by these defendants.

In arbitration at Cherokee, December 18, 1924, the finding was for the claimant, on the basis of maximum award.

A careful review of the evidence submitted by transcript in this proceeding would seem to justify these conclusions:

At the time of his untimely death, Theodore Heinen was in the employ of these defendants in the capacity of automobile salesman. In the forenoon of the day of his death he left the garage of his employers at Cherokee and proceeded to the town of Meriden. After transacting some personal business he left Meriden for the town of Cleghorn for the purpose of making a sale of a second-hand car. In crossing the Illinois Central Railway track, less than two miles from Meriden, he was run down and killed by a passenger train.

At the time of this accident a sale of the business property of these defendants had been pending for some weeks. It is contended by the defendants that a transfer had already been made by the Motor Inn Corporation and Stanley Olmstead to the Jones-Barr Company, and that they were actually in possession of the premises and plant.

Furthermore, defendants aver that if this transfer had not been consummated the business of these defendants was in such a state of stagnation as to justify the assumption that Heinen was not in actual service. This assumption is not tenable under the evidence. Several witnesses testify to the contrary. On January 28, 1924, Miss Isabell Campbell was in the employ of these defendants as bookkeeper and stenographer. She not only made out the checks issued by the corporation, but actually signed the same. The death of Heinen occurred on Monday. She testifies that on the Saturday previous she issued to the deceased for the Motor Inn Corporation a check in weekly payment for his services for the closing week in the sum of $50.00.

It is further contended by the defendants that Theodore Heinen left Meriden with the avowed intention of going to a farm he owned for the purpose of instructing his tenant to deliver grain from his farm to a buyer in Meriden, to whom a sale of said grain had just been made. The record does not justify this conclusion. A number of witnesses testify to statements by Heinen to the effect that he was going to Cleg-

horn on car business. W. H. Runnings, the grain buyer, in evidence quotes the deceased as saying: "'I have to go to Cleghorn on business' and he says 'I will drop down from Cleghorn to the farm and tell him to send the corn down right away.'"

This is the most definite evidence as to any intention to visit the farm on that drive, and whatever may have been his intention after he left Cleghorn is not material in this case.

Finally, it is contended by defendants that the visit to Cleghorn was in the nature of a personal mission—that Heinen went there for the purpose of disposing of a second-hand car of his own.

The evidence indicates a contract of employment of peculiar character between Heinen and these defendatns. The employe had been in this service for a period of about a year. During this entire period he was paid for full time on the basis of $50.00 a week, and there is some evidence in the way of commission in addition.

The testimony of Miss Campbell, best advised of all witnesses as to the actual relationship, indicates that used cars were to be taken in part payment for the new cars sold, but on a basis of guarantee by Heinen to the extent of the allowance made for the used car in exchange.

While in a sense it would appear that these cars were taken over by the employe, it was distinctly a part of the business of the employer to make provision for their sale. As the automobile sales are made in Iowa, it is the common practice to take old cars in part payment. This would seem absolutely necessary to successful salesmanship. It was distinctly to the interest of the employers that such exchange should be made, and when made, it was to their interests that cars should be disposed of in order to promote the selling of more new cars. These sales of the used cars were made upon the time of the employer and, manifestly, in his interest.

This contention on the part of defendant is admitted to be their most plausible ground of defense. But under the circumstances it would not seem to justify the denial of compensation to his widow, whose husband lost his life in actually promoting the business interest of the Motor Inn Corporation.

Salesmen are frequently required personally to guarantee employers against loss sustained because of credit unwisely extended, or that may occur through the cutting of prices. This is, in effect, the arrangement between this employer and this employe. The employer stipulated that he must be protected against loss by the exchange system, and the employe assumed to stand good for any such loss that might occur from his error in judgment. It would appear from the record that any price for the used cars obtained in excess of the exchange price was to inure to the advantage of the employe, which was doubtless considered an offset against the guarantee provision.

All this used car business was transacted on the time of the employer. Assuming that Heinen was out to promote the sale of a used car at the time of his death, he was engaged to the advantage of his employer and under his pay, therefore, his death arose out of and in course of his employment.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, this 17th day of February, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme court.

INJURY IN CLERICAL EMPLOYMENT HELD NOT DUE TO HAZARDOUS EXPOSURE

Olla Kent, Claimant,

vs.

Fred V. Kent, Employer,

Employers Mutual Casualty Company, Insurance Carrier.
Chester W. Whitmore, for Claimant;
John F. Hynes, for Defendants.

In Review

In arbitration at Ottumwa, November 26, 1924, Deputy Commissioner, Ralph Young, held for the defendants on the ground that claimant was engaged in clerical work only; that she was not "subjected to the hazards of the business" within the meaning of the compensation statute and, hence, her claim is barred by statutory exclusion.

The record shows that Fred V. Kent was in the grocery and meat business at a number of points in Ottumwa and elsewhere. In his employ was his sister, Miss Olla Kent, the claimant herein, who was engaged wholly in keeping the books and accounts of the employer. So engaged, her duties were confined practically to an elevated platform in the rear of the main store, containing a desk, safe and other counting room equipment. This platform was reached by a stairway of eight steps, each eight inches deep and eighteen inches long.

November 26, 1923, while descending these steps Miss Kent alleges she sustained an injury to her right knee which occasioned substantial disability and considerable medical, surgical and hospital expenditure.

It is further alleged that the injury was due to a fall caused by the projection of the arm of a platform scale from the rear side of the open steps.

In defining who are employes under the compensation statute, paragraph (b) of Section 2477-m16, Supplement to the Code of 1913, specifically exempts "those engaged in clerical work only," with this qualification: "but clerical work shall not include one who may be subjected to the hazards of the business."

It is admitted claimant was engaged "in clerical work only." It only remains to find whether or not in her employment she was "subjected to the hazards of the business."

Counsel contends that the stairway in use was hazardous because

these steps were without enclosed risers. In support of this contention he refers to the testimony of the brother employer who says he so regarded them and had tried to get a carpenter to enclose the open steps. It is held by counsel this signifies "a hazard of the business."

The Iowa Compensation Statute differs essentially from all others in the matter of exempt employment. Casual examination of the laws of all the leading states fails to reveal one in which clerical employment is specifically exempt. Counsel cites no decisions in support of his contention because there are none in the books. There can be none in other states based on statutory provision, and in Iowa no such contention as he submits has ever been suggested.

Evidently it was the purpose of the General Assembly to classify clerical work with agricultural and domestic labor as an exempt employment. Why did it qualify this exemption? Because there is in many cases occasional actual contact on the part of clerical workers with situations inherently hazardous. Stenographers and accountants are not infrequently required to leave the purely clerical zone and expose themselves to hazards of machinery, of explosive chemicals, of street hazards, etc. Had Miss Kent been required to visit daily, or occasionally, the other stores of her employer in Ottumwa, any injury she might have sustained from street exposure or otherwise while thus engaged would have been definitely covered by statute because she would then have been "subjected to a hazard of the business." Suppose she had been disabled in making collections or in serving customers in the grocery or meat departments of her brother employer? Of course, she would have been given relief, because of her departure from the zone of purely clerical employment and of her exposure "to the hazards of the business."

The hazards referred to in our statute can only mean situations inherently hazardous as a matter of common knowledge and experience. The alleged hazard of the open risers and the platform scale suggest nothing of the kind. If contention of counsel is successful, the exemption of clerical employment is practically without meaning and effect. A clerical worker may lose a finger from infection, based on the incident of changing pens in her pen holder. From a pin prick lives have been lost. The swivel chair this claimant occupied might have given way throwing her to the floor and breaking her back. Such things have happened. But because of an obscure happening from some cause remote and unexpected injury cannot make hazard out of elements not inherently hazardous. The platform scale and open risers might, perhaps, be termed a hazard of building construction and equipment arrangement, although before the fact of injury these incidental objections suggested no measure of peril in common recognition or common experience. A typewriter, or an adding machine, or a steel pen might be considered hazardous after it had been a factor in a serious case of infection, but this would not change the general recognized character of objects inherently harmless.

Counsel wants to know if an over-charged bottle of soda water had happened to explode and fragments of glass had been blown into claimant's right knee, inflicting injuries in question, if we would hold such injuries covered? It depends on circumstances. If the soda bottle was part of a soda equipment forming part of the business of the employer, we surely would say Yes. It would then be "a hazard of the business." If, however, a stray soda bottle unrelated to the business of employment caused such injury, we would surely have to say No. It would then be by no means "a hazard of the business." The distinction is clear.

Counsel further desires to know why the Deputy Commissioner denied compensation to this claimant after the department had approved of a settlement in the sum of $1,500.00 between an insurer and Grace Tinsley, of Ottumwa, living in the same house, and injured in about the same degree. This question is not at all embarrassing. Miss Tinsley was filling an engagement as "saleslady," an occupation clearly covered by statute, while claimant is wholly engaged in clerical work and not "subjected to the hazards of the business." The law makes its own distinction. In the case of Miss Tinsley the only question was as to the extent of disability.

Counsel frequently uses the word "negligence," a term unknown to compensation jurisdiction. He says the employer is held to furnish a safe place to work. Not under the compensation statute. Counsel is speaking in terms of damage with which we have nothing to do.

Claimant relies upon the insurance policy which includes clerical coverage to the extent of $1,500.00, and wants us to explain why this does not establish coverage in this case. We would not assume to account for all the ways of insurers. Some have been known to take good money for coverage the statute denies. In this case, however, the insurer would have been held whether or not the claimant had been specifically covered in the policy if injury had arisen out of exposure to "the hazards of the business," or without the exclusion zone of her usual engagement. This risk may account for the sixty cents the insurer taxed the employer for clerical coverage of $1,500.00.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 16th day of January, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Reversed by district and supreme courts.

DEATH FROM INFECTION HELD DUE TO ABRASION IN EMPLOYMENT

Margaret Wittrig, Claimant,

vs.

William Reschly, Employer,
The Fidelity & Casualty Company, Insurance Carrier.
Livingston & Eicher, for Claimant;
B. O. Montgomery, for Defendants.

In Review

In arbitration at Washington, October 23, 1925, it was found that this

claimant is entitled to receive from the defendants the sum of $15.00 a week for a period of 300 weeks as statutory relief for the death of her husband, J. H. Wittrig, as arising out of and in course of employment May 1, 1925, by the defendant employer.

The contention of claimant as to chief issues involved is that on the 17th day of April, 1925, (the evidence of the employer and others, however, shows the date of incident of alleged injury to have been Thursday, April 16th.) while laying asbestos shingles he sustained an abrasion upon the right side of his nose which rapidly developed erysipetalous infection which resulted in death two weeks later.

Defendants deny this assumption and insist that the death of this workman is in no manner or degree due to any incident of employment.

Joe N. Reschly testified that he was working with the deceased on April 17th, the day following the alleged incident of injury. On the morning of that day when Wittrig came to work he says he noticed a scratch and discoloration on the side of his nose. Thought it was about the size of a dime, maybe a little larger.

Emerson Wittrig, son of the deceased, says that on the evening of the same day, April 17th, in the wash room at home the father asked him if he could see anything on the right side of his nose. He said he observed the scratch and inflamed part which seemed to be about the size of a quarter.

L. H. Renner saw John Wittrig at Sunday school on Sunday, the 19th. Says deceased did not assume his usual relation as chorister. Noticed his nose was very red, and as he shook hands with him he asked if it was a boil. He said: "No, some shingles flew down on my face at the Nyswanger place." Thought inflamed area about the size of a half dollar.

Dr. E. C. Allen testifies: Mr. Wittrig called on him for medical counsel the evening of April 19th. He was complaining about his face. The right side of his nose was inflamed and pained him some. It was red and he had just a little abrasion of his skin, on the face there. The inflamed portion seemed about the size of a silver dollar. The patient was not feeling very well otherwise. He told him he had scratched his face while at work over there at Crawfordsville; that he thought nothing about it. Thought it was just a little scratch, didn't amount to anything. Several days later while calling on the patient at his home the doctor says patient told him the same thing as to the origin of the trouble. Witness believed this incident to be reasonably regarded as the source of the infection resulting in death.

Edith Winger was called to the Wittrig home, as graduate nurse, on Wednesday, April 22nd, and was on duty there until the workman died. She says that on the day after her arrival she heard a conversation in the sick room in which the patient declared that his sickness came from a scratch while shingling on the Nyswanger place, carrying a bunch of shingles and one fell and struck him. She says this statement was in the presence of Mrs. Wittrig, Dr. Allen and herself.

The claimant, Margaret Wittrig, testifies to the conversation referred to by the nurse.

Dr. C. W. McLaughlin was called in counsel with Dr. Allen, April 23rd. He says Dr. Allen told him that Wittrig had called at his office several days previous; that there was a little scratch on the side of his nose that was infected at that time; that the man had been complaining of not feeling well. On the occasion of this visit he understood that Wittrig had sustained a scratch from a shingle which had become infected. Witness says this history was entirely consistent with subsequent development. He was firm in the belief that the injury and resulting death were due to this cause. In the absence of Dr. Allen this witness was called by the family on April 29th, the day before the death.

Dr. N. J. Lease was called in consultation in this case on the 29th of April. He says at that time the man was unconscious; face and head swollen beyond recognition. Dr. Allen gave him a history that the patient had received a scratch on the face and that it had become infected. There was agreement between these doctors as to diagnosis.

The Taylors', man and wife, occupied the house undergoing repair, testify that while at dinner with the workman in a very well lighted room they observed no evidence of a facial wound shortly after the alleged occurrence.

E. C. Wyse says he worked with the deceased on the day following the alleged injury; that he saw upon his face no evidence of wound or inflammation.

The employer, William Reschly, at the review hearing, December 22, 1925, testifies from long acquaintance as to the character and credibility of the leading witnesses for claimant. He further says from such investigation as he was able to make, he entertained no doubt as to the injury of April 16th being the source of disability and death.

D. J. Bollar, called at the review hearing, said that as a representative of the defendant insurer, he interviewed Dr. Allen and became satisfied Wittrig's death was due to the alleged incident of injury occurring April 16th.

The record of the case under consideration is scrutinized with great care and unusual interest, and it may be candidly admitted that it is distinctly of the border line variety. This scrutiny, however, results in the personal conviction that the weight of probability is on the side of claimant. Whatever conclusion might be reached elsewhere, this conviction must result in a consistent holding.

The good faith of the several witnesses testifying for claimant is plainly emphasized. There is no basis in the record for the suspicion that a frame-up is involved. Without due regard for veracity much better showing might have been made. The widow and son testifying might have "remembered" that the deceased came home and directly reported the shingle incident and upon the appearance of inflammation given it as a cause. On the contrary, these relatives would seem to have been very careful to avoid any appearance of misrepresentation in their statements in evidence. The suggestion of counsel that Dr. Allen was forgetful of professional character and plain integrity in trying to make

a case for claimant is not worthy of consideration. The evidence of other doctors as to history involved and as to the consistency of such history with developments in the case are important.

The medical authorities cited add weight to the reasonableness of claimant's contention. Considerable importance is given to the progressive tendency of the infection as established by various witnesses. The morning following, the inflamed area is said to have been about the size of a dime. On the evening of that day it is said to have been the size of a quarter. The next morning the testimony shows it to have been about as large as a half dollar. The evening following Dr. Allen said it was about the size of a silver dollar.

Counsel for defendants insists that any statement made by the deceased workman to Dr. Allen relative to the source of infection should be excluded from the record. This seems to be the rule under the law of damage and counsel submitted compensation decisions in other jurisdictions justifying this conclusion. This view is repugnant to the spirit of administration in the state of Iowa. A physician is naturally led to make such inquiry when called upon as the source of indisposition. If disposed to deceive others, no patient is inclined to fool the doctor upon whom he depends for relief, and perhaps for life. In the endeavor to ascertain statements of fact from all credible sources we frequently have valuable assistance from doctors derived from contact with injured workmen, as to source of disability or death.

Counsel for defense all through this record emphasizes emphatic opposition to hearsay evidence. Under the liberal statutes of Iowa and the decisions of the Supreme Court, there is no doubt as to admissibility of such evidence. While it is not held to be sufficient to establish an award, wholly unsupported by other evidence, it is taken and accepted upon the basis of relative and corroborative value. It is not admitted that this case rests wholly upon hearsay as alleged. The courts give substantial weight to circumstances tending to justify and strengthen other evidence, and in this case there is substantial support of this character.

Counsel contends that the report of the employer should be taken and accepted as admission against interest, and as of substantial, if not conclusive evidence of the validity of a compensation claim where statement made tends to support the same. Citations from other jurisdictions are submitted in support of this contention. It is not held to be at all decisive by this administration in case of litigation. These reports are frequently made from meager information. Where insurance is carried the employer is aware that he has no financial responsibility whatever except in case of bankruptcy on the part of the insurer, a situation so remote as to be given very little consideration. It is not recalled that any employer in the state of Iowa, with the exception of mine operators have been called upon to pay a dollar in compensation because of the financial failure of an insurer.

No rule of other jurisdiction which to this administration seems repugnant, inconsistent or subversive of manifest rights shall be adopted here until error on our part shall be declared by the Supreme Court of Iowa.

While it is held in this state that claimant may not secure award upon an equipoise of evidence it is also frequently held that proof need not make for dead moral certainty. A preponderance is not necessarily overwhelming. It is only "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." In this case what is opposed to the contention of claimant? Merely general denial, which does not overthrow the impelling force of inherent probability.

The crucial test of this record is not as to whether injury as alleged is consistent with subsequent development in the case of J. H. Wittrig. This is settled conclusively in the affirmative by medical evidence and medical authority. It only remains to decide as to whether or not the shingle incident of April 16, 1925, is established in evidence. The Commissioner believes it is, and so believing, the arbitration decision in favor of claimant must be and is hereby affirmed.

Dated at Des Moines, this 28th day of December, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DEATH FROM ACUTE BLADDER TROUBLE HELD DUE TO INJURY

William McKinney, Claimant,

vs.

Central Iowa Fuel Company, Employer,

United States Fidelity & Guaranty Company, Insurance Carrier.

Clarkson & Huebner, For Claimant;

Mabry & Mabry, for Defendants.

In Review

William McKinney died February 17, 1925, at Albia.

This action is based upon the contention that the death of claimant is due to injury occurring March 13, 1924, as arising out of and in course of his employment by the defendant Fuel Company.

In arbitration at Chariton, July 17, 1925, the finding was for claimant, and defendants were ordered to pay Ada McKinney, the widow of William McKinney, the sum of $15.00 a week for a period of 300 weeks.

March 13, 1924, and for some time previously, William McKinney had been in service as car repairer. On this date he quit work. The day following, he was operated upon for bladder trouble. He was never able to resume labor of any kind.

Defendants paid compensation to this workman for a period of eighteen weeks, at the rate of $15.00 a week, refusing further payment.

Petition for arbitration was filed by claimant, December 22, 1924. Meanwhile claimant had been failing in health and strength since he quit work. It becoming apparent that his end was near, his deposition was taken January 28, 1925, in which he testifies substantially as follows:

March 13, 1924, he was engaged in making rollers. Says he "took eight foot bars and sawed them into 22 inch pieces and made rollers of them." These eight foot bars, he says, were round and from 6 to 8 inches thick, and weighed 150 to 200 pounds. It was all he could do to handle one. He was working with a circular saw about which was a sliding frame to which the bars were elevated for contact with the saw. The sliding frame is by testimony of claimant and his superintendent 3½ feet from the floor. In lifting one of these 8 foot bars claimant says "it got on the saw and then caught me right across the abdomen." Later he says: "When it hit the corner of the frame there, it gouged me right in the abdomen."

He suffered pretty severe pain, but after the lapse of about five minutes he resumed work. The pain increased, and he soon obesrved the discharge of blood from the bladder. Whereupon he left work and went home in his Ford car, a distance of about a mile. As he left employment he says he called the attention of the superintendent to his injury. He also told the top boss, Alex Wallace, and a blacksmith, Tom Martin. Upon reaching home, claimant proceeded at once to clean up and change his clothes, and without delay started for Albia, where he had a bladder operation performed by Dr. Gutch the evening of the day following.

Depositions of seven doctors appear in this record. While there is much divergence of medical opinion expressed hypothetically, there is substantial agreement upon material points among six of these witnesses. Dr. J. W. Martin, General Medical Counsel of the defendant insurer, is the radical exception. He insists that in order to establish a basis for successful claim in this case the injury should have been so severe as to rupture the bladder. In replying to hypothetical questions, naturally framed by counsel of claimant along the most favorable possible lines, no range of circumstances could be submitted which would check his positive assertion that the death was due to bladder trouble of long standing, and any injury which may have been sustained was a mere coincidence and not a determining cause.

Dr. T. E. Gutch, of Albia, testifies in deposition that at the time of his examination on March 14, claimant gave him a history of injury which he repeated, and which seems consistent with the claimant's statement in evidence. The operation seemed to develop indications of acute condition. There was no apparent chronic condition of long standing. The injury as recited by claimant seems to afford consistent basis for the situation disclosed upon operation.

The defendants seemed to rely substantially on the contention that for some time, perhaps as much as two or three years prior to the date of injury as alleged, claimant had suffered continually from kidney and bladder trouble; that during this period he had discharged blood, and gave other evidence of a condition more or less serious.

The record is searched in vain for substantial support to this contention. Dr. W. R. Hornaday, of Des Moines, whose deposition appears as Exhibit D-3, had this case under observation for a week or ten days in November of 1924, nearly eight months after the alleged injury. In direct examination he testifies that the witness gave him a history of

passing blood for some two or three years prior to this examination. The record the doctor had made, however, said claimant had admitted he had had bladder trouble, but no entry was made as to the passage of blood prior to the injury. When the attention of witness was called to this fact he said: "I will have to answer the question with regard to the blood, that I don't remember." There is no evidence from any medical source as to any loss of blood from the bladder prior to March 13, 1924.

At the arbitration hearing, Alex Wallace, who qualifies as top boss in the employ of the defendant Fuel Company, testifies that claimant had called his attention to places where he passed blood two or three weeks before March 13th. He does not say he saw him pass blood, or saw any blood he had passed, but that witness showed him places where such an incident had occurred. This witness also testifies that claimant had showed him medicine he had to take for his kidneys, and that he had quit work several times to see a doctor.

No medical witness was produced to show any treatment for kidney or any other trouble at the period mentioned. In the testimony of Dr. R. A. Hill, of Russell, it is shown that he had for sometime been claimant's family physician; that he had counseled him for minor trouble, chief of which was piles. As there was no cross-examination, defendants did not seem to press the point of treatment for kidney or bladder trouble.

The only other doctors apparently available were Doctors Gutch and Eschbach, both of whom testify as to having given McKinney no attention whatever for kidney or bladder trouble, and had never known he was so afflicted.

The doctors are all in substantial agreement as to the fact that loss of blood in this manner would soon result in disability. Claimant and his wife are both on record with the positive statement that McKinney had worked every day the mine was running. This statement, if untrue, might easily have been controverted by the employment record, which was not produced.

There is also substantial medical agreement that serious internal injury at the point of infection described may result from a blow, which may not produce an abrasion, or take the form of great violence. There is substantial medical agreement that if the claimant was injured as he alleges, if he had no serious bladder trouble before March 13th, and if he was injured as alleged, having been able-bodied before, and completely disabled from that date, henceforth, there is substantial basis for the conclusion that the injury as alleged was the cause of death.

It is a matter of further substantial agreement that if the claimant had suffered to a minor degree from bladder trouble, if he had had some showing of blood in his urine, with even less of violence than would otherwise be required, any lurking bladder affection would be lighted up, accentuated and hastened in development through such injury.

In order to reach the conclusion that the arbitration decision should be confirmed, there must appear fairly substantial basis for the belief

that the incident of alleged injury and its attendant effects must have occurred substantially as related by claimant.

It therefore, becomes necessary to carefully scrutinize the deposition of William McKinney and all the circumstances in connection with his statements of fact pertaining to the history of injury. He was not a good witness if to be a good witness the testator must tell a smooth story which dovetails definitely in all its arts and parts. There is some contradiction in this deposition. There is some inconsistency involved, but we are most concerned with the vital facts and circumstances.

At the time this testimony was given by the claimant he was in the presence of death and beside an open grave. He died less than three weeks later. From the fact of his gradual failure, and that he finally had to remain in bed and his failing strength, he must have felt his end was near. Furthermore, the very fact that he was confronted by this ordeal of testifying must have given him to understand that he was given up to die; that he would not be able to appear and testify in his own behalf at an arbitration hearing.

Reading this deposition with these facts and circumstances in mind, one cannot fail to be impressed with the native candor of the witness and his purpose to tell the truth. In his sadly debilitated condition his story is naturally more disjointed than if he had been in better health. But from this narrative the impression is sustained that he did receive in employment definite injury March 13, 1924, substantially as he alleges.

In his testimony he admits he had experienced some bladder trouble, but not so serious as to interfere with his work or to make him seek medical relief. It is fair to assume that he had not previously passed blood; that the appearance of blood shortly after his lifting experience gave him such fright as to induce him at once to go home and proceed forthwith to consult Dr. Gutch, at Albia. Such bladder trouble as he might previously have had may have culminated and become acute and serious by an injury of no apparent violence.

The recognition of some measure of trouble as admitted by claimant in no sense weakens his claims upon this employer for compensation, if an injury arising out of employment caused his disability and ultimate death at a time such dire results would not have been otherwise experienced.

This is one of the most perplexing cases ever submitted to this tribunal. It is frankly admitted to be of the border line variety. But while it cannot be said this record establishes it beyond all peradventure, it is held to afford preponderance of support to the McKinney claim. In its general character it adequately confirms the history given by the workman in essentials of detail, and careful analysis of medical testimony definitely sustains this claim if this history is to be regarded as reliable.

In all such involved situations the elements of inherent probability must be given due consideration. Scrutiny of the entire record affords substantial support to the conclusion that this disability and death actually did arise out of and in course of employment and such scrutiny

takes this case out of the realm of conjecture and justifies the affirmation of the arbitration decision, and said decision is hereby affirmed.

Dated at Des Moines, this 21st day of September, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme court.

BACK STRAIN NOT DUE TO EMPLOYMENT

J. B. Connor, Claimant,

vs.

Eagle Coal Company, Employer,

Bituminous Casualty Exchange, Insurance Carrier.

Clarkson & Huebner, for Claimant;

Bates & Dashiel, for Defendants.

In Review

On the record of an arbitration hearing at Centerville, November 11, 1924, it was held by the Deputy Industrial Commissioner that "claimant has failed to discharge the burden of proving that the disability for which he seeks recovery resulted from injury arising out of and in course of his employment by the defendant employer within the meaning of the compensation law."

Claimant alleges that on the 15th day of November, 1923, he sustained a back strain in the employ of the defendant coal company which developed disability covering a period from November 15, 1923, to January 14, 1924.

September 18, 19, 20 and 22nd he was treated by an osteopath. About a month later he received six treatments from a chiropractor. As to his disability during the period stated, there would seem to be sufficient evidence.

At the arbitration hearing claimant testified as to the basis of his claim that while handling a heavy chunk of coal in the mine of the employer he strained his back. He worked at loading coal an hour or so after which he went home, in accordance with a previous intention to attend the funeral of a friend in the afternoon.

There is some measure of corroboration in the deposition of Pearl Scarlett, who was working in the mine near claimant, in September of 1923. Also in the testimony of Mrs. Connor at the arbitration hearing, and that given by Dave Banks at the review hearing August 28, 1925.

Defendants deny obligation in this case on the ground that there was no injury in the statutory sense as alleged; that disability sustained was due to chronic ailment, and that a claim for compensation came as an afterthought and developed a theory upon which such claim might be based.

Mr. Connor admits that he had for years had occasional attacks of lumbago for which he had received treatment, and throughout the ailing area liniment had frequently been applied.

T. Lundgren, speaking for the employer, testifies that on September 15th, the date of the alleged injury, claimant as he came to the top, remarked to him: "I am sick; I am all in," making no mention of any sort of injury. Claimant insists he did not see Mr. Lundgren at the time mentioned, but that he had seen him under some such circumstances at a previous date. Lundgren insists with a good deal of particularity of support that he cannot be mistaken as to the incident as he relates it himself. This witness further states that the day after the injury as alleged Mrs. Connor 'phoned him that her husband would not return to work that day because he was sick; that he knew nothing as to any alleged injury until Mrs. O'Connor came to see him on October 31st, some six weeks after the incident of alleged injury, when he made out an employer's report on the basis of her statement at that time. Lundgren testifies to the probity of Connor, and claimant seems equally well satisfied as to the sincerity of Lundgren.

In this record, as Exhibit D-2, appears a statement signed by J. B. Connor and witnessed by Mrs. J. B. Connor, under date of November 9, 1923, relative to existing disability and its cause. In this statement there is no reference to any sort of accident or specific injury. It is simply related that "I received an attack in the back of left hip in the manner of an aching pain such as might be caused by a wrench or a strain."

The word "attack" is used several times in this statement as applying to the inception of disability. This statement is in a measure repudiated by claimant as having been the product of misplaced confidence on his part, and of undue persuasive influence on the part of a representative of the insurer, but the said statement bears upon its face much evidence of accurate transfer or personal recital to paper based upon statements of the undersigned. This exhibit is not held to be controlling in this case, but significant as to the general situation.

That the diasbility claimant sustained had its origin in lumbago, to which he was subject, a cause not arising out of employment seems most probable. In any event, the claimant has distinctly failed to meet the requirements of the burden of proof imposed by statute.

It is impossible to weigh this evidence and consider the entire situation involved and differ in conclusion from the arbitration decision and which is hereby affirmed.

Dated at Des Moines, this 4th day of September, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

PSOAS ABSCESS HELD DUE TO INJURY

Lloyd Patterson, Claimant,

vs.

Central Iowa Fuel Company, Employer,

United States Fidelity & Guaranty Company, Insurance Carrier.

Clarkson & Huebner, for Claimant;

Mabry & Mabry, for Defendants.

In Review

Since the latter part of July, 1923, Lloyd Patterson, the claimant herein, has been totally incapacitated from earning.

Existing disability is obviously immediately due to the development of an abscess in the left groin, which has made necessary a number of operations and the ultimate result seems undeterminable.

When Dr. L. K. Meredith, of Des Moines, took the case in the early part of August following the injury, the workman was running a temperature of 104½ degrees. He had recently lost the use of his left leg and was in very serious physical condition. After removal to the hospital, operation was performed for the removal of pus at the left groin.

There is abundant medical evidence in the record, a preponderance of which is to the effect that the ailment for which operation of the groin was performed is scientifically known as a psoas abscess. The weight of medical evidence is to the effect that such ailment is due to trauma along the line of the psoas muscle, usually in the lumbar region, the theory being that the infection seeks outlet along the lines of least resistance, resulting in accumulation of pus at the lower limit of the muscle in the groin.

Dr. Meredith, first called in service, states that claimant gave him no history affording suggestion as to the origin of his trouble until upon searching inquiry as to such cause he referred to a back injury, occasioned in lifting coal cars. The depositions of five physicians are in the record. All these doctors seemed to search for some such cause. Nearly, if not all, medical witnesses seem to agree that if injury had been sustained as alleged by claimant, explanation of the existing disability would be afforded. So it becomes necessary carefully to consider what the record discloses in the way of sustaining history.

At the arbitration hearing Lloyd Patterson testifies that on the 10th of July, 1923, and for some time previously he had been in the employ of the defendant fuel company at Tipperary, in the capacity of what is known in miner's parlance, as trapper. In the process of cutting out a number of coal cars at one of the switches a number of the cars left the rails, when it became necessary to lift and shove them back on the track. He testifies that a method of handling these small cars was to place his back against the same and lift and slew the car around to its proper position. While lifting on one of the cars he says his foot slipped and he struck his back against the head of a bolt used in the construction of the car. He worked the rest of the day without much distress. That night his back seemed to itch or smart. Next day the

mine was not working. He thinks he worked on the 12th. Is sure he worked on the 13th. There was some distress at the point of injury, but not to a disabling degree. Then the mine closed down. About that time he made a visit to relatives in Des Moines. About eight days after the injury as alleged, his left leg commenced to bother him.

August 4th following, Dr. Meredith was called to see the patient at the home of his brother. His leg was then helpless and he could not get about at all without help. Witness says he did not venture information as to his back injury because he was too sick to remember. The record shows he was in a considerably demoralized condition.

At Tipperary claimant lived at the home of his brother-in-law, Harry E. Perry, who testifies substantially as follows: He says that on an evening on or about July 10th, 1923, claimant told him of an injury to his back, incurred during the day's work. It seemed from the evidence of this witness that it had been the custom of each of these brothers-in-law to wash the back of the other when in the evening bath. Examining Lloyd's back while in the bath after he had his attention called to the incident of the day, he found a little red spot about the size of a pea. He says subsequently he washed claimant's back twice and saw it once afterwards, before he went to Des Moines.

The point of injury was about three inches from the spine on the left side and near the lower rib. About the fourth day the red spot remained, surrounded by purple surface, in all as large as a half dollar; that the point of injury was puffed out some. Claimant made considerable complaint of progressive development of pain in his back. He had bathed his back nearly every day for some time prior to the incident of lifting the cars and had discovered no evidence of injury or effection.

William Storms in evidence says he has known claimant for twelve or fourteen years. Says a day or so afterward Lloyd informed him that he had hurt his back; that he pulled up his shirt and showed him a red spot about the size of a quarter or half dollar. He seemed to be suffering quite a bit. Says he saw his back several times. At the time he last saw it, it was puffed out he would judge about like a hen's egg.

Levi Storms says claimant told him about his back injury sustained while lifting cars two days after the incident. He showed him his back. Testifies to a red spot about the size of a half dollar or a little bigger. Neither of the Storms are related to claimant.

Sam Patterson, an uncle of Lloyd Patterson, says claimant told him about the car lifting incident, and that he had hurt his back. He thinks this was a day or two after it had occurred.

J. E. Patterson, a brother of claimant, then living at Des Moines, says his brother came to his home in July of 1923. He informed him that a few days previously he had injured his back, as hitherto stated in evidence; that upon examination he found a bruised spot, kind of greenish bruise, about the size of a half dollar or a little bigger, and that his back was swelled a little. Before Dr. Meredith was called on August 4th, he had lost the use of his left leg.

In this record history there would seem to be abundant basis for the conclusion that Lloyd Patterson suffered an injury to his back, as he states, and that the injury was progressive in tendency from the day it was sustained to the time the case was taken by Dr. Meredith.

The hypothetical question asked physicians would seem to have been well founded in comprehensive statement substantially corroborated. Since the preponderance of medical evidence sustains the hypothesis that a psoas abscess usually results from an injury higher up the psoas muscle, connection would seem to have been well established between the point of injury and the site of the abscess. Doctors inclined to the belief that symptoms of trouble should substantially appear at the point of injury should find in this record reliable connection between the injury and its later development.

Several months prior to the car lifting incident claimant had sustained an injury to his knees. At the arbitration hearing there was persistent effort on the part of counsel to connect the abscess development with this prior injury. One doctor testified to apparent relationship herein. Consideration of the entire record would seem to discredit, if not to demolish this theory. If, however, the defense had succeeded in establishing this contention, the obligation of the defendants would not be in the least diminished because the knee injury clearly arose out of and in course of employment, and existing disability would be compensable to the same extent as if it had its origin in any other compensable relationship.

In arbitration it was held that claimant "is now totally disabled as result of injury arising out of and in course of his employment by the defendant employer" and order was issued for compensation payment of $15.00 a week from July 13, 1923, to date, payments to continue until claimant is able to resume work.

The arbitration decision is hereby affirmed.

Dated at Des Moines, this 10th day of September, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DURATION OF DISABILITY

L. A. Wang, Claimant,

vs.

Cudahy Packing Company, Defendant.

Naglestad, Pizey & Johnson, R. E. Rieke, for Claimant;
Snyder, Gleysteen, Purdy & Harper, for Defendant.

In Review

The claimant in this case was injured under compensable circumstances by the breaking of several ribs while in the employ of the defendant Packing Company on January 18, 1924. The maximum rate of compensation payment was made weekly from that date until the 19th day of April next ensuing. He returned to work on the 22nd day of April and

tender was made of the sum of $4.30 in additional payment for the full period of time lost.

Medical testimony submitted indicates no permanent injury as the result of the accident of January 18, 1924.

The evidence of Doctors Cremin, Sawyer and Koch does not support a claim for continuing disability.

Testifying for claimant, Dr. Nervig ventures the opinion that claimant is not able to labor as he was before the accident.

Claimant Wang testifies that the work at which he was engaged on his return after the accident was harder than he was performing before that date; that he was "compelled to do lifting of heavy loads and things of that kind." He further says he worked every day until he got fired because he wouldn't sign up the final compensation papers. This was for a period of about two months.

The fact that claimant was for two months after his injury able to do, and did do harder work than he was doing before, as he admits, and since there is no evidence of recurring or relapsing conditions, any claim for continuing disability would seem to be substantially discounted.

Compensation in the sum of $300.00, including $185.00 already paid, was ordered in arbitration. The award would seem to be ample in view of the circumstances hereinbefore noted and all the evidence of record.

The arbitration decision is affirmed.

Dated at Des Moines, this 11th day of March, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

STREET CAR CONDUCTOR DENIED AWARD FOR ALLEGED DISABILITY

Ed. Rasmussen, Claimant,

vs.

Omaha & Council Bluffs Street Railway Company, Defendant.

Cockshoot & Cockshoot, for Claimant;

Tinley, Mitchell, Ross & Mitchell, for Defendant.

In Review

In arbitration at Council Bluffs, January 13, 1925, additional arbitrators were waived by stipulation of counsel, and Deputy Commissioner, Ralph Young, found for defendants.

Claimant alleges injury in the employ of this defendant as conductor in January, of 1924, "right around the 10th," under circumstances substantially as follows:

In entering the car, after piloting the motorman across a group of railway tracks, he lost his balance in closing the car door upon re-entering and "fell over on the iron rail on the right hand side." He says he felt pain for about an hour at the point of bodily contact with the railing.

He continued in service until the 10th day of February, 1924, when he says he was no longer able to continue his work for his employer.

At the time of the alleged injury, claimant Rasmussen took the names of Carl Shearer and Edward Stewart, who were passengers. These men testify to some such incident as is outlined by claimant as the basis of this action.

Dr. B. O. Burton, Osteopath, testifies that he first treated Ed. Rasmussen February 22, 1924, and continued until seventeen treatments were given. He says he "found the right innominate in anterior condition. The ribs on the right side were down and in, not level." Considered him "able to carry on any job requiring him to be on his feet most of the time." Upon more rigid questioning, thought he might not be.

Doctors Bellinger and Hull, examining claimant in April, 1924, diagnosed the case as sub-acute appendicitis, recommending operation, which was declined by claimant.

Dr. A. F. Tyler gave Ed. Rasmussen X-ray examination and interpreted pictures taken as disclosing no abnormal condition of the hip.

In the department files appears a report of examination made by Dr. Fay, department Medical Counsel, under date of January 20, 1925, in which it is stated:

"There is no limitation of motion in the right hip joint. The legs are of equal length. X-ray examination of hip by Dr. Burcham is entirely negative. I also had Dr. Harnagle examine this man. Neither of us could find any pathology. There is no disability at this time. He should return to work."

Claimant contends he has been unable to work since he quit the employ of the defendant street railway company February 10, 1924.

The record would seem to amply justify the arbitration finding for defendant company. Accepting at full value the account claimant gives of his injury "right around January 10th" there would seem to be slight foundation for extended disability. He continued in regular service for a month. No medical support is given to the contention that such disability as he may have experienced is due to the street car incident.

Assuming claimant has been unable to work as he alleges, it is mere conjecture to continue the assumption that his disability arose out of his employment.

The disability of which he complains has little foundation in any medical evidence. The only witness he calls is the Osteopath, Dr. Burton, and no endeavor was made to induce this witness to couple any disability for which he gave treatment, with the alleged accident. The "grating" or "clicking" of the hip joint would seem to be overworked by claimant. It would not seem to afford any reasonable support for this claim.

The circumstance of "spotting" two passengers as witnesses to the stumbling incident is not at all reassuring as to good faith.

Ed. Rasmussen might have been disabled as he contends. Possibly he was so disabled, but he certainly has not sustained the burden of proving such contention. Counsel succeeded in getting all medical witnesses to

admit that it was possible for this disability to have arisen out of employment in the manner alleged. But this is by no means convincing, and is not to be taken seriously in support of the required burden of proof so frequently asserted and defined by our supreme court.

The arbitration decision is affirmed.

Dated at Des Moines, this 13th day of March, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

FAILURE OF PROOF AS TO ALLEGED DEPENDENCY

F. O. Van Pelt and Mattie Van Pelt, Claimants,

vs.

Northwestern States Portland Cement Company, Employer,
London Guarantee & Accident Company, Insurance Carrier.
Healy & Breen and R. F. Clough, for Claimants;
Chandler Woodbridge, for Defendants.

In Review

In the employ of the defendant Cement Company, S. J. Van Pelt lost his life, December 3, 1923.

In arbitration at Mason City, September 23, 1924, award of fifty-seven cents per week for a period of three hundred weeks was made these claimants as the dependent parents of the deceased.

The only issue in this case is as to whether or not these parents were dependent upon their deceased son at the time of his death within the meaning of the statute.

The record does not disclose sufficient basis for assuming dependency in any degree. During the year prior to his death no showing of contribution is made. For several years prior to August, 1923, when the deceased took work with the defendant at Mason City, he made his home with his parents, excepting when engaged in farm work during the farming season.

It would appear from the plain statements made that when at home he paid $5.00 a week for his board, room and washing. The inference is justified that when he was out of work he received this service just the same without payment. Some five years prior to his death he had bought a lawn mower, and somewhere in these years a bucksaw, both of which have been in use at the family home. He had occasionally made small purchases for his mother, and perhaps bought some groceries for the table.

There is no specific evidence whatever as to definite support contributed for which service was not given in return. Such articles as he purchased of which mention is made would appear to be meager gifts of somewhat rare bestowal.

The arbitration decision is reversed.

Dated at Des Moines, this 19th day of May, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

WORK ON TOWN HALL CHIMNEY HELD INDEPENDENT EMPLOYMENT

John H. Kirchoff, Claimant,

vs.

Town of Hartley, Employer,

London Guarantee & Accident Company, Insurance Carrier.

In Review

On the 28th day of October, 1924, while doing repair work on a town hall chimney, John H. Kirchoff sustained injury resulting in three weeks of disability and substantial medical and surgical obligation.

At the arbitration hearing at Hartley, May 1, 1925, additional arbitrators were waived and the case was submitted to the Industrial Commissioner. Finding was for defendant on the ground that at the time of his said injury claimant was engaged in employment as an independent contractor.

The transcript of evidence discloses that near the time of injury, as above stated, this claimant was employed by the Mayor to rebuild that part of the chimney above the roof of the Town building, about five feet in height, requiring a few hours of time.

Claimant testifies that he had done occasional jobs for the town and charged them by the hour at his regular price without any agreement having been entered into as to terms.

Hugh Ewoldt, Mayor of Hartley, testifies that he met Mr. Kirchoff on the street. "I said: 'John, will you fix the chimney on the City Hall as quick as you can?' He said: 'Maybe I can't get at it today, but will fix it just as soon as I can.' I said for him to get the material and charge it to the Town, hand me the bill, and I will take it before the Council and it will be all right."

The Mayor further testifies that there was no talk as to what the charge would be, either by the job or by the hour. Asked if there was "any difference in the way you hired this man to work from time to time and the way you hired a blacksmith, carpenter, or any other job the town had to have done?" The answer was "No."

Claimant had been doing all kind of mason work in the town of Hartley during a period of twelve or fourteen years. It would seem to have been the rule for him to work by the job or by the hour at a price fixed by himself.

The character of this engagment is specifically defined by the Mayor in his statement, that he hired claimant as he would have hired a blacksmith or carpenter, or any other man doing jobs for the town.

According to the rule laid down in many decisions of courts of last resort, one who is held to his employer only as to the results of his work and not as to means employed, is an independent contractor and not an employe. Another common rule prescribed is that an independent contractor controls his own time and is not held to specific hours of service.

These definitions of independent contractor snugly fit the relationship of this claimant to the Town of Hartley. He set his own price for the work. He used his own tools. He was to deliver a finished job, and was responsible to the town only as to results, retaining control of means and time to produce the same.

This situation affords no basis for compensation relationship. If the case of Kirchoff is covered, then the town would be held to any drayman delivering coal with his own team to the city, to any glazier putting in a window glass, or to any carpenter nailing down a lose board in case of injury in such temporary job work. If this is not independent employment, it is difficult to conceive of any such thing as independent employment in compensation jurisdiction.

In its definition and reasoning as to the relationship of independent contracting to employment, the Iowa Supreme Court has spoken in terms of clear interpretation. Reading.

Pace vs. Appanoose County, 168 N. W. 916;
Storm vs. Thompson, 170 N. W. 403;
Norton vs. Day Coal Company, 180 N. W. 905.

No doubt can exist as to the meaning of this term, and these cases are squarely opposed to award in the case of Kirchoff vs. Town of Hartley.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 5th day of June, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INJURED WORKMAN NOT HELD RESPONSIBLE FOR OBSTINACY DUE TO INSANITY

Dan Krpan, Claimant,

vs.

Shuler Coal Company, Employer,
Bituminous Casualty Company, Insurance Carrier.
Clarkson & Huebner, for Claimant;
Bates & Dashiel, for Defendants.

In Review

By stipulation of counsel this case was submitted to the Deputy Industrial Commissioner for arbitration at Des Moines, July 24, 1924. Owing to settlement negotiations pending decision was deferred until September 29, 1924, wherein compensable disability of the claimant was estimated at twenty per cent permanent.

From this decision both parties appealed.

Submission in review to the Industrial Commissioner occurred June 11, 1925.

October 21, 1922, in the employ of this defendant Dan Krpan sustained an injury to his head from a fall of slate in employer's mine. A voluminous record deals largely with the physical condition of claimant

prior to October 21, 1922, which seems to justify the conclusion that he was of average strength and earning capacity. The injury to his head would seem to have resulted in a fracture of the skull.

The case has been decidedly perplexing to examining physicians. Their evidence differs substantially as to physical condition of the workman since his injury, and it is difficult to conclude from this conflicting evidence as to the actual measure of disability existing, and as to the proximate cause thereof.

Claimant was first taken to Dr. Jones, of Waukee, for treatment and was later transferred to the Methodist Hospital at Des Moines. After a few days he left the hospital and went to a hotel against orders. A few days later he returned to the hospital but remained for only a few days when he again left on his own motion.

December 30th he was taken to the Miners Hospital at Albia where his obstinacy was continued, and he arbitrarily left after two or three days. He was a little later taken to a hospital at Centerville only to repeat his former arbitrary conduct.

On the part of the defense it is contended that but for his persistent contumacy claimant would have made more rapid and substantial recovery.

Testifying for the defense Dr. T. E. Gutch in his deposition stated that he believed the workman to be insane. Other expert witnesses definitely supported the conclusion that claimant was of unsound mind during this period of conspicuous obstinacy.

Upon such conclusion claimant is not held responsible for any degree of disability that may have resulted from his perverse conduct in connection with hospital and medical treatment.

Therefore, the extent of disability must be estimated upon the basis of actual incapacity found to exist upon the best possible interpretation of medical evidence submitted.

The chief source of disability would seem to be found in evidence relating to conditions of the heart. Several physicians testify to aneurism —enlarged aorta. It seems necessary to conclude that this condition actually exists.

Furthermore, it seems reasonable to assume that this affection of the heart existed prior to the injury of October 21, 1922.

There is some disagreement on the part of experts as to whether or not the injury to the skull would contribute to accelerate the infirmity of aneurism, but the weight of evidence is clearly with the affirmative.

The best evidence as to the measure of disability and as to causes contributing thereto is held to appear in the deposition of Dr. F. A. Ely, of Des Moines, who reaches the conclusion that Krpan is not more than half a man in working capacity, and that disability should be fixed at fifty per cent of total, on the basis of his latest examination May 5, 1924. Testimony of Doctors Eli Grimes and W. L. Bierring, eminent diagnosticians of Des Moines, substantially support, and other medical evidence reinforces this conclusion. Dr. Van Epps, Professor of Neurology at the State University, differs in his conclusion of the case—in fact,

differs so widely from the greater weight of evidence as to discount the importance of his statements.

The record justifies the conclusion that the arbitration estimate of twenty per cent of total permanent disability should be increased to fifty per cent of such disability, and such modification is hereby ordered.

Dated at Des Moines, this 2d day of July, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

OSTEOMYELITIS—DISABILITY DUE TO TRAUMA

Cecil Munson, Claimant,

vs.

Western Asphalt Paving Company, Employer,

United States Fidelity & Guaranty Company, Insurance Carrier, Defendants.

Helsell & Helsell, for Claimant;
Farr, Brackney & Farr, for Defendants.

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 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 witnesses under scrutiny of the abitrators.

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.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

ESTABLISHING IDENTITY OF EMPLOYER

Mrs. Grace Murphy, Claimant,

vs.

James R. Shipley, Employer,

Southern Surety Company, Insurance Carrier.

Carl J. Knox, Miller, Kelly, Shuttleworth & McManus, for Claimant;
Paul Risher and Jennings Adams, for Defendants.

In Review

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 the 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 treamsters 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 question 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 anyone other than James 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 vs. 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 employe 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 employes in a business or enterprise which customairly 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, this 20th day of November, 1924.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme courts.

SCOPE OF EMPLOYMENT—TERMINATION OF ENGAGEMENT

Gust Johnson, Claimant,

vs.

City of Albia, Defendant.
Mabry & Mabry, for Claimant;
David Strieff, and Bates & Dashiel, for Defendant.

In Review

Submitted to the deputy industrial commissioner at Albia, September 13, 1924, it was in arbitration decided that the defendant is held in compensation payment to Gust Johnson at the rate of $15.00 a week for a period of two hundred twenty-five weeks for the loss of his left arm November 16, 1923, as arising out of and in the course of employment by the defendant.

For a period of more than seven years prior to the date of this accident the claimant had been in the employ of the city of Albia at one of its water plants. His chief occupation was attending engines and pumps in use on the premises of the city in connection with the water supply. For a considerable time prior to November 15, 1923, his salary had been fixed at $175.00 a month, together with the use of a cottage belonging to defendant near the said plant. July 1st his cash salary had been reduced to $100.00 a month, and because of this reduction claimant notified the council that he would surrender the job on November 15th.

George Seibert who had been serving the city in the capacity of superintendent of the water system was detailed to succeed the claimant at the pumping station and he assumed charge of the plant the evening of November 15th.

On the morning of the 16th, the claimant drove out to the pumping

station, evidently for the purpose of gathering up and bringing in a number of tools of his own he had used in his work, and for the purpose of milking his cow, pastured near at hand. He testifies to this fact, and this testimony is corroborated by Gust Almquist, his son-in-law, and Mrs. Gust Almquist, his daughter. Claimant testifies that on reaching the station he inquired if everything was all right and Seibert said: "Yes, only I couldn't get the south pump to take water." Claimant testifies: "I says, 'I sometime have a little trouble with it, but always get it started.' He says then: 'Well, let's try it.'" As to what followed Mr. Johnson testifies:

> "There was an inch and a half valve down in the pit and I have always had to start that pump first and open that valve and Mr. Seibert had never opened the valve, and I don't know whether he knowed where it was, even, at that, and you can't start a pump with a lot of air on top of the valves. No man can. And the pump was full of air and I opened that valve and tried to get the air out of it, but the pipe was so full of air that it wasn't priming. There was a priming valve on the pump that I put on that south pump years ago, and there was water in the pit and I had only a pair of shoes on and going down I kind of tip-toed, and I went back there and opened this priming valve and coming back there was a narrow place about two feet and a half, I should judge, and the suction pipe laid there and I walked tip-toed, and I stumbled, you know, on that suction pipe and the gear wheel was on this side, so it couldn't be my coat ketched in the wheel. When I fell it caught this arm right in the gearing wheel for there was no protection on there to protect it."

The arm was amputated at the shoulder.

It is the contention of the defendant that the parties to this action severed the relation of employer and employe on the evening of the 15th, the accident occurring on the 16th of November; that the act of Johnson, which caused the loss of his arm was in no wise authorized, and that the deputy commissioner was, therefore, in error in holding the city of Albia in compensation payment.

George Seibert testifies that one of the pumps failed to function after he had exhausted all the remedies within his knowledge to induce action. He says: "On the morning of the 16th when Johnson drove up and remarked: 'Well, George, how is everything going,' and I swore, and I says: 'That engine on the south end isn't working right.' He says: 'What do you mean, the engine or the pump.' I says: 'Well, engine.' I had trouble with the starting. The battery was disconnected. The pump I couldn't get to catch the priming so he went over to get some tools, took it down in this pit. He says: 'Well, the trouble is in that foot valve, but I will show you how I catch the priming on it.'"

It is the contention of claimant that going to the plant after his tools on the morning of the 16th was entirely within the range of his employment. Furthermore, to promote the interest of the employer in his endeavor by putting the balky pump to work was well within the zone of compensation coverage.

These questions are involved:

1. Did this employment and relationship cease when Johnson left the premises of the employer on the evening of the 15th?

2. If not, does the statute afford compensation coverage for the act of claimant which resulted in the loss of his arm?

It is commonly held that an employe is within the zone of his employment after his working engagement has terminated, until he has time to leave the premises of his employer, or until properly related incidents are closed.

It is further held that after the close of working engagement proper any related service is within the compensation coverage.

The record shows that the trip of claimant to the premises of the employer the morning of November 16th was for the dual purpose of milking his cow and removing tools belonging to him that he had used in employment. These tools he had left in the pump house consisted of a sledge, a monkey wrench, a screw driver and a couple of other wrenches.

His approach to the premises was evidently of more than ordinary interest to Seibert, his successor in service, who describes in evidence how he had tried in vain to get action on the idle pump. The water in the tank was lowering and he seemed to fear an emergency that might exhaust the limited supply. As he was talking to a chance bystander he says: "I happened to look up, and I says 'Here comes Mr. Johnson.'" Then "Mr. Johnson comes along and waved his hand and I waved back at him, and he smiled and I smiled at him." It was then Johnson asked: "How is everything going," and then Seibert swore, and told him his trouble.

Concern, anxiety and appeal is evident in this conversation outlined by Seibert. Johnson was the one man who knew most about the engines and pumps after seven years of contact with them. Johnson offered to help out. He would have been unworthy of respect and confidence had he failed to sympathize with the situation. The stalling pump had been last used by him. He understood its tantrums. He felt for the concern of Seibert, and he was mindful of his obligation to the city as a faithful servant of many years. He told Seibert how he would handle the idle pump. He says Seibert remarked: "Let's try it."

Seibert says he made no such remark, but he is careful not to testify to any word of protest he made against the proposed endeavor. He had been working with Johnson as a superior in authority. It would have been so easy to say: "Never mind, Gust, this is my job." Or, "I'll take care of it myself," but no such suggestion is in evidence to offset the state of mind he was in when he swore and told his troubles to Gust. After the lapse of a year the testimony of Seibert is significant of appeal to his predecessor at the pumps.

So without any motive whatever suggesting personal interest or advantage Gust Johnson goes to the pump pit. It is six or seven feet deep. It had six or eight inches of water in the bottom. Going down meant wet feet, soiled clothes and personal discomfort to a man seventy years old, but it seemed up to him to help out, which he did with the sacrifice of his arm as the price of loyalty and helpfulness.

With a gesture of gentle disdain counsel would have us assume Johnson was fairly a trespasser—an interloper, as it were, at the time of his

accident. He would make it appear that his testimony is merely self-serving and improbable, though in argument he pays high tribute to the character and standing of claimant. It is as reasonable to assume that Seibert was trying to color his testimony to serve his employer as that Johnson was trying to serve himself with definite perjury. The testimony of Seibert, closely scrutinized, actually sustains the account of Johnson, and reflects doubt upon his own endeavor to create the impression that Johnson merely butted in to the situation and gave his arm for his impertinence.

The citation of most value submitted in this case is *Mitchell vs. Consolidation Coal Company*, 195 Iowa, 415.

Mitchell was discharged November 10th. November 13th he engaged for service with another employer. November 15th he returned to the mine to measure up his work and to remove his working tools. In this wholly self-serving enterprise he sustained injury resulting in his death. It is a common mine custom for a miner to clean up his work and square up his room when he closes his engagement. This, Mitchell failed to do, but whether with or without the consent of the employer, does not clearly appear in the record. The court affirmed award to the dependent widow.

It seems reasonable to assume that Johnson in good faith returned for his working tools the morning of the 16th. He had moved his family and household effects, and naturally would transfer his tools. Council declares he evidently did not need them, as he did not take them away until months later. But losing his arm naturally made his tools of less immediate importance and the death of his wife in the meantime further interrupted his usual working program. Final payment of wages due occurred some time later.

Counsel contends that the return of Johnson for his tools was a mission wholly separate and apart from the incident that caused his death. This may be so, but not necessarily. His self-serving mission accounts for his visit to the plant as a like mission called Mitchell back to the mine. Once there, however, the appeal of his old employment in its needs for his knowledge gained by years of experience, and the evident anxiety of Seibert, a long time fellow employe and superior, did the rest with Gust Johnson. It was an accident reasonably incident to the employment.

It must be held in accordance with the decisions of the highest courts in this and other states that this workman was under the coverage of statute at the time of his return to the premises of employer the morning of November 16th as to all risks inherent in the employment. It will hardly be denied that if in the act of recovering his tools he had been injured, coverage would have existed. He was where he had a right to be, and the appeal of his successor and of the water and pump situation generally led him to do what he would naturally be expected to perform. Therefore, he was afforded protection from any inherent peril in his endeavor to serve the interests of his employer. In the Mitchell case Justice Weaver said:

"The deceased was not a trespasser in the mine. The relations of

employer and employe by virtue of which he entered the mine and had performed service there were not fully dissolved. The order for a car for his tools is shown not to have been presented until about 10 or half past 10 of the morning of the 15th of November; and it was still before noon when the witness met him going down the manway, to hasten the hoisting of the tools. Not until that was done can it fairly be said that his protection as an employe terminated, as a matter of law."

American Bridge Company vs. Funk, 187 Iowa, 397:

"Deceased had been ordered off the bridge work because of his intoxicated condition. He had retired beyond the zone of peril when he returned to see the boss on a matter wholly self-serving. Death overtook him on the way. Award was sustained."

In the renowned McNicol case, 102 N. E. 697, it is cogently stated:

"If injury can be seen to have followed as a natural incident of the work and to have been anticipated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises out of the employment."

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 5th day of February, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court, pending in supreme court.

COMMON LAW MARRIAGE NOT ESTABLISHED

Carrie Perry, Claimant,

vs.

Arthur H. Neumann & Company, Employer,

Aetna Casualty & Surety Company, Insurance Carrier,

Eliza Bradshaw, Intervenor.

H. R. Wright, for Claimant;

Lee G. Ingraham, and John Inghram, for Defendants,

C. H. Johnston, for Intervenor.

In Review

Compensation is claimed by Carrie Perry on the basis of alleged common-law marriage relation between this claimant and Clifford Perry, who lost his life in the employ of Arthur H. Neumann & Company, December 12, 1924. The intervenor is the mother of the deceased, Clifford Perry, who claims relief upon the basis of contribution to actual dependency.

It was held in arbitration at Des Moines, March 23, 1925, that Carrie Perry failed to prove that she was the wife of Clifford Perry, and that defendant insurer shall pay Eliza Bradshaw the sum of $4.00 a week for a period of 300 weeks on the basis of actual dependency.

As a witness in her own behalf claimant testifies that "on or about the 21st day of January, 1924, Clifford Perry and myself entered into an agreement to live together as husband and wife and continued to cohabit and was living as such at the time of his death."

It would appear that she had secured a divorce about the 12th day

of January, 1924, and she further testifies as to Perry, "So we decided then that he would just stay there with me and make my living."

On cross-examination witness states that Perry never stayed with her "constantly until I got my divorce," though she admitted that he had been staying with her more or less.

The home of Carrie Perry was at 635 East Second street. It is established and admitted in evidence that Clifford Perry during all the period of alleged marital relations, and for some time previously, maintained a residence at 414 East Walnut street. Claimant admits he kept part of his clothes there. She insists, however, that he spent every single night with her in her home, except at one period when for a few days he was out of the city.

Testifying for defendant, Joe Shane gives his business address at 420-22 East Walnut, and his business as selling, "accordions, shoes, and everything for working people." This place of business he states to have been two or three doors from 414 East Walnut, the residence of Perry. He had known Perry for six years. Testifies he saw him "in the morning about 5:30 every time he would go about and buy a loaf of bread and things." Then he saw him coming in about 5:30 in the evening. He came in to buy oil nearly every day for the stove where he was batching. He passed as a single man. Never knew him to mention a wife or any woman with whom he was living. Knew him familiarly right down to the date of death. Saw him every day. Saw him carrying water from across the street at the fire department as there was no water in his rooms.

G. H. Cleggett, janitor of the Municipal Court was called by defendant. Had known Perry five years. Lived two blocks from him. Was his particular friend. Saw him nearly every morning eating breakfast at Shaw's restaurant. Went out with him two or three times a week. Had seen him in public with Carrie Perry, but he had never mentioned marital relations of any kind. Never referred to this woman as his wife. To his knowledge Perry had spent all or most of his nights at 414 East Walnut. Witness used to go up there a good deal in the evening and he would always be there. He cooked in those rooms. Had seen him eating there. Knew he got his water across the street at the fire house. Knew he bought groceries and took them up and there cooked them. Put whatever he had to cook on his oil stove and let it cook slow and it would be done when he got home.

Earl Williams, testifying for defendant, said he had known the deceased since about 1914 or 1915. He was a close friend. His home was at 414 East Walnut, and he was a single man. Never said anything about any marriage relations of any kind or character.

Witnesses testifying as to the condition of Perry's rooms at 414 East Walnut after his death state they found sugar, salt, oatmeal and other edibles in the kitchen cabinet. There is some dispute as to the condition in which the bedding was found. Clothing worn by Perry appeared in these rooms upon which he had been paying rent for years up to the date of death.

Introduced as an exhibit is a receipt signed by J. S. Dunn, as receiv-

ing from Mrs. Clifford Perry for rent to December 13, 1924, $16.00. This is evidently in payment of one month's rent.

E. G. Miller, in the grocery business at 507 East Second street, testifies that Perry came into his store the month before he was killed and told him to let Mrs. Perry have any groceries she wanted and he would pay the bills.

In re *Boyington's Estate, Jones vs. Williams*, 157 Iowa, 470, the Iowa Supreme Court records this interpretation of common-law marriage:

"While cohabitation and the reputed relation of husband and wife may be shown as tending to give color to the relation of the parties and the recognition each by the other of the existence of a marriage between them, the fundamental question in determining whether such relation constitutes a common-law marriage is whether the minds of the parties have met in mutual consent to the status of marriage. Neither such intent nor consent can be inferred from cohabitation alone, and reputation is of no significance save as it has a bearing on the question of intent."

Does the case of Carrie Perry justify with this judicial diagram:

The record contains very meager support to the contention of claimant. There is little evidence upon which to found the belief that these parties in good faith agreed to enter into the marriage relation making common cause of their domestic affairs and living under conditions usually existing in the marital state. Perry may have upon rare occasions spoken of this woman as his wife, but there is little support to this conclusion. She never went by his name in the ordinary neighborhood association. She was not held out as his wife in any sort of common understanding.

It is clearly established that he maintained a home elsewhere, at 414 East Walnut street, while the home of claimant was 635 East Second street. During the period of nearly a year, covered by this alleged marriage relation, he paid rent upon the Walnut street premises. He is known to have occupied them a good share of the time during his leisure hours. The conclusion is justified that he cooked and ate there many of his meals; that he carried water to these rooms from the fire department; that he kept at least a considerable portion of his clothing there; all of which affords support for the conclusion that he did not consider the home of this claimant as his home in any ordinary understanding of this term.

The fact that this claimant holds a receipt given to Mrs. Carrie Perry for one month rent out of the eleven months alleged marital period, also that the grocer testified that he was authorized to furnish her groceries as the wife of Clifford Perry the month prior to his accidental death, is not overlooked. These incidents may easily be regarded as intention on the part of the deceased, merely to furnish a quid pro quo for favors received, as it is not to be presumed a man would sustain the relations he evidently sustained with this woman without any financial contribution.

Such evidence as there is in support of the contention of claimant is shifty, evasive and indefinite and not at all calculated to inspire confidence. Witnesses contradict each other and themselves in their statements relative thereto.

The statutes of Iowa (Code Section 10437) recognize the validity of "marriage solemnized with the consent of the parties in any other manner than herein prescribed." Does the evidence in this case suggest any sort of unusual ceremony or agreement that might pass as solemnizing a mutual compact of marriage relations? While this statute tolerates the irregular solemnization, it plainly suggests definite agreement, as of a specific date, to enter upon and abide by the usual obligations of the marital state. To show that this sort of marriage is repugnant and merely tolerated after the fact the law prescribes that "all persons aiding or abetting them shall forfeit to the school fund the sum of $50.00."

Carrie Perry, improperly so-called, on the witness stand, expressed very loose ideas as to common-law marriage. She says: "We decided then that he would just stay there with me and make my living." Asked: "What is common-law wife?" She said: "Well, when you are living together six or seven months you are supposed to be man and wife, they tell me, in Iowa." No thought of any antecedent solemnizing agreement, specific contract, or the usual home-making factors. She later said it was understood that if they quarreled they could "just split up." Merely a relation of convenience and indulgence, to be dissolved at pleasure.

Evidence affords basis for the conclusion that claimant had not been much known, if at all, by the name of Perry in the neighborhood where she resides. She had usually borne the name of Sheperd, one of the men to whom she claims to have been previously married, though sometimes called Willoughby, the name of her other man. She may have been introduced somewhere by Clifford Perry as his wife. Her most direct testimony to this effect is: (transcript p. 19)

"Q. Well, here is the point, Mrs. Sheperd. How did he happen to introduce you to these people as his wife?

A. Well, he would come in there and he would be drunk with something, that would be what was up, and he would say: 'Well, this was my wife,' and he would be playing with me."

Testimony following is significant of nothing in confirmation of her common-law marriage contention.

Circumstances may exist where it might be well to strain a point to bring an irregular domestic situation into semi-respectable relationship of common-law marriage. In such cases the parties meet conventional requirement. They uniformly hold each other out as husband or wife; they sustain a common interest in domestic affairs and a common purpose in plans and in performance. There is manifest a mutuality of interests, a merging of individual concerns into the common family welfare. The record in this case has almost no resemblance to these conditions and circumstances.

The evidence submitted does not afford support to the assumption of inherent probability as applying to the contention of this claimant. The compensation service is not designed to clothe with respectability relations of criminal intimacy and to reward those who defy the reasonable demands of organized society.

The record contains stipulation between the parties for payment to the intervenor, Eliza Bradshaw, as dependent mother of the deceased, Clifford Perry, in the sum of $4.00 a week for a period of three hundred weeks, if contention of Carrie Perry shall fail.

In its denial of the claim of Carrie Perry, (so called in this controversy) as the wife of Clifford Perry, and in its finding for the intervenor, Eliza Bradshaw, in accordance with stipulation of record, also as to costs of this action, the arbitration decision is affirmed.

Dated at Des Moines, this 20th day of July, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Further appeal abandoned.

ESTABLISHING IDENTITY OF EMPLOYER

A. O. Hauge, Administrator of the Estate of Egil Softing, Deceased, Claimant.

vs.

Wilford Bland, Doing Business Under the Trade Name of Grain Dealers' Supply Company, Employer,

Zurich General Accident & Liability Insurance Company, Insurer, Defendants.

Stewart & Hextell, and Sampson & Dillon, for Claimant;

Carr, Cox, Evans & Riley, Represented by Ehlers English, for Defendants.

In Review

The arbitration decision, filed February 19, 1926, denies recovery on the ground that claimant "has failed to discharge the burden of proving that the deceased, Egil Softing, was an employe of the defendant employer within the meaning of the compensation statute at the time of the injury sustained by him, for which recovery is sought in this proceeding."

Petitioner's Exhibit "B" which appears in this record as constituting a contract between the Grain Dealers Supply Company of Minneapolis, Minnesota, and the Gilmore Portland Cement Company of Gilmore City, Iowa, diagrams relations existing between these parties in connection with the erection of an important extention of the plant of the cement company in the years 1921 and 1922. The exhibit in question comprises several sheets, what purports to be an original contract, together with modification subsequently made. It is alleged by defendant that he was not a party to the contract in its modified form, but from evidence given by Wilford Bland in corroboration of correspondence relative to the modified portions as to more material provisions, the amended contract would seem to be the actual basis of operation, though the modification referred to would not appear to materially affect the issues involved in this proceeding.

In the performance of service as carpenter, Egil Softing sustained injuries April 12, 1922, resulting in total permanent disability, finally

in death. The one and only question involved in this case is as to who was the employer of this workman at the time of his injury.

It is the contention of claimant that under the terms of this contract with the Gilmore Portland Cement Company it was incumbent upon this defendant to deliver to the said cement company a completed structure, and that in this engagement he was held responsibile for all details of employment and character of workmanship. In support of this contention claimant emphasizes the contract provision for the furnishing of certain skilled workmen; that he was to supply certain materials at a maximum price; that he was to receive in payment for these materials promissory notes of the cement company, and that he did receive such notes and used them in meeting his own obligations other than indebtedness for materials so furnished, as well as for this purpose; that these skilled workmen were employed without consultation with the cement company, and that during their employment they were directed and controlled wholly by the defendant.

It is the contention of the defendant that his relation with this engagement was definitely that of superintendent and agent; that any and all workmen employed by him were engaged in his capacity as agent for the Gilmore Portland Cement Company, and that in their direction, supervision and control he was exercising the function of superintendent and not that of an employer. He insists that terms of the contract are wholly inconsistent with the assumption that he was responsible to the cement company or to the workmen in any other relationship than that of superintendent. He further insists that he purchased the material ordered by him because it was understood between the parties he could buy the same cheaper than the cement company; that the margin of five per cent on the purchase of lumber, and two per cent on the purchase of steel was in the nature of remuneration for handling the same and assuming payment therefor.

Reduced to practical demonstration, the terms of this contract, together with all the incidents of construction and relationship indicate a situation substantially as follows:

The cement company in its practical operation had need for a substantial increase in storage capacity. Storage tanks in use having been constructed in a satisfactory manner by the defendant Bland some years previously, he was called into consultation. Bland was carrying an expensive organization which it seemed necessary to maintain, and he desired to take on work that would contribute to overhead expenses during a dull season. The chief charge in this connection was a superintendent, costing in salary and expense, about $450.00 a month. The cement company apparently did not have in sight funds for a considerable portion of this heavy charge of construction. Bland could arrange to buy large quantities of material, taking in payment promissory notes of the cement company which were to be and were largely paid in products of the cement factory.

From this peculiar situation a unique contract was developed, and its peculiarity is substantially due to the peculiar condition in which each party to the contract found itself at that particular time. Facts

already recited show cause why it was to the advantage of each party to have the defendant purchase the building materials he secured for the cement company. Each party was served by the arrangement, which made it incumbent upon the defendant to furnish certain skilled laborers. This class of labor was not available at Gilmore City. Responsible for the character of the work, the defendant preferred to select the skilled labor employed, while it was to the advantage of the cement company that it should be relieved of this responsibility.

While it often occurs that an employer is legally identified by his exercise of the right of hiring, and having the right to direct and control and to discharge workmen, all these functions may naturally and necessarily be exercised by a superintendent or agent of an employer. Assuming that Bland acted in the capacity of superintendent and supervisor, neither in the interest of himself nor of the cement company would any other arrangement than that he was to have entire control and direction of the men engaged in building operation have been practicable.

In the first paragraph of the contract between these parties it is provided that Bland "promises to design and superintend erection on the property of the party of the second part near Gilmore City, Iowa, a concrete stock-house for the storage of bulk cement according to the sketches, data and information furnished by the party of the second part."

Before beginning work upon the premises Egil Softing and each and every carpenter engaged by Bland was taken to the timekeeper employed by the cement company, who issued to him a card for use in connection with punching of the time clock. The record of his employment was, hour by hour, kept by this timekeeper. Every dollar expended for labor in connection with this building enterprise was paid in checks issued by the Portland Cement Company. There was no profit made by the defendant upon the wages paid to any workman. Employes at work upon the structure other than those engaged by Bland were employed by the cement company, and its employes worked interchangeably in and about the operating portions of the plant as well as upon construction work.

On the fifth day of his Gilmore engagement, Egil Softing was injured. It is in evidence and not disputed that during more than half this period claimant and several other men appearing with him were set to work by a representative of the cement company and worked for several days upon a building known as the sack house, evidently designed for the storage of cement sacks, a building which was in nowise directly or remotely connected with any engagement of the defendant Bland.

A fairly convincing fact as to the relations of these parties is found in the consideration agreed upon and in the element of possible profit to the defendant. For the sum of $3,500.00 Bland was to furnish and to pay a superintendent whose services in connection with this work were estimated at actual cost to the defendant at $1,800.00. He was also to furnish, and did furnish for use in this connection equipment in the way of a steam engine, hoist, hoisting equipment, two hundred special form jacks and heavy wooden yokes, and miscellaneous equipment such

as wheelbarrows, concrete buckets, steel cables and tackle, and various other construction equipment. The rental of this equipment for use in this building enterprise was held to be worth $1,500.00. Actual expense incurred in travelling and hotel bills was in the neighborhood of $220.00. The aggregate for superintendence, equipment, rental and these expenses slightly exceeded the entire contract price agreed upon.

Claimant contends that the profit on material furnished should be counted as part of the consideration received by the defendant. The margin of two per cent on steel purchased, and of five per cent on lumber amounted to about $500.00, without counting anything for handling charges, and for services in connection with the marketing of large shipments of cement to apply on material indebtedness without charge to the cement company.

The entire cost of this plant improvement is understood to have been approximately $85,000.00. To say that for all consideration received or possible to have been received by the defendant for his services in connection with this great construction enterprise makes it reasonable to assume that his relationship of contractor for a completed structure seems little short of ridiculous. Had this defendant engaged to become responsible for accidents to workmen employed upon this construction work, he must in practical business management have provided compensation insurance, which the record shows to have been reasonably worth eleven to twelve hundred dollars. It may be readily seen that with no prospect to secure any substantial profit for his part in the construction work he could not have considered himself liable for any such obligation.

At the time of this injury a report of the accident was made to this department by the Portland Cement Company, showing insurance coverage by the Fidelity & Casualty Company of New York. This fact is by no means conclusive as to liability, but it may be regarded as significant.

The payment having been made to all workmen engaged in this building operation by the Portland Cement Company is not conclusive, but decidedly significant. The bookkeeping in connection with this enterprise in the way of time-keeping, the interchange of workmen from the plant to the construction work, and the fact that this claimant engaged by Bland should have been set to work by a representative of the cement company upon employment by no means related to the contract between the defendant and the said company is so significant as to be fairly conclusive, as indicating the actual control of the time as well as the payment of these workmen.

Control seemed logically and naturally retained by this company that it might profit by working the men selected by Bland as well as those brought in by themselves, including plant employes, by shifting them from the factory work to the building enterprise and vice versa as circumstances might suggest. This arrangement is wholly inconsistent with the contention that this defendant was the employer of Egil Softing.

Defendant pleads the general statute and amendment in the compensa-

tion law as a bar complete and sufficient against this proceeding, since the injury to claimant occurred more than two years prior to the time of bringing this action. This defense is held to be unavailing.

Defendant's motion to exclude exhibits containing evidence taken at a trial of issues involved in this case before the Industrial Commission of the state of Minnesota is overruled.

Every paragraph of the transcript of evidence covering more than two hundred pages, and every deposition and exhibit have been scrutinized in the endeavor to ascertain the actual relationship of the contracting parties. The situation is more or less confusing upon casual examination, but thorough consideration has been given the bulky record, and the extended argument of counsel leaves no doubt in the mind of the commissioner.

Wherefore, the arbitration decision is affirmed in its holding that at the time of his injury in April of 1922, Egil Softing was not an employe of this defendant, Wilford Bland, in a statutory sense, and as to the taxing of costs.

Dated at Des Moines, Iowa, this 15th day of March, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Appeal abandoned.

TUBERCULOSIS—INJURY AS PROXIMATE CAUSE

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

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 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 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, 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 livening 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 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 tuberculosis 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 of any accident occurring. 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 defendant's 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 developments 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 was to encourage activity of any lurking infection claimant may have entertained, and would make more probable a plausable 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 following, however, it would seem that such things actually happen in the opinion of the higher courts:

Retmier v. 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 v. Dwight Devine & 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 v. 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 sustained were not sufficient either to cause or hasten his death. The claimant called no physicians, 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 v. 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 became 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.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme courts.

BAD AIR IN MINE NOT SHOWN TO HAVE BEEN PROXIMATE CAUSE OF DEATH

Etta Muck, Surviving Spouse of Steve Muck, Deceased, Claimant,

vs.

Central Iowa Fuel Company, Employer,

United States Fidelity & Guaranty Company, Insurance Carrier.

Clarkson & Huebner, for Claimant;
Mabry & Mabry, for Defendants.

In Review

On the 3rd day of January, 1925, and for some time prior thereto, Steve Muck was an employe of this defendant coal company. At about three o'clock in the afternoon, he left his mine room proceeding a distance of about a thousand feet to one of the main airways of the mine where he sat down near a trap door, as had occasionally been his custom. Within a very few minutes he fell over making little further signs of life.

At the arbitration hearing at Chariton, June 10, 1926, it was held that Steve Muck died as a result of injury arising out of and in course of his employment.

Autopsy developed that the deceased came to his death by acute dilatation of the heart, and it was contended that the loss of life was from the effects of breathing noxious gases, due to improper ventilation in that portion of the mine in which he was employed.

This place of employment was known as room seven in mine No. two of the employer. The next room, number eight, was being worked by Thomas E. James. He had mined side by side with the deceased for about two years. James testifies that on the day of his death Muck left his room about half past two or three o'clock; that he had previously seen him lying, face down, in his room. Says he lifted him up and took him out in the driveway. This was just before noon. About two o'clock he saw him getting ready to "tamp a shot." Said at this time Muck said "Oh, Tom, there is something hurting me here," with hand on left breast. Says he said: "We can't work here any longer." Also, that he was "weak at the knees." Witness said the air was bad; that it had given him a pain in his head, and that his knees were weak.

Edward James, a son, had been working with his father in room number eight. Says he was in Mr. Muck's working place the day he died, three or four times. Said the air seemed the same to him in both rooms, but that he felt the effect of bad air at the time; that it took

his appetite so he didn't eat all his dinner. He was weak in the knees. Helped Muck load his last car; had to do most of the loading himself because Muck couldn't do very much. Said Muck complained of the air during the forenoon. Says deceased was just finishing his dinner at the mine entry when he saw him near noon.

Merrell Muck was working with his father the day he died. Says on that day he went home about 11:30 with a headache and feeling weak and shaky in the legs. Says his father had complained of the bad air.

In cross-examination witness said that during the four or five months he had worked in that room the day of his father's death was the only day he ever thought he got any bad air.

Ed. Downs testified that on January 3rd he was trapping at a door in one of the main entries. About three o'clock in the afternoon he observed Mr. Muck coming from his mine room. He stopped at his door and "sat down on my seat. He was there about four or five minutes before he fell over, kind of sidewise on the bench. He was talking to me when he fell over." Never spoke again. On cross-examination witness said Muck was walking as he usually walked when he came up to the entry. Never staggered any or wabbled. Muck was smoking during this time. In response to the question: "How is it going, Steve," he said Muck replied: "Not very good. I ain't got no air up there."

This is substantially the case as submitted by claimant relative to the death of Muck and in immediate support of contention that death was due to bad air. It becomes necessary to find further basis of this contention, and it is therefore pertinent to examine conditions and circumstances involved in the working situation in that portion of the mine in which the deceased last worked.

It seems to be required as a part of the ventilating system to put up curtains across the driveways at what are known as cross-overs, that is to say, runways connecting the entries.

Thomas James says "the curtain at the cross-over nearest room number seven was practically all of it down," excepting some strings, torn pieces of curtains hanging down.

Merrell Muck says the curtain heretofore referred to was all down, and all the other curtains in that part of the mine were down.

Recalled, Edward James says that the curtain near the Muck room was practically all down. The one next nearest was about three-fourths down.

Herbert Woods, a mine driver, testifying for claimant says the curtain near the Muck room was there as far as he knew. Another curtain not far away "was hanging there on a nail when I went in in the morning and I took it and hung the other side of it upon a nail. The shot must have blown it down, and there was a strip torn off the bottom of it."

Dave McNish, mine superintendent, testifying for the defendant says the curtains in that part of the mine were all in place at nine o'clock the morning of January 4th, with the exception that there was a piece about two feet wide torn off the bottom of one of the three sections of the curtain near the Muck room. He further testifies that all the ven-

tilating conditions that morning were exactly the same as at the time of Muck's death.

Albert Cross, testifying for defendant, said he had occasion to examine the first two curtains between the fifth and sixth west entries the morning of Muck's death. One was in usual order, the other had slight openings.

David James, called by defendant, testifies that on January 3rd he saw the curtains all in place as usual, except that there was a piece off of the bottom of the third curtain, making an opening about as high as the table.

Rooms three, four, five and six toward the airshaft from the Muck room had been worked out and abandoned for some time, and were all more or less obstructed by the caving in of the roof. Proper ventilation requires the passage of air through what are known as break-throughs piercing the room walls. It is important to understand whether or not such circulation was seriously obstructed by the debris. Thomas James testifies in this connection. He says there was scant room in the break-through between rooms seven and six for him, a small man, to squeeze through. Thought the hole approximately two and one-half feet on the square. In cross-examination he testifies as to the condition of the rooms, number six and beyond, toward the airshaft as follows:

Q. And you don't mean to say, do you, Mr. James that these rooms were entirely caved in?
A. I do, positively. I positively made the statement that room number six was cave in tight.
Q. No air could get in at all?
A. No air could get in at all.

In the testimony of Dave McNish, it is developed that he had been mine superintendent for seven years, and that his duties had especial "reference to the ventilating system and the examination of the entries and rooms." On the day following the death of Muck, he made especial examination. As to the condition of number six, he says it was caved in, but "he was on top of the fall," and went clear over to number five. Says the break-through was approximately three feet high and seven or eight feet wide. There was a second break-through between sixth and seventh which was in a little bit worse condition, but he could climb through there; that he was able to get through number six and clear into number five. Says he stood in front of these break-throughs and the current of air was plainly noticeable. The anemometer is an instrument used in measuring the strength of ventilating currents in mines as well as for other purposes. With this instrument McNish took readings—three, he thinks. The first was at the bottom of the shaft; the second was near the place where Muck was sitting when he died, where the reading was 4,500 cubic feet. The third was taken between rooms six and seven, the latter being the Muck room, where a record of twenty-eight hundred cubic feet was registered. He describes somewhat in detail the circulation system throughout the mine. He testifies how the three methods of ventilating that section of the mine operated.

F. W. Trost, mining engineer for the Central Iowa Fuel Company since 1913, testifies that he was in the Muck room on Monday, two days after the decease. Says he examined the break-throughs between seven and six. He went right into both of them. In the first break-through there was a good current of air, it was coming so I didn't even test it with my lamp. It was cool and fresh on the first." The second break-through he could get a current of air on his lamp. As near as he could tell conditions had not changed since the Saturday previous at any break-through.

On January 18th, fifteen days after the death of Muck, McNish went to that portion of the mine where deceased had worked for the purpose of taking air samples. Quart bottles filled with distilled water were emptied at two separate localities in room seven, when the corks were replaced, shoved down into the neck of the bottle and the remaining space filled with sealing wax, after which an impression of the letter "M" was made on top of the wax.

Albert Cross, Herbert Woods and Harve McDowell attended the taking of the air samples January 18th, and their testimony as to this proceeding substantially supports in all material details the process recited by McNish.

In the record appears the deposition of Dr. Wilford W. Scott, taken at Los Angeles, January 15, 1926, on behalf of defendants. At the time this deposition was taken Dr. Scott was professor of chemistry at the University of Southern California. He testifies to receiving the two sample bottles of water transmitted by mine superintendent McNish at which time, and for four years previously, he was associate professor of chemistry at the Colorado School of Mines. The bottles were sealed, as testified to by four witnesses, as heretofore stated, and the seals were intact. The doctor relates in detail the scientific procedure usual in such cases and states that the samples in question were analyzed by the customary process. He says the air in these bottles "contained about 20.2% of Oxygen, and carbon dioxide was present in very small quantities, which was recorded as a trace, which means that it is there, but not in appreciable quantities. The carbon monoxide I was not able to detect at all in the samples."

Dr. Brittell, of Chariton, qualified as county coroner. He presided at autopsy proceeding, held the day following the death of this workman. Says acute dilatation of the heart was found to be the cause of death. Says he could find nothing that would account for this acute dilation other than bad air. It is admitted in cross-examination that the deceased did have a diseased condition of the heart prior to the day of his death, though it had not extended over a great period of time.

Dr. Daniel J. Glomset, of Des Moines, assisted in the autopsy. In his report of disclosures at the dissecting table the doctor reaches the conclusion that acute dilatation of the heart was the cause of death, the proximate cause being the breathing of bad air. In his deposition taken May 14, 1925, the following developed in cross-examination:

"Q Was there anything in the post mortem of itself, anything only in the post mortem that would cause you or make you feel that the man had died from the effects of bad air or suffocation?

A. There was nothing that would indicate in the body, I could find no indication of the actual cause of death, that is the actual cause of the heart failure.

Q. So that when you end up your report with this statement 'It seems certain from the clinical facts that some form of mine gas is responsible for his death by heart failure,' that conclusion is not based on anything that you found to show that, from the actual post mortem or autopsy of itself?

A. No, it is based on the information and based on the fact that I could find no other reason for his heart failure.

Q. And when you call these clinical facts, you of yourself don't know whether those are facts or not?

A. No, I don't know that. I have to believe the story as told by those individuals where I obtained the information.

Q. And there wasn't any one of those individuals with the exception of Dr. Brittell but what was a relative of the deceased Steve Muck, that is correct, isn't it?

A. Yes, that is correct, I don't know anything about it. Certainly some of them were relatives."

In further deposition, taken April 3, 1926, this evidence of Dr. Glomset appears:

"Q. And if at the time of your post mortem you had a written report of a chemist who was nationally known for his experience in analyzing air samples, was thoroughly competent and you had a record that there had been no finding of poisonous gas in that air, wouldn't your findings on the autopsy have been that death was due to some other cause than breathing poisonous gas?

A. Well, if I had a competent chemist that analyzed it at the time when he was in there and found nothing I should say that the man died from acute dilatation of the heart, cause unknown.

Q. Of course, if this chemist had analyzed sample of the air taken under exactly the same ventilating conditions a short time after the death without any change in those ventilating conditions, wouldn't your findings have been different?

A. I would know, of course, whether the conditions in the mine as far as the gases are concerned actually were the same at the time the chemist examined it and if it were, then I should say that it couldn't cause death.

Q. And at your autopsy you simply assumed that there was bad air in there and poisonous gases, didn't you, Doctor? You didn't have any evidence that there was poisonous gas in the mine?

A. My conclusions were based upon the statement of the man's relatives and upon the statement of those around there from which I took those clinical facts, and inasmuch as I found no other cause for this condition in the heart I decided that bad air was perfectly capable of doing it.

Q. You assumed that it was bad air in your findings?

A. Yes, sir."

Within reasonable space limitation it is difficult to summarize the important evidence in these three hundred pages of abstract and important depositions of record. Much of it is industrially technical or involved in scientific intricacy. This mass of evidence, however, is given thorough scrutiny and careful consideration leading to the conclusion that the claimant fails to meet the burden of proving that Steve Muck lost his life as arising out of his employment in a statutory sense.

Evidence as to circumstances immediately preceding his death is wholly in the possession of relatives or friends manifestly in sympathy so intense as to obscure the requirement of "the whole truth and nothing but the truth." As to these circumstances and conditions the chief spokesman

is Thomas E. James. His testimony occupies fifty-six pages of the manuscript. He frequently contradicts himself, and many of his statements are grossly inconsistent with the evidence of several disinterested witnesses. He is extravagant in statement where moderation would better serve, and positive without due information. It becomes necessary for counsel who called him to insist that he refrain from arguing with opposing counsel and confine himself within reasonable limitations. As a miner working side by side with the deceased, the testimony of Thomas James is important. Much, perhaps most, of his recital has basis in actual fact, but when it becomes necessary to discount the statements of a witness it is impossible to know what to accept and what to reject. He swears positively that the break-throughs for air passage were closed so as to absolutely prevent circulation. This is important, if true, but one cannot read the complete record and give it any value whatever. The curtains and their condition at the time of the death are also important, but the record will not sustain his statement that in his quarter of the mine they were all down. On the contrary, it appears they were in fairly good condition. Other inconsistencies are manifest.

Merrell Muck, working in the room with his father, swears that he had not noticed any evidence of bad air until the day the death occurred.

The ventilating scheme in this mine was evidently of approved design, and nothing appears to show the fan system was not functioning normally on January 3rd. Several witnesses state the break-throughs were open and that on the day following they personally sensed the air current. The anemometer tests made by mine superintendent McNish on January 4th show distinct circulation.

The taking of air samples in the Muck room which had not been occupied, fifteen days after death, and the report thereon by Dr. Scott, a chemist of wide reputation must be given weight. Claimant contends the test was not fair because of the lapse of time since the day of death, while the deffendant insists that any difference of condition that may have existed was in favor of claimant. There is evidence in support of both contentions. It is reasonable to assume, even if claimant is right, that in order to show that bad air in menacing volume existed January 3rd, the test on January 18th could not have found almost perfect mine air at the later date.

It seems safe to assume that the deceased was ailing on the forenoon of January 3rd. William James testifies that on this day the air effected him so he didn't eat all his dinner. He says, however, that at the usual hour he saw Muck "just finishing his dinner." It is understood the effects of bad air tend to make eating repulsive to appetite. Ed. Downs testifies Muck came to his door, walking as usual and smoking a cigarette. Do men crave tobacco when sick from bad air?

There seems no doubt that Steve Muck died of acute dilatation of the heart. Dr. Brittell, county coroner, who conducted the autopsy, says he could not find anything except bad air that could account for this condition. In such cases the process of elimination is not conclusive in the establishment of proximate cause.

Quotations from the testimony of Dr. Glomset, hitherto given herein,

show to what extent his conclusions upon the autopsy examination are to be modified if based upon incorrect understanding as to case history, which seems manifest in the record. He says in his deposition of May 14, 1925, that his report is based on information "and on the fact that I could find no other reason for his heart failure" except the bad air hypothesis. Further on, he testifies that at the autopsy he was to "find some cause for that heart failure. That is what I was paid for." If this process meets the exigencies of inquest, it does not serve to establish the burden of proof in judicial inquiry. In the event of death from causes more or less obscure and where theory more or less plausible is submitted in support of compensation claim, it is perhaps natural to accept the hasty conclusion that it behooves the defense to show if not, why not. In other words, that with any showing of affirmative fact the burden shifts to the defendant. It may do no harm to confess that this elusive logic has made trouble in this very tribunal, instance, the case of Sparks vs. Consolidated Indiana Coal Company, 190 N. W. 593. Riley Sparks had died at his work in the mine. Autopsy disclosed no explanation of death. There appeared on the right temple of the deceased a bleeding wound, more than abrasion of the skin, evidently sustained coincident with demise. In summing up, the review decision said:

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

This conclusion was perfectly good until the case reached the Supreme Court, where the preponderance of evidence necessary to establish a compensation claim does not depend upon the weight of testimonial resistance, but upon definite, convincing character of affirmative support. The court declared that the fact of death in the course of employment does not justify the conclusion that it arose out of employment. "The fact of a compensative injury must be established by legitimate and proper proof * * * It cannot be the result of conjecture, speculation or mere guess."

Familiarity with the evidence in both cases seems to justify the conclusion that the minor injuries to the person of Sparks coincident with his death afforded basis more substantial for award than the assumption of bad air as a proximate cause in this case, when it is by no means proven that bad air existed, or if it did exist that it was shown to have been the cause of the death of Muck. The fact that medical testimony holds bad air as the proximate cause is rendered nugatory, since it seems substantially based upon the assumption that it must have been so, as no other cause could be found. Even the wisest doctors sometimes fail to solve the mystery surrounding untimely death, and in deep perplexity conjecture is distinctly barred by statute.

It behooves claimant to sustain the burden of proving that death is due to employment. It is not incumbent upon the defense to prove to the contrary. In this connection, however, the defendant has gone far in the endeavor to show the utter improbability of death from bad air.

Claimant fails to prove a lack of ventilation. The defense affords substantial basis for a contrary conclusion. There is little affirmative evidence as to the presence of noxious gases in room number seven. The defense affords substantial basis for the belief that this insidious element could not have been a contributing factor.

In considering this record the impression is unavoidable that affirmative theories have their support from sources interested or intensely sympathetic. Testimony in negation is almost wholly by employes of the defendant coal company, which has no financial interest in the result of this controversy, and hence, no basis for bias is apparent. Claimant relies upon testimony merely speculative and conjectural, while the defense seeks support in methods scientific and practical and of character generally approved as efficient and accurate.

Muck died in the course of his employment from acute dilatation of the heart. As a remote possibility this may have been due to bad air, but the claimant has not sustained the burden imposed by statute.

The arbitration decision is reversed.

Dated at Des Moines, this 30th day of September, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

ROAD DRAGGING HELD INDEPENDENT EMPLOYMENT

James T. Harn, Claimant,

vs.

O'Brien County, Iowa, Employer,

Fidelity & Casualty Company, of New York, Insurance Carrier.

Homer C. Myers, for Claimant;

Snyder, Gleysteen, Purdy & Harper, for Defendants.

In Review

In arbitration at Sheldon, October 2, 1924, it was found that at the time of the injury to his foot, March 20, 1924, the claimant, James T. Harn, "was engaged in the capacity of an independent contractor and was not an employe of the defendant, O'Brien County, within the meaning of the act."

At the time of his injury claimant was under contract for service with the County of O'Brien in terms as follows, to-wit:

"This contract made and entered into this 29th day of February, 1924, by and between the Board of Supervisors of O'Brien County, Iowa, and W. L. Anderson, County Engineer of said County, party of the first part, and Jas. T. Harn, party of the second part, Witnesseth: Said party of the second part, for and in consideration of the payments therefor, hereinafter stipulated, agrees to properly drag all roads as directed by the party of the first part, at such times and places as indicated by said party of the first part, in good and workmanlike manner. Dragger to ride drag or use at least 150 pound weight on same.

That for such service said party of the first part agrees to pay to said party of the second part at the times and in manner provided by law,

as follows: At the rate of 85 cents per mile round trip, on the following miles:

Between sections 22-27, 23-26 and 24-25, Carroll Township."

The question at issue is, does engagement under contract constitute independent employment, or does it signify that the relations of employer and employe within the meaning of the law existed between James Harn and O'Brien county.

The testimony shows that claimant was held in performance of his obligation to the county merely as to the results of his work, and nothing in the record tends to show that the county retained any control whatever over the time when this work should be done as to the day and hour, as to the hours to be employed in any day, or as to any detail of service to be rendered.

James Harn is a farmer who had for several years done grading work under similar arrangement. He testifies that he was in the habit of doing the work when conditions of the weather should require, upon his own motion and not under any specific direction. For such service as he deemed necessary to perform, he billed the county at the rate provided in the contract. It is shown in stipulation that his entire charge against the county for grading during the year previous to his injury was $84.99. The county furnished nothing in the way of working equipment.

Counsel for claimant in his Brief and Argument says: "It is difficult to imagine how any greater control over the details of Harn's work could have been reserved by the county. It would be hard to frame the language of a contract in such a way as to give an employer more control over the details of the employe's work than was done in this case."

On the contrary, it would seem to the Commissioner that it would be difficult to frame a contract retaining less control than is indicated by this instrument. In cases of independent employment the man who pays for the work is interested in results to such an extent that he has a right to insist, and does insist that it shall be performed "in a good and workmanlike manner" as this contract provides.

Under independent contracting the man who purchases results is unusually lax if he does not require proper performance. He does not care when work begins, what hours in the day are used, or when it terminates, except as to the matter of necessary time limit for producing such results. This is all there is to the contract between this claimant and O'Brien county.

By coincidence or otherwise, both parties to this action cite in support of their contention substantially the same cases decided by our supreme Court bearing upon the issue of independent employment. All the cases cited have gone through this department and in all of them the decisions of the department noting the distinction between contracts of service and contracts for service have been affirmed. In not one of these cases is independent employment more clearly indicated than in the case under consideration on the basis of the contract between the parties and the testimony of the claimant himself.

The arbitration decision is affirmed.

Dated at Des Moines, January 5th, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by supreme court.

DEATH FROM PNEUMONIA WITH TRAUMA AS PROXIMATE CAUSE

Martha Hughes, Surviving Spouse of Lewis Hughes, Deceased, Claimant,

vs.

Egypt Coal Company, Defendant.

Clarkson & Huebner, for Claimant;
H. E. Valentine, for Defendant.

In Review

In arbitration at Centerville, March 4, 1926, finding was for claimant. Hearing in review was called for by defendant and set for June 30, 1926.

Defendant 'phoned from Centerville after the hour set for hearing, stating that he would not appear at this time, and suggesting that submission proceed.

This action is brought by claimant as the dependent widow of Lewis Hughes.

While working in the mine of defendant, October 12, 1925, deceased sustained an injury consisting of a compound fracture of the left leg in the region of the ankle. November 18, 1925, he died with pneumonia as the proximate cause.

It is the contention of the defendant that the death of Lewis Hughes was not due to the injury of October 12, 1925, and that there was no causal connection between the alleged injury and the causes from which his death occurred.

According to the testimony of mine foreman, Albert Horrocks, the injury to Lewis Hughes was due to the falling of a rock "four to eight inches thick, and maybe three feet wide, and possibly three and a half or four feet long." The foreman personally released Hughes and sent him for treatment to Dr. Harris. After eight days, Dr. Harris found the case was not making progress in the way of healing, and at his instance the deceased was taken to a local hospital where he received treatment by Dr. F. B. Leffert, who testifies that because of infection at the point of injury and elsewhere in the system of deceased, there seemed to be no tendency to heal. Later pneumonia set in which caused death as stated, October 12th.

Dr. Leffert testifies to the belief that the resulting pneumonia came about through a general debilitated condition disclosed in the condition of Hughes. He was found to be considerably afflicted with pyorrhoea, his teeth being seriously infected. He was evidently not well nourished.

There was trouble with some measure of bowel obstruction. Low resistance was manifest.

In cross-examination, however, Dr. Leffert admitted that together with infection from other sources, the infection at the point of injury "would be a contributing factor."

Q. And is this true that this pneumonia was probably caused both by the infection in his teeth and also the infection from the ankle, the two sources?
A. It is probable, yes.
Q. Both of them probably were material contributing factors in producing pneumonia?
A. Yes, they probably were.

It is the opinion of Dr. Harris, who had this case in charge for eight days following the date of injury, that the fracture of the leg "would materially contribute to the pneumonia;" that he would be more susceptible to pneumonia, and because of lowered vitality less able to resist its encroachment.

Dr. E. E. Bamford, who conducted the autopsy, held the day following the death of Hughes is in substantial accord with the opinion of Dr. Harris just related, to the effect that because of greater susceptibility and lowered resistance the fatal complication of pneumonia was due to the injury of October 12th. Dr. W. E. Webb and Dr. M. W. LaBaugh, who assisted Dr. Bamford in the autopsy, are in substantial agreement with this conclusion.

In the report of autopsy, which appears in this record as claimant's Exhibit C-2 and signed by Dr. E. E. Bamford appears these

Conclusions: To sum up the findings, it is our judgment that this man was septic, perhaps from his teeth, and had poor nutritive function as result of the adhesions and obstructive troubles in the intestines. This would produce lowered vitality. When he received his fracture he doubtless got infection in it, and did not have recuperative powers necessary for its healing. Having to lie in bed on his back, as the fracture necessitated, the blood gravitated to the back part of his lungs and a septic hypostatic pneumonia developed. This pneumonia perhaps did not start for several days after being put to bed, and was the direct cause of his death, since the appearance of the fracture at autopsy showed that instead of healing, slough was taking place in the fracture. We believe that the fracture, in his low physical condition, and the treatment necessary in the fracture, produced the pneumonia and that the pneumonia caused his death.

While the record clearly indicated that Lewis Hughes could not have been considered a well and strong man at the time he sustained this compound fracture, it also appears that he had a good working record, perhaps not as an able-bodied man, but a steady worker with no lapses from employment for a considerable period prior to his injury. It is reasonable to assume that a previous deteriorated physical condition made the injury considerably more serious, and doubtless made recovery the more doubtful. It is likewise reasonable to assume that but for this injury claimant would have continued in earning capacity for an indefinite period, and that but for the said injury his mortal career would not have terminated when it did. This would seem to be the real test in all such cases, not as to whether or not conditions previously existing

made more difficult the matter of recovery after serious trauma, but that because of such trauma the workman died at a time when death was not to be reasonably expected, or even remotely suggested.

In view of facts disclosed in the record and holdings common in compensation jurisdiction, it must be held that the death of Lewis Hughes on November 18, 1925, was actually due to the injury of October 12th, as a materially contributing factor, and therefore it becomes necessary to affirm the arbitration finding, which orders the defendant to pay to this claimant as the dependent widow of the deceased, $15.00 a week for a period of three hundred weeks, together with statutory burial charges and all costs of this action.

Dated at Des Moines, this 2d day of July, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

SCOPE OF EMPLOYMENT—MANNER OF LEAVING WORKING PLACE

Mary Howe, Surviving Spouse of Luther Howe, Deceased, Claimant,

vs.

Egypt Coal Company, Defendant.

Clarkson & Huebner, for Claimant;
H. E. Valentine, for Defendants.

In Review

Luther Howe, husband of this claimant, lost his life December 22, 1925, in the employ of the defendant Coal Company, under circumstances substantially as follows:

What is technically known as a tail-rope was used for pulling empty cars in and loaded cars out of the mine of the Egypt Coal Company. At the breaking of this rope, at about the hour of 9:30 in the forenoon word was passed in to the miners to suspend work. With a number of other workmen, the deceased mounted a coal car to ride to the mouth of the mine. On the way out a falling rock crushed and killed him instantly.

The defendant appeals from a finding for claimant in arbitration at Centerville, March 4, 1926.

Review hearing was called for June 30th at 9 A. M. Defendant failing to appear, counsel H. E. Valentine was called at Centerville by 'phone, whereupon he informed counsel F. C. Huebner that he would not appear at this hearing, and that submission might proceed. The further evidence of Alexander Boslem, who testified at the arbitration hearing was taken and claimant's counsel was heard in support of this claim.

On the part of defendant, obligation is denied on the ground that fatal injury of the deceased did not arise out of his employment for the reason that he was out of the zone of his employment at the time of this occurrence, in that he was leaving the mine in a manner forbidden by the rules established in such cases.

Defendant's Exhibit D-1 is a placard displaying these words:

NOTICE

Henceforth all persons, except drivers or company officials, must NOT ride in or out of Egypt mine in any other conveyance than that known as the man-trip.

EGYPT COAL COMPANY

A man-trip is understood to be a trip arranged to afford transportation by cable between the place of employment and the mine entrance. The pony trip is the technical term designating trips with coal cars hauled by ponies.

The breaking of the tail-rope, of course, suspended all conveyance by that method. When work was called off the only way for the miners to reach the outside was to walk, or to ride with the ponies. It would seem that walking was to a degree disagreeable. The distance was probably about half a mile and there was a good deal of water and mud to contend with along the way.

It is the custom in this mine to haul the man in by the man-trap at 7:15 in the morning and haul them out again a little after four in the afternoon. When the miners are working only half a day, the man-trip returns at twelve o'clock. This custom would indicate that while men may walk the distance from their work to the mine entry, the rule is to haul them in and out according to a regular schedule. Of course this schedule was impossible of performance on the day in question because of the breaking of the tail-rope which required a full day to repair, as the evidence shows. The pony cars were returning empty when Howe and others crowded in to ride to the outside.

Witnesses for defendant testify that miners were forbidden to ride on the pony cars. The preponderance of the evidence, however, is to the effect that this habit was common, continuous and conspicuous. The testimony of drivers is to the effect that no serious effort had been made on the part of the officials to prevent this custom or to enforce the rule to this effect, if such a rule may be considered as existing.

It is commonly held throughout compensation jurisdiction that a rule of employment forbidding certain practices is of no force or effect as a defense against injury arising out of violation where the said rule is not rigorously enforced.

The evidence would seem to justify the conclusion that the employer recognized its obligation to convey these men from the mine entry to their work and return them when work was over. In this case the regular method of conveyance was unavailable because of the accident to the tail-rope.

In view of this recognized obligation, and the reasonable requirements of the situation, miners could not consistently have been expected to walk through the water and mud to the outside while empty cars drawn by ponies were available, and particularly when it was a common custom to ride these empty cars whenever it seemed convenient so to do.

On the part of the defendant it is alleged that the rule against riding the pony trips is based upon the fact that more or less peril is involved in this mode of conveyance because of the fact that when the ponies get a glimpse of daylight they are inclined to run to the outside, suggesting danger of accident to occupants of the cars.

In case of a miner injured in one of these cars because of this suggested peril, against which employer seems to have taken precaution, this defense would seem more reasonable. In view of the fact, however, that this mode of conveyance was in no sense the proximate cause of the fatal injury to Luther Howe, and that the fact of his being in the car was in no wise prejudicial to the interests of the employer in connection with the accident, this defense is furthermore considered without force or effect.

Counsel submits a number of cases wherein reasoning and conclusion substantially support this claim. *New Stanton Coal Company v. Industrial Commission* (Ill.) is definitely sustaining, and other citations are especially in point.

In view of the law, and the facts developed in this record and the common holding in compensation cases, it is necessary to find:

1. That in leaving his work in the mine on the day of his death, Luther Howe did not depart from his zone of employment.

2. That his fatal injury, occasioned by the fall of rock, arose out of and in course of his employment within the meaning of the statute.

The arbitration decision ordering the defendant Coal Company to pay the dependent widow of Luther Howe the sum of $15.00 a week for three hundred weeks, together with statutory burial benefit and the costs of this action, is hereby affirmed.

Dated at Des Moines, this 2d day of July, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

DOMESTIC EMPLOYMENT—AWARD DENIED

Julia M. Tunnicliff, Claimant,

vs.

J. W. Bettendorf, Employer,

Federal Surety Company, Insurer, Defendants.

Cook & Balluff, for Claimant;

A. R. Kroppach and W. A. Hodges, for Defendants.

In Review

In the employ of J. W. Bettendorf, Cave Tunnicliff sustained fatal injury August 5, 1925. This action is brought by a sister who was totally dependent for support upon the deceased at the time of his death.

Claimant appeals from adverse arbitration decision.

For a period of five years prior to his death, the deceased had been in the service of the defendant employer in and about his home premises in the capacity of mechanical expert in charge of electric motors, pumps, boilers, electric wiring, gas and ice machines, and as chauffeur, and on

special occasions he assisted in houshold service such as waiting on tables, receiving at the door, etc.

The rather extensive domestic premises of J. W. Bettendorf embraces, besides his own home and buildings incidental, a bungalow occupied by a married son. While repairing the gas machine in this bungalow, August 5, 1925, an explosion occurred resulting in injuries to deceased so serious as to cause his death the day following.

Obligation is denied by the defendant insurer on the ground that claimant had no legal right herein, for the reason that at the time of his injury the deceased was a domestic servant within the meaning of Section 1361 of the Code, wherein such employes are excluded from compensation coverage.

Claimant avers that Cave Tunnicliff was a chauffeur and that under the compensation law of Iowa a chauffeur is not a domestic or household servant, and that this department has so held. No such holding is of record. It is the department opinion that some chauffeurs are and some are not employes within the protection of the Iowa law. Circumstances of employment and service must decide.

The compensation statute definitely excludes from compensation coverage two distinctive employments—domestic and agricultural. It is a matter of common knowledge that the barring of agricultural pursuits is based chiefly upon the fact that, being deprived of the privilege of fixing prices upon his products in the open market, the farmer may not pass on to the consumer the cost of such coverage, as is the practice in other industries. In the case of domestic employment exclusion is understood to be based upon the fact that such employment involves no relations with the trade or business of the employer, and is not subject to be carried as a charge against community obligation.

In a late decision, in *Eddington v. Northwestern Bell Telephone Company*, 202 N. W. 370, our Supreme Court used this significant language:

"The clear objective of the Compensation Act is to protect the employee against the hazards of the employer's trade or business."

All through the compensation statutes and the decisions in this field the suggestion is evident that coverage is confined to obligations connected with the trade or business of the employer. It consistently follows that employment involving no relations with trade or business is not classified as compensable and this condition affords a convincing test as to limitations of domestic employment.

Claimant further contends that the statutory exclusion referred to does not apply in this case because the accident from which Cave Tunnicliff lost his life occurred in connection with the obligation of his employer to maintain and keep in repair the bungalow in question occupied by his son, and that these premises were therefore beyond the range of consideration of domestic relationship.

The deceased occupied as a home living apartments above the garage on the premises. The services he rendered would seem distinctly to classify him as a domestic servant, in that his entire time was required in connection with the domestic situation. Was this relationship suspended when he was engaged in service at the bungalow?

In the last paragraph of his reply argument counsel for the defense says:

"We contend that renting a house, and having your regular repair man and chauffeur do the hazardous work of repairing a gas machine in your rented house, which you are obliged to keep in repair for your tenant, puts both you and your mechanical employee, so engaged, within the benefits of the Compensation Law."

This statement would seem unassailable. If the son and the father in this case established the usual relations of landlord and tenant; if the element of quid pro quo was substantially exercised; if there was involved in the use of the bungalow property pecuniary reward to the owner and actual rental payment on the part of the occupant, then this claimant must win her case. Does the record so disclose?

The employer testifies that his son occupied the bungalow "under some arrangement" between father and son; that he "maintained that house as far as equipment is concerned;" and that he had such "understanding" with his son. Nothing appears in the record as to any fixed charge, or as to any payment in money or other valuable consideration under this "arrangement." While no such expression is definitely given, the assumption is justified from all evidence of record that this son was occupying as a home the bungalow property without substantial consideration; that in a statutory sense this building was indeed and in fact part of the domestic premises of the employer, set apart, as it were, for the free use of the son through the generosity of an indulgent parent.

As to rulings of law and finding of fact, it must be held:

1. That the general range of employment in which Cave Tunnicliff was engaged in the service of the defendant employer is distinctly domestic in character within the meaning of Section 1361 of the Code of Iowa;
2. That the relations of the defendant employer and his son as to the occupancy of the bungalow involved in this record was not that of landlord and tenant in such a sense as to remove this case from the classification of domestic employment.

The arbitration decision is affirmed.

Dated at Des Moines, this 29th day of June, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

AWARD IN CASE OF ALLEGED INDEPENDENT EMPLOYMENT

Robert J. Tyler, Claimant,

vs.

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

On or about the 7th day of June, 1923, claimant was seriously injured in the service of his 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% permanent 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."

These 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 comission 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 commission, 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.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DEPENDENT WIDOW—DESERTION NOT ESTABLISHED—MOTION TO VACATE DECISION DENIED

Mrs. Beda O'Farrell, Claimant.

vs.

Wright Construction Company, Fidelity & Casualty Company, Defendants.

Lloyd O'Farrell, by Delilah O'Farrell, his next friend, Intervenor.

In denial of motion to vacate former decision.

Strock, Cunningham & Sloan, for Claimant;

B. O. Montgomery, Sampson & Dillon, for Intervenor.

In Denial of Motion to Vacate Former Decision

In this case the review decision of the Industrial Commissioner finding for claimant, was filed September 29, 1924.

Appeal was taken to the District Court on the certified record of this department.

January 24, 1925, the file transmitted to the District Court was returned to this department by the Clerk of said court upon order.

January 26, 1925, argument was submitted in this proceeding and hearing upon the issues was ordered by the commissioner.

February 18, 1925, Motion to Vacate was taken up for consideration at the department.

The only issues involved in this proceeding are as to whether or not this claimant had deserted her husband, and if so, was this desertion without fault on the part of the deceased.

The record in this second hearing is hardly consistent with these issues. The motion to vacate, however, is so sweeping in its allegations as to suggest comprehensive inquiry and the consideration of the record at the former hearing as well as the one of February 18th in reaching conclusions.

George B. Haskins, stepfather of the claimant, took the stand for the defendants. He testified to a visit of Mrs. O'Farrell to his home in South Dakota. While at his home he says claimant received a postal card from one Earl Anderson, in which the writer said he missed claimant, and wished she were with him, and that he just got out of jail. Witness says he accused her of "staying with this man instead of Earl O'Farrell." Says she acknowledged this to be a fact. This was, he says, about three months before Lloyd O'Farrell was born. He further says he wrote to Earl without saying anything about this incident, but told him he didn't consider it was his place to pay doctor bills, and that Earl ought to take care of his wife. Says O'Farrell wrote back that he was perfectly willing to do so, as he "thought the world of her." Testified that he had "bought nearly everything the child ever had since Earl got killed, and her too." During the four or five months she was at his home in 1924, he gave here $87.00. Later, he thought it might have been $78.00. He "treated her as if she was his own child." Said she was much given to attending dances and leaving her child in irresponsible hands.

Mrs. Hattie Haskins, mother of claimant, testified this daughter was much given to dancing. Said she was only happy when dancing. Testified to two occasions when she left her boy to go to dances. Asked what she did for claimant and the boy, she says: "Well, we kept them." Says they bought clothes for her "and done her just like anybody would do a daughter."

Mrs. Beda O'Farrell testified in her own behalf. She thinks she was placed in an orphans home at the age of nine by her mother, who had separated from the father. The mother states this age as eleven. She was taken out by her father and returned by her mother. She was placed in the Girls Industrial School at Beloit, Kansas, when she was just a little over twelve. Didn't know who sent her there, or why.

After two years and a half, at the age of fifteen, she was parolled to Mrs. Frank Boyd at Phillipsburg, Kansas. A little over two years later she was parolled again to a woman with whom she stayed exactly two years. She was then nineteen. After spending a few months with her mother in South Dakota she came to Des Moines, and shortly married Earl O' Farrell.

As appears from the record at the arbitration hearing and in this proceeding, this marriage career was of somewhat unusual character. It is evident that the O'Farrell's lived at many places, probably not less than fifteen. During the three years of their married life there were a number of separations when for weeks or months they were living apart. In the fall of 1923 an arrangement was made whereby the man and wife and baby were to live with two brothers of claimant at Valley Junction. The brothers were to furnish the house and equipment, rent free, and pay Mrs. O'Farrell $5.00 each per week for their board. After two or three months the brother ordered Earl to leave, for the reason, as appears in the testimony in this record, that he would not work, and failed to keep his agreement as to his contribution to family support. A little later Mrs. O'Farrell went to her father's at Kansas City. Subsequently, she went out into the state of Kansas as housekeeper, where she was employed when informed of the death of her husband.

To a considerable extent the defendants would seem to rely upon evidence relating to the separation of this man and wife at various times, and at last in the month of December of 1923. They feature various partings approaching a climax on the occasion when Mrs. O'Farrell is said to have abandoned her husband when they had a home on Corning Avenue, in Des Moines. It is alleged that she left without notice to her husband and gave out false information as to her intended whereabouts. It seems, however, that her husband found her the same evening at the home of her brothers in Valley Junction, where she was able to provide an unusually easy arrangement for keeping up the home through co-operation with the two brothers. Then she is charged with final abandonment when this home was broken up.

It is a matter of record that Mrs. O'Farrell had nothing to do with the banishment of her husband from this home. When he left there he had nothing whatever to offer her in the way of a place to live, and

past experience was not at all reassuring as to future home arrangements. The query naturally arises that when Earl O'Farrell was unable to make good under the very favorable conditions afforded at the Valley Junction home whether or not there was any substantial ground for the hope that any workable plan could be arranged.

The claimant testifies over and over again to her willingness at all times to live with her husband whenever he could provide a home. She says she never intended any permanent separation if these conditions were met, even in a humble way.

There would seem to be no escape from the conclusion that Earl O'Farrell was disposed to be indolent and that he was very much of the time out of a job because he failed to meet the ordinary requirements of usual employment.

This consideration relates to the matter of desertion. Perhaps even more strenuous effort is made by defendants to mitigate statutory fault on the part of the husband by assaults upon the character and conduct of this claimant. The postal card incident is apparently overworked. Mrs. O'Farrell admits she received the postal card from Earl Anderson. She says it did not say he was just out of jail, but something that sounded like it. She met this man Anderson at the home of her sister, where he would seem to have been a regular boarder. She says she went with him to several dances during a separation from her husband. If Anderson was a jailbird the defense carefully avoids specifying his crime. He may have been a jaunty joy-rider, or immured under a charge of contempt of court, or some such genteel crime, but it seems to to serve the purpose better by leaving the impression that he was a very vile creature, though he was good enough to be an inmate of the home of claimant's sister, who seems to have made no protest against association with him.

Plaintiff indignantly denies the admission charged by the stepfather that she had "lived with this man." When it is remembered that at the time this illicit relation is charged, Mrs. O'Farrell was approaching the end of her pregnancy period, it is a condition by no means consistent with the claim of the stepfather. At this period illicit sexual relationship has no charm for women good or bad.

Another high spot in defendants case is the contention that Mrs. O'Farrell deliberately planned to avoid attending her husband's funeral. She consistently explains her absence on the ground that the first telegram she received was so changed in transmission that she had no intimation as to what had actually happened. She went to the telegraph office for explanation, and there received intelligent notice of her husband's death. She frankly outlines her course from that time until she reached home.

Another cherished diagram of inconsistent conduct relates to dancing. There is nothing in the record to show that she ever attended a dance during the time she was living with her husband, nor does it appear that she manifested any frivolity whatever. Excepting the Anderson incident, there is no hint that she ever looked at any other man than her husband, and Anderson suddenly vanished from the scene. They actually proved that she went to two or three dances after her husband's death.

Defense emphasizes the fact that claimant kept house for a bachelor in Kansas. How did they know? She frankly volunteered the information. No inquiry is made as to how many members were of the household of the bachelor, as such inquiry might have spoiled the background for prurient suggestion.

No unprejudiced person could have heard the testimony of Beda O'Farrell without being impressed by its candor and inherent evidence of reliability. She made admissions that a dishonest or crafty woman would not have made. She did not need to confess some matters of inconsistency which she frankly admitted. Inquiry on the part of her counsel developed a childhood and early womanhood career of unusual hardship and neglect. When her parents separated she got the worst of the squabble. Jammed in and jerked out of an orphans home, she was finally landed in a reformatory. There is inherent support for the conclusion that she was in the way, and that little care was given to the sort of refuge she might find in her unprotected loneliness.

During the nine years, from the time of the separation of her parents to her appearance in Des Moines, no charge is made against her conduct when she was tossed about on the waves of neglect and loveless childhood. She never saw her mother but once for a period of eight years. Her brothers, who now so willingly testify in vague suggestion against her, were not bound to her by any ties of association or contact such as bind families into relations of devotion. On the witness stand, the mother, Mrs. Haskins, seemed utterly lost to all sentiment of affection, if any she ever entertained, for this girl. She had no word of gentleness or compassion, no suggestion of regard or consideration, but seemed possessed by a grim determination to round out the wretchedness she had visited upon her daughter by a final attempt to ruin her character.

George Haskins' testimony speaks for itself. On the witness stand he proved himself utterly unreliable by gross mis-statement and sinister purpose. After repeatedly stating that he had bought her clothes and the clothes for her child for quite a considerable period, he was forced to admit that all the things he bought, except some very minor articles, were developed out of a certain thirty dollars which he claimed to have given her, but which was, as a matter of fact, secured at a bank upon her note endorsed by the stepfather, which she is expected to pay when she secures her compensation payments. The $87.00 or $78.00 which he features as conspicuous benevolence is further made up by $25.00 paid to a lawyer who was expected to secure commutation of her compensation claim for investment as he dictated, in a rooming house. All that could be shown as actual gifts on his part, which were really in payment of several months of service she rendered, was a few paltry dollars beyond this attorney fee, and the $30.00 note still unpaid at the bank. His affidavit upon which this motion to vacate is founded is grossly inconsistent with his testimony on the witness stand.

When this girl was at her mother's home and approaching her motherhood he demanded that her husband take her away and care for her himself that he might not be held for any doctor bills in connection with the anticipated event. This heartless exhibition is strikingly consistent with the treatment this girl has received since she was a little child. A young woman, about to be crowned with motherhood, usually finds no place where she is more welcome than in the home of her mother, and she feels that there is no person she so much needs as the mother, who is supposed to understand, and who is usually disposed to do all in her power to mitigate the ordeal of childbirth.

In the fall of 1924, Mrs. O'Farrell was in the home of her mother for a few months where she seems to have been useful in domestic relations, partly because her mother was necessarily absent a considerable share of the time. She alleges gross misconduct on the part of her stepfather, and after a night and day of crimination and recrimination, while they were alone in the home, during which time she alleges all manner of threats and a choking on the part of the stepfather, she went out into the world with her baby. The stepfather admits that he shook her. Instead of seeking the vile companionship, of which the defense hints, she went directly to the Young Woman's Christian Association where she secured lodging for the night. But for the receipt she carries, and which now appears in exhibit in this record, a strong effort would doubtless have been made to break down this phase of her testimony. Even with this receipt, the attempt is not abandoned.

The next morning she takes her baby and seeks introduction to a livelihood at the employment office. Here she meets O. O. Boyce who needed a housekeeper much as she needed shelter and food. An employment engagement is made. She goes to the Boyce home near Kelly, Iowa. Here there are four children who have been taken away from a divorced mother, without legal resistance, with which Beda O'Farrell turns her own child loose, and for all of whom she seems to be striving to keep a home together. Here she is pursued by her benevolent parents in the attempt to besmirch her character and further destroy her opportunity for making a respectable living. In view of other developments in this family history their expressed purpose to have her leave this home and find her another place that they may save her from scandal, is utterly without credibility.

Defendant's Exhibit No. 1 is a letter from Haskins to Mrs. O'Farrell, dated January 13, 1925. In this letter Haskins says:

"* * * I am all alone tonight. * * * I am sure lonesome. Well Beda, I am glad you are happy. Wish I could say as much. Well, Beda, your mother sure liked the place out there, and she wants to meet Mr. Boyce and the other children, and I have promised to bring her out Sunday, the 25th. I believe Mr. Boyce will make you a good home, and if you think he would make my little girl happy, I have not one word to say, but Beda, I want you to be my daughter anyway, and I will never treat you as anything else. I have suffered enough for the shaking I gave you and the way you went away. Now Beda, write to me and kiss baby for me, as I love you both."

Just seven days after this mushy letter was written, the writer signed the affidavit which is the basis of this hearing. In this affidavit he

assails the "little girl" that he wants to be "his daughter" and he will never abuse her any more. Only a few weeks later as a witness he has forgotten that "Mother sure liked the place out there" as he proceeds to scandalize the situation at the Boyce home and to make this claimant a character so vile as to place her without the pale of common decency, if his testimony were reliable. All through his relations with this stepchild he gives evidence of a rare combination of cruelty and hypocrisy.

Beda O'Farrell may be a dishonest and sinful woman, but close scrutiny of this record does not justify any such conclusion. In view of the treatment she has received since a little girl, the wonder is that she is able to have any standing at all among decent people, and she really would seem to have such standing. Several witnesses of apparently sound reputation seemed very much interested in her case at the time of this last hearing upon the basis of months of rather intimate acquaintance.

Evidence abounds as to devotion of this claimant to this child. The effort to show she has neglected him is a dismal failure. The record shows she kept him with her and planned and worked for him as do few mothers of more gentle breeding and broad culture. For more than an hour on the witness stand she was grilled and badgered by attorneys. In endeavor of her own counsel to bare the drab details of her somber earlier life when abandoned by her parents, and apparently almost forgotten by her God, he was necessarily annoying. It was the business of opposing counsel to harass and to confuse her to the limit of endurance. During this ordeal the husky youngster, Lloyd, sustained a pitched battle with the lawyers to decide which should hold the undivided attention of the witness. Under these distracting conditions, the mother never for an instant lost patience to any degree whatever by hasty word, by a frown or otherwise. This exhibition was proof conclusive as to the child's dependence upon the mother, and as to her devotion and indulgence to the child. She will give him such love and care as she herself has never received.

Finally, consideration must turn upon the only vital issue. Did this claimant desert her husband without fault on the part of deceased? This mass of testimony and muss of contribution which encumbers this record, has not strengthened the case of defendant, and it affords no basis for granting the motion to vacate. In so far as any direct evidence upon the real issue is produced it relates to testimony of two witnesses of the defendant who actually support the claim of the claimant however unwillingly or unintentionally given.

Mrs. Georgie Hall, called to substantiate the funeral episode featured by the defense states that Earl O'Farrell after he had left the Valley Junction home came to her and asked her to call Beda and try and get her to live with him. She further states that he said he knew he had "never fixed a proper home for her" and that he would be better to her if she would come and live with him again. Nothing is said, however, as to Earl meeting the reasonable demand of claimant that he should show some chance of giving her a home. This interview

between Mrs. Hall and Earl O'Farrell is corroborated by Mrs. Hall's daughter, Gussie.

Bert Morris, a brother of claimant, while testifying for the defense, emphasized the fact that it was he and his brother who dismissed Earl from the Valley Junction home because he would not work and do his share in maintaining the home.

Counsel submits citations elaborate and all inclusive almost wholly founded on the law of divorce. If these have practical bearing on this case, the brief of claimant at least takes care of the citations of the defense.

In our judgment, however, the law of divorce is in no substantial degree comparable with the Iowa statute establishing basis for denial of compensation to a surviving spouse. "Without reasonable cause" on the part of the alleged offender is by no means analogous to "without fault on the part of the deceased" as the compensation law provides.

There is no compensation case outside of Iowa available for this application for the reason that no other law contains the "without fault" condition. *Black vs. Funk*, is the only Iowa compensation precedent. These cases are more or less analogous in that failure of support in both cases is the source of separation. In this cited case the twain lived apart not only for weeks or months, but for many years. When Mrs. Wright joined her husband at Waterloo she found how hopeless it was to assume to depend for support upon her husband on account of his limited earning capacity. The arbitration record shows that in her discouragement she consulted a lawyer as to divorce.

Mrs. O'Farrell would have lived with Earl if he could or would have supported her. She even made it unusually easy to keep the family together in her arrangement with her brothers at Valley Junction. When he failed to do his part in this most favorable family compact, it was enough to strongly suggest the "hope deferred that maketh the heart sick."

In finding for the claimant in the review decision conclusions of the commissioner were based entirely upon the transcript of evidence as it was not his privilege to observe the bearing of witnesses and the personal impressions so frequently justified by actual contact with persons giving testimony.

After such contact in the latter hearing, after manifestation on the part of witnesses for defense that could not be conveyed in printed words, after rigidly scrutinizing the claimant as a witness and following her credible statements and explanations, the commissioner is much more strongly convinced that Beda O'Farrell did not desert Earl O'Farrell without fault on his part, and that it would be a gross miscarriage of justice to deny her recognition as the dependent widow of the deceased.

The Motion to Vacate is denied.

Dated at Des Moines, this 5th day of March, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Appeal abandoned.

STRAINED BACK—FAILURE OF PROOF

Frank Booton, Claimant,

vs.

Trans-Mississippi Grain Company, Employer,

London Guarantee & Accident Company, Insurance Carrier.

John P. Tinley, for Claimant;
E. L. Murphy, for Defendants.

In Review

This case was appealed from an arbitration finding for defendant at a hearing held at Council Bluffs, April 28, 1925.

Claimant alleges an injury to his back, sustained while unloading grain with a steam shovel in the employ of the defendant company in 1923.

Says the accident occurred along in October, but he doesn't remember whether it was the first, middle or last of the month, and can't recall the time of day. Says he didn't work any more on that day; that he went home immediately. Thinks he came back to work the next day, but doesn't feel sure. Testifies his superintendent, Mr. Hoxang, put him on lighter work. The light work consisted in "sweeping and monkeying around with the purifier and the dryer." After so working for three weeks he says he was discharged.

Dr. J. C. Anderson was called by claimant. He testifies that he examined Frank Booton on the evening of October 10, 1923. "He evidently had a sprain of the back, and if I remember right he had a black and blue spot across the ribs here." Treated him occasionally in months following. The doctor says claimant told him he "fell off a ladder or a platform, or something he used inside of a car."

Testifying for claimant, Edward Martin says he was working in the car with Booton at the time of the injury. He says Superintendent Hoxang came along and asked witness what had happened. After being informed, Hoxang said: "We better get an easier job for him for a few days." Doesn't testify to any date nearer than the month of the year. Thinks Booton was off three or four days. When he came back his work was "sweeping up and cleaning up the dryer." Doesn't remember how long he worked after the injury.

In the deposition of Floyd Moffat, it is testified that witness was injured as stated by himself; that he returned to the company a few days later and did other work—"pumping water out of the basement and cleaning up grain and dust."

Testifying for defendant, Otto Hoxang, superintendent in charge of claimant, says as to the injury: "One day he got hurt." "Came and asked for easier work for a day or so until he got better." "I gave him a week or ten days in the basement to sweep up, and after that he went back at his regular work again." He says Booton told him he "got hurt with a bar on opening the door of the grain car." This was the only time he ever heard of claimant being hurt. Says Martin never

spoke to him about any injury to claimant. Says Booton never laid off at all.

His record showed claimant began work on September 21, 1923. From Monday, October 8th to Friday, December 17th, inclusive, claimant worked forty-five days of nine hours each. Witness says Booton did light work for a week or ten days and then took his regular employment during the rest of this forty-five day period. Says claimant was not discharged but that he quit. Didn't show up for four or five days and when he came back his place was filled.

This evidence of Superintendent Hoxang as to dates and days worked was given with an open time-book in his hand from which he verified all his statements of fact. His record differs very substantially from the account given by claimant. He says he only worked for three weeks, while as a matter of fact he worked for more than six weeks after the alleged injury. He says he is sure he worked for defendant employer four or five months before the grain car incident, while the record shows it could not have been that many weeks. While claimant testifies he continued at light work until the close of his engagment, Hoxang says he went back on his regular duty after a week or ten days for a period of four or five weeks. The superintendent testifies that Booton told him he "got hurt with a bar on opening the grain car," while claimant gives an entirely different incident as a basis for his claim.

The story of claimant that he fell on his hands and knees is not consistent with the serious injury to his back. The corroborating witnesses differ substantially from the testimony of the superintendent as to facts and circumstances. At least one of these witnesses gives indication of prejudice against the insurer. The testimony of Hoxang can hardly be questioned since it is so well supported by record evidence, and since neither he nor his employer had any interest or apparent prejudice as to the result of this controversy.

Careful scrutiny of this record does not justify the conclusion that Frank Booton has sustained the burden of proof, and therefore his claim must be denied.

The arbitration decision is affirmed.

Dated at Des Moines, this 23rd day of July, 1925.

A. B. FUNK,

Iowa Industrial Commissioner.

Affirmed by district court, appeal abandoned.

RE-OPENING AND REVIEW OF SETTLEMENT

HERNIA RECURRENCE—PAYING PERIOD EXTENDED

Dominic Augustino, Complainant,

vs.

Pershing Coal Company, Empolyer,

Bituminous Casualty Exchange, Insurer, Defendants.

Frank B. Bianco, for Claimant;

Bates & Doshiel, for Defendants.

Re-opening

In a fall of slate in defendant employer's mine April 23, 1923, Dominic Augustino suffered injuries to his back and a recurrence of a previously operated hernia. The recurring hernia was repaired April 26th. On August 28, 1923, shortly after he resumed work, Augustino suffered another recurrence of his hernia. It was again repaired, this operation being done at Chicago, November 2, 1923. Under settlement stipulation Augustino received compensation up to November 2, 1923. He refused to accept a tender of compensation for ten additional weeks and on August 10, 1924, petitioned for a hearing to have determined the extent of the compensable disability. This hearing was had September 1, 1925.

The testimony of four medical witnesses was offered, two testifying for the claimant and two for the defendants. All of the doctors agree that subsequent to the last operation Augustino was apparently physically fit. The doctors testifying for the claimant ascribed his claimed disability to traumatic neurosis and were of the opinion that a settlement of the case would bring about recovery. The doctors testifying for the defendants were of the opinion that at the expiration of ten weeks following the operation of November 2, 1923, the claimant should have been and was able to resume work.

For the purpose of award and to give the claimant the benefit of the doubt, this ten-week period is extended to twenty weeks, and defendants are hereby ordered to pay the claimant compensation for twenty weeks, starting as of date, November 2, 1923, from which may be deducted such amount of compensation, if any, the claimant was paid for disability subsequent to November 2, 1923. Defendants are also ordered to pay the costs of the hearing.

Dated at Des Moines, Iowa, this 16th day of September, 1925.

RALPH YOUNG,

Deputy Industrial Commissioner.

PERMANENT INJURY—INCREASE OF PREVIOUS AWARD DENIED

Anton Voracek, Claimant,

vs.

Quaker Oats Company, Employer,

Employers' Liability Assurance Corporation, Insurer, Defendants.

John D. Randall, for Claimant;
Carl F. Jordan, for Defendants.

Re-opening

In this case settlement agreed upon by the parties was re-opened and reviewed upon petition of the claimant in November, 1924, and the compensation was raised in that proceeding from the amount payable under the act for a 15% permanent physical impairment to the amount due for a 30% permanent injury. Appeal from this decision was taken to the district court by the claimant and the court affirmed the commissioner. Further appeal was not taken although the claimant has refused to accept the amount of the judgment.

In June, 1925, the claimant petitioned for further re-opening and review and hearing on this petition was had August 5, 1925.

The conclusion is reached that the claimant's physical condition, as it is assumed to be from his activities for some time past and his present appearance, is much more consistent with the estimates of disability as made by the doctors called by the defendants than with the estimates made by the doctors called and testifying for the claimant.

It is held upon the record that the claimant has failed to discharge the burden of proving that he is entitled to compensation in excess of the amount awarded in the previous hearing and further recovery is hereby denied. The costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 14th day of August, 1925.

RALPH YOUNG,
Deputy Industrial Commissioner.

Affirmed by district court.

FURTHER RECOVERY FOR TRAUMA WITH NEUROTIC COMPLICATION

U. Butler, Claimant,

vs.

Cement Products Company, Employer,

Iowa Mutual Liability Insurance Company, Insurance Carrier, Defendants.

Walter R. Stewart, for Claimant;
Tompson & Dillor, for Defendants.

Re-opening

This claimant sustained an injury to his back in a fall while at work for defendant employer February 18, 1924. Under settlement agreement entered into by the parties April 5, 1924, the claimant received compensation at the rate of $15.00 for a period of twenty-nine weeks. On February 4, 1925, the claimant petitioned for a re-opening and review of settlement, alleging continuing disability. Hearing on this petition was had at Des Moines, July 9, 1925.

The injury in this case was to the fifth lumbar vertebra. There may have been facture. X-rays do not disclose definitely. The medical witnesses differ widely and leave much doubt as to the extent of the injury and measure of disability.

Most certainly the preponderance of the medical testimony does not justify the conclusion that the claimant is totally and permanently disabled as is his contention. On the other hand, the record cannot well be construed to afford acceptable basis for the assumption that disability terminated some months since as is claimed by the defendants. Practically all of the time since the injury the claimant has worn a body brace, early because of the insistency of the physicians, later at their suggestion and more recently upon his own motion. He has worked none since the accident and apparently is sincere in his belief that he has been and is now unable to do so. Neurosis is undoubtedly involved and it is the belief that exercise of will on the part of the claimant and gradual return to work would bring about complete and permanent recovery.

Upon the record it is held that the claimant is entitled to compensation from the date of the last payment up to September 1, 1925, at the rate of $15.00 a week. Defendants are ordered to make payment accordingly. Defendants are also ordered to pay the statutory medical, surgical and hospital benefits and the costs of the hearing.

Dated at Des Moines, Iowa, this 25th day of July, 1925.

RALPH YOUNG,
Deputy Industrial Commissioner.

No appeal.

SCIATICA AND NEUROSIS—INJURY AS CONTRIBUTING CAUSE OF CONTINUING DISABILITY

Jack Kosonovich, Claimant,

vs.

Norwood-White Coal Company, Employer,

United States Fidelity and Guaranty Company, Insurance Carrier, Defendants.

Clarkson & Heubner, for Claimant;
McCoy & McCoy, for Defendants.

Re-opening

This claimant suffered a strained back in accident in defendant employer's mine September 16, 1924. Under settlement agreement entered into by the parties November 5, 1924, the claimant received compensation in the amount of $115.70, which paid him at the rate of $15.00 a week for temporary disability up to and including November 9, 1924. On April 22, 1925, the claimant petitioned for a re-opening and review of settlement, alleging continuing disability as a result of the injury. Hearing on this petition was had June 5, 1925.

Upon the record it is held that by reason of sciatica and neurosis complications the claimant was totally disabled up to March 1, 1925, and that his injury of September 16, 1924, was the proximate and contributing cause of such disability.

Wherefore defendants are ordered to pay the claimant at the rate of $15.00 a week for the period from November 11, 1924, to February 28, 1925, inclusive. Defendants are also ordered to pay the costs of the hearing.

RALPH YOUNG,
Deputy Industrial Commissioner.

No appeal.

LEG INJURY—ADDITIONAL ALLOWANCE FOR PARTIAL DISABILITY

Wm. P. Steinback, Claimant,

vs.

Ford Motor Company, Defendant.

Lehmann, Seevers & Hurlburt, for Claimant;
Clark & Byers, for Defendant.

Re-opening

In accident arising out of and in the course of his employment by the defendant, occurring March 18, 1924, this claimant suffered a fracture of the left patella. He received compensation at the rate of $15.00 a week up to and including July 30, 1924. Settlement papers to cover such payment were executed by the parties and approved by the commissioner. On February 10, 1925, the claimant petitioned for a re-opening and review of settlement, alleging continuing disability. Hearing on this petition was had May 13, 1925.

Since the accident the claimant has worked approximately three months, August, October and November. Although he received full pay during these periods of employment, his testimony that he was somewhat handicapped in his work by reason of the condition of his knee is to some extent substantiated.

The medical witnesses differ as to the measure of disability in the leg and as to the cause of such disability as exists. Neurosis is undoubtedly a factor and has had much, if not all, to do with the present atrophied and weakened condition of the muscles of the limb. The disability is not permanent, according to the preponderance of the medical testimony and complete recovery could be brought about by will and work.

For the purpose of award, the claimant is held entitled to compensation for 50% temporary disability from August 1, 1924, the date he first resumed work, until August 1, 1925, and defendants are ordered to pay him at the rate of $7.50 a week for this period, deducting the actual

time he worked and received full wages. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 3rd day of July, 1925.

RALPH YOUNG,
Deputy Industrial Commissioner.

No appeal.

INFECTION NOT DUE TO INJURY—FURTHER RECOVERY DENIED

Swan Olson, Claimant,

vs.

Des Moines Water Works, Employer,

London Guarantee & Accident Company, Insurance Carrier.

Reopening and Review of Settlement

On November 10, 1923, this claimant suffered a mild concussion of the brain occasioned by being struck on the right side of the head by a chunk of coal falling from above. He was confined to the hospital for a short period, and on December 2, 1923, returned to work. He was paid the statutory compensation for this temporary disability under settlement agreement entered into by the parties December 3, 1923, and approved by the commissioner. Within a few weeks it was discovered that the right ear was affected. Under the assumption that this ailment was due to the injury he was paid for a seventy-five per cent impairment of hearing. These payments, running for thirty-seven and one-half weeks, were made under settlement agreement entered into by the parties January 31, 1924, and approved by the commissioner. Olson continued to work at his regular employment until early in July when he developed a head trouble known to the medical profession as bilateral neurolabyrinthitis. Alleging that this condition disabled him, and that it was due to the injury, the claimant filed a petition for re-opening and review of settlement. Hearing on this petition was had January 15, 1925.

Upon the record it is held that the claimant has failed to discharge the burden of proving that the ailment for which he seeks recovery resulted from the injury. The disease would seem to be due to infection and to have no connection with the accident. It is held that the claimant has been fully compensated for his injury and further recovery is denied. The costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 5th day of February, 1925.

RALPH YOUNG,
Deputy Industrial Commissioner.

EMPLOYER HELD FOR RESULT OF ACCIDENT DUE TO PREVIOUS INJURY

C. W. Butler, Claimant,

vs.

Norwood-White Coal Company, Employer,

Bituminous Casualty Exchange, Insurer, Defendants.

Clarkson & Heubner, for Claimant;

Bates & Dashiel, for Defendants.

Re-opening

In accident arising out of and in the course of his employment by defendant employer, occurring May 3, 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 4, 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 22, 1922, claimant petitioned for re-opening and review of settlement, alleging that the fracture of the femur increasing the disability was a consequence of the original injury. Defendants plead on 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 24, 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 proximate consequence of the original injury.

Examination by Dr. Fay November 14, 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 4, 1922, the tibia was, of course, nearer complete repair than it was on November 14 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 affected. 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 had been instructed by the attending physician to use and exercise the injured limb as much as possible to strengthen it and aid 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.

RALPH YOUNG,

Deputy Industrial Commissioner.

Affirmed by district court, pending in supreme court.

ADDITIONAL AWARD FOR MENTAL IMPAIRMENT DUE TO GAS POISONING

Roy Jones, Claimant,

vs.

Sayre Coal & Mining Company, and Maryland Casualty Company, Defendants.

Clarkson & Heubner, for Claimant;

J. Ralph Dykes, for Defendants.

Re-opening and Review of Settlement

Roy Jones was employed as shot fireman in defendant employer's mine. On August 30, 1922, while he was engaged in placing and firing shots in the mine, he suddenly collapsed. The cause of the collapse was acute carbon monoxide poisoning according to the doctors. Jones was taken to the hospital where he remained three or four days, and after convalescing for ten weeks, returned to work. Under settlement agree-

ment executed by the parties in March, 1924, Jones received $150.00 in compensation as payment for the temporary disability. In the memorandum of this agreement, which was approved by the commissioner, it was stipulated that the settlement was not to be considered as final, as the claimant's memory had been affected and the doctors feared he might eventually have a mental breakdown. In November, 1924, the claimant petitioned for a re-opening of the case and review of the settlement. In this pleading, he alleged he had a permanent disability as a result of the injury. Hearing was had February 26, 1925.

It is of record that the claimant has worked regularly since returning to the mine on November 2, 1922. This would indicate there is no substantial impairment of physical capacity. Such impairment as exists is mental, and is evidenced particularly in loss of memory. Jones needs to be supervised more or less in practically everything he does. As to remote events, his memory seems reliable, but it does not properly function in current matters. In the details of every day life and his work, he is forgetful, and according to the testimony can manage only because of the indulgence and assistance of those with whom he is associated at home and in the mine. At the mine, he neglects at times to order necessary supplies, and at other times he will over order. It is also of record that the lunch which he carries to his work is often returned home without being touched. His disposition is changed, and at all times he is nervous and irritable. Although difficult to measure, there is impairment which, under less favorable circumstances, would be reflected in earning capacity.

The medical testimony is in agreement in diagnosis—the ailment is due to carbon monoxide poisoning. The doctors explain the described effects are occasioned by the the obstruction of cerebral vessels due to the injury, and that they are permanent. The record contains but a single estimate of the impairment by medical witness—Dr. Ely gives it as his opinion that the measure is from a fourth to a third. For the purpose of award, the disability is fixed at 20%.

Wherefore, defendants are ordered to pay the claimant on the basis of $15.00 per week for eighty weeks, less the ten weeks previously paid. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 9th day of March, 1925.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

DEPARTMENT RULINGS

TEN CENTS A MILE REASONABLE CHARGE FOR USE OF AUTOMOBILE

J. H. Carder, Claimant,

vs.

Central Iowa Fuel Company, Defendant,

United States Fidelity & Guaranty Company, Insurance Carrier.

Commissioner's Ruling in the Matter of Expense Account

Application on the part of claimant, filed July 23, 1925, asks the industrial commissioner to reconsider an informal ruling with regard to expense account in this case, and that the issue be reopened and assigned for hearing on evidence.

The record shows that on or about August 22, 1924, claimant Carder sustained a personal injury to his left arm in the employment of the defendant coal company at its mines near Olmitz. It became necessary for him to make several visits to Albia, some thirty miles distant, for medical and surgical treatment. In making these trips the workman used his own automobile, driven either by himself or a friend, in either case without transportation expense other than the amount to which he is entitled for the use of his own automobile.

Ruling is sought as to proper charge for this service. Also, as to whether or not the reasonable service provided by statute is held to mean merely actual necessary outlay.

The burden of this record consists in evidence developed with a view to determine the actual average cost per mile of operating automobiles on the highways of this state in varying conditions.

In establishing this fact claimant relies chiefly upon the testimony of T. R. Agg, Professor of Highway Engineering at the Iowa State College of Agriculture. The witness testifies in this record that the "figure of twelve cents per mile represents what, in our judgment, is the average cost of the average car owner for year round operation on the dirt roads in this state. He explains that this conclusion is reached upon the basis of reports as to the experience of individual car owners as to what their costs actually were, and from the owners of fleets of vehicles of various kinds, and from every other conceivable source where experience afforded evidence bearing upon this question during a number of years. From such reports the conclusion is reached that fifty thousand miles is about the average service of the average car and all factors involved including original cost, interest, depreciation, gas, oil, repairs, etc. Are considered in this estimate.

In cross-examination the witness was asked for figures separately on the various elements of the cost of automobile operation—gasoline, oils, tires, repairs, depreciation and interest—on the basis of fifty thousand

miles of service. His replies aggregated a total of $3,650, and this calculation showed the cost per mile to be 7.3 cents.

The witness protested against this process of reaching a conclusion and counsel insists the demonstration of Professor Agg is subject to successful denial. Presumably, both are measurably correct in their criticism, but each process and its results is suggestive of relative accuracy.

All evidence submitted relates to average experience, though mention is made and some figures are given as to varying expenditure in support of different classes of automobiles and varying highway conditions.

It is a matter of common knowledge that the state of Iowa in its rules for the adjustment of transportation expense fixes the cost of automobile use driven by one in the employ of the state at ten cents a mile. While this fact is not in the record, it is so notorious as to justify this tribunal in taking judicial notice of the same.

In this case it is not only necessary to decide as to the usual or average cost of automobile use. We have a particular case, an individual experience, somewhat unique in character, which must be considered in this ruling.

The road between Olmitz and Albia is entirely of dirt construction. For a considerable portion of the way this road is very much more difficult of negotiation than the average state highway. It is poorly worked and unusually hilly, while the rest of the way the dirt road is perhaps a fair average of such construction, though quite hilly. The car used by this claimant on the occasions of his visit for medical treatment was a Ford touring car, and common knowledge asserted in this record shows the cost of operation of Ford cars to be below the average of automobile transportation experience.

On the one hand we have to consider this particular vehicle used, and on the other hand it is necessary to take into consideration the character of the highway traveled. In view of the entire situation it is held that this workman should be reimbursed by the defendant insurance carrier in the sum of 10c a mile for the use of his car on the occasion of these trips from Olmitz to Albia for necessary medical and surgical treatment.

In this connection it is further held that actual necessary expenditure only should be considered in the adjustment of an expense account for which an employer or insurer is held responsible.

Dated at Des Moines, Iowa, this 7th day of December, 1925.

A. B. FUNK,
Iowa Industrial Commissioner.

COSTS DIVIDED FOR TESTIMONY OF MUTUAL INTEREST

J. H. Carder, Claimant,

vs.

Central Iowa Fuel Company, Defendant.

Hearing was held at the department, December 7, 1925, to determine as to the amount in which defendant should reimburse claimant for the use of his own automobile necessary in connection with medical, surgical and hospital services required, and for which defendant is liable under the statute. The decision filed did not assess costs incurred in this proceeding, and application is made for the taxing of costs.

The decision filed does not conform to the contention of either party. On the part of claimant it was alleged that reimbursement should be on the basis of twelve and six-tenths cents a mile, while defendant insisted that eight cents a mile was proper remuneration. The commissioner held for reimbursement on the sum of ten cents a mile, so neither party won to an extent that would suggest special liability for costs.

The costs in question relate chiefly, if not wholly, to the attendance as witnesses of Professor T. R. Agg, of Ames, and this claimant, J. H. Carder, together with the services of R. U. Woodcock, as reporter.

This hearing was in the nature of inquiry to determine the fair valuation of such automobile services in this and other cases that might arise in this jurisdiction. The witnesses mentioned were both called by claimant. The defendant offered no testimony. The testimony contributed by both witnesses, however, was necessary to establish a record upon which to base an opinion, and was the only basis afforded. Counsel for defense, as well as opposing counsel, made use of Professor Agg in the endeavor to establish contention, and the testimony of Carder as to the condition of the roads negotiated in his trips to the hospital and as to the car in use was necessary to intelligent conclusions. The shorthand report was indispensable.

It is therefore held that since neither party actually won, and since all services rendered were important to both parties concerned, the costs incurred in this proceeding shall be divided equally between the claimant and the defendant when settlement is made for such services.

Dated at Des Moines this 12th day of January, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

TEN DAY TIME LIMIT FOR REVIEW APPEAL HELD TO BE INFLEXIBLE

Juliett Pratt, Surviving Widow of Frank Pratt, Deceased, Claimant,

vs.

Pershing Coal Company, Employer,

United States Fidelity & Guaranty Company, Insurance Carrier.

Clarkson & Huebner, for Claimant;

Mabry & Mabry, for Defendants.

On the 15th day of June, 1926, the defendants in this case filed with this department a petition for review of arbitration finding and award.

June 23, 1926, the claimant filed motion to dismiss defendants petition for review for the reason that it was submitted for department record at a date beyond the ten day limit in such cases made and provided.

The department record shows the arbitration decision to have passed on file the 2nd day of June, 1926. It further shows that the defendants petition for review was received for filing June 15, 1926.

Section 1447 of the code contains this provision:

Review. Any party aggrieved by the decision or findings of a board of arbitration may, within ten days after such decision is filed with the industrial commissioner, file in the office of the commissioner a petition for review, and the commissioner shall thereupon fix a time for the hearing on such petition and notify the parties.

Defendants aver that the failure to file the review petition within the ten day limit is wholly due to oversight occasioned by pressure of professional duty requiring the service of counsel away from the home office. It is contended that the legislative injunction relative to the liberal construction of the compensation statute affords sufficient basis for ignoring the rule cited by claimant; that the law is not mandatory and that it is within the discretion of the industrial commissioner to place the petition for review upon the department calendar for hearing in the usual manner.

Department construction of the statute is not in accord with these views. Definite time limits fixed by statute are held to be inflexible in application. To hold otherwise would be to invite confusion and encourage demoralization in administration. All pleas for such loose construction may be supported by plausible explanation and fervent appeal. If the law may be so construed as to excuse three days of default, why not ten days or three months upon showing of mitigating circumstances. If this rule of leniency and loose construction applies to the ten day limit for review, why shall it not apply to the two year limitation for bringing arbitration action. Then, why not construe the ninety day notice of accident provision as meaning most anything where occasion arises for exercising indulgence in this connection.

It therefore becomes necessary to hold that the ten day limit provided in Section 1447 is definite and mandatory; that in cases where filing is beyond this date limit no discretion may be exercised and that further proceeding is beyond the jurisdiction of the industrial commissioner.

Motion to dismiss petition for review is sustained.

Dated at Des Moines, this 1st day of October, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Appealed.

COMMUTATION—RE-OPENING DENIED—JURISDICTION IN DISTRICT COURT

Tony Zika, Claimant,

vs.

Coon River Sand Company, Employer,

Aetna Life Insurance Company, Insurance Carrier,

John D. Denison, for Claimant;

Carr, Cox, Evans & Riley, for Defendants.

Claimant was injured December 4, 1922. After payment of maximum compensation for a period of thirty-seven weeks, commuted settlement was made August 29, 1923. August 30th succeeding, said settlement had the approval of this department.

It appears from the record that on the same day O. S. Franklin, Judge of the District Court of Iowa in and for Polk County, entered an order approving of this settlement which order was written on the reverse side of the application for commutation.

Hearing on this application for reopening was held at the department, October 14, 1926, wherein issues and arguments were confined to the question as to whether or not it is within the jurisdiction of this tribunal to reopen this case in the present state of the record.

Counsel contends that because of misapprehension or otherwise commuted settlement was unjust and inconsistent with statutory requirement; that the claimant, Tony Zika, was mentally incapacitated to such an extent as to disqualify him for making a legal contract, hence the industrial commissioner should now afford him equitable relief.

Counsel further contends that because of alleged irregularities related to the process of commutation on the part of the district court, this settlement never had vital existence, and therefore the situation is as if the said instrument of commutation had never left this department, and hence all right of readjustment at this time is vested in the industrial commissioner.

The statute governing this proceeding is found in Section 2477-m14, Supplement to the Code of 1913, which reads as follows:

Sec. 2477-m14. In any case where the period of compensation can be determined definitely either party may, upon due notice to the other, apply to any judge of the district court for the county in which the accident occurred for an order commuting further payments to a lump sum; provided, however, that no judge of the district court shall consider any such application until there is endorsed thereon by the Iowa industrial commissioner his approval of such commutation, and no order shall be issued by such judge contrary to the endorsement of said industrial commissioner. And such judge may make such an order when it shall be shown to his satisfaction that the payment of a lump sum in lieu of future monthly or weekly payments, as the case may be, will be for the best interest of the person or persons receiving or dependent upon said compensation, or that the continuance of periodical payments will, as compared with lump sum payments, entail undue expense or undue hardship upon the employer liable therefor. Where the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at five per cent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, for which said compensation was being paid, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement, award, finding or judgment shall be discharged of record.

Under this statute it must be understood that the district court has the burden in connection with commutation proceeding. Before a district judge may consider such application, the same must have been endorsed by the industrial commissioner, but with this fact in evidence the decision giving or refusing vitality to such settlement is exclusively

in his hands. The law provides that before making an order for commutation it must be "shown to his satisfaction that the payment of a lump sum in lieu of future monthly or weekly payments, as the case may be, will be for the best interests of the person or persons receiving or dependent upon said compensation," etc. No such admonition is given the commissioner and the entire statutory statement clearly indicates that the district court and not the industrial commissioner has the chief and final responsibility in this process of lump sum settlement.

The fact is emphasized only as a basis for conviction on the part of the commissioner that it would be sheer presumption on his part to assume to assert jurisdiction in any degree to set aside or otherwise nullify an order of the district court authorizing commutation.

Allegation as to irregularity in this connection on the part of the court is not here to be considered, much less presumed, for the reason that under a plain rule of jurisprudence the commissioner may not assume to question method or conduct on the part of a superior tribunal.

Equity may or may not abide with this claimant, but since his case has passed beyond the jurisdiction and control of this department, the industrial commissioner may not consider it upon its merits. It is for the district court alone to say whether or not its order is valid and, if valid, as to whether or not it shall be vacated. It is not within the power of the industrial commissioner to exercise an ounce of influence in this case until he shall have had legal notice that a tribunal, clothed with final authority, has held that the court order was without force or effect, or, if valid, that such order has since been legally rescinded. Then, and in that case the industrial commissioner will proceed to consider issues raised by this application upon their merits as by statute provided in all cases of uncommuted settlement.

It is held by the industrial commissioner that he is without jurisdiction to consider this application for reopening or commuted settlement, wherefore, the said application is denied.

Dated at Des Moines, this 18th day of October, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Appealed.

N. J. Caldwell, Claimant,

vs.

Home Insurance Company, Employer,

Globe Indemnity Company, Insurance Carrier, Defendants.
Comfort & Comfort, for Claimant,
Stipp, Perry, Bannister & Starzinger, for Defendants.

Ruling on Motion to Dismiss Petition for Re-opening of Commuted Settlement

Claimant was injured in an automobile accident, November 22, 1923, while in the service of the Home Insurance Company of New York, as special agent. As insurance carrier the Globe Indemnity Company on May 31, 1924, assumed obligation and agreed to pay maximum compensation "during compensable disability," the Memorandum of Agreement of this date showing payment of $255.00 as compensation.

September 13, 1924, there was made what is termed a final payment, bringing total payments to $330.00.

There was filed with this department January 7, 1925, an application for lump sum payment, duly executed by claimant, N. J. Caldwell, and by W. C. Hoffmann, on the part of the employer and insurer, which was duly approved by the industrial commissioner on the day next succeeding. As presentation of petition to the district court has been waived by both parties, the approval of the commissioner completed the legal process of commutation.

July 24, 1926, counsel for claimant filed an instrument entitled "Application for Arbitration and Petition to Reopen Compensation."

August 13, 1926, counsel for defendants filed motion to dismiss the said application.

Hearing was held at the department, October 19, 1926, upon the motion to dismiss. Claimant's amendment to petition was admitted to the record. Claimant's resistance to motion to dismiss was denied.

Claimant's application for reopening and the amendment thereto allege as grounds therefor inadequacy of payment, duress on the part of the Home Insurance Company, invalidity of instrument of commuted settlement, misconception on the part of examining physicians.

Through the exercise of unusual liberality on the part of the commissioner in the consideration of motion to dismiss claimant was permitted to introduce evidence in support of these allegations.

All facts and circumstances and statements of record seem to justify these conclusions. In the accident of November 22, 1923, the Studebaker Corporation was involved through fault of automobile construction and said corporation was duly served with notice of subrogation liability by both claimant and defendant. After the tentative settlement of September 13, 1924, further claim for compensation was made by claimant, by whom it was proposed that if the Globe Indemnity Company would waive all claim to subrogation recovery, claimant would concede all right to further compensation and this offer was finally accepted by the insurer. The commuted settlement in the record hitherto referred to was effected on the basis of such understanding.

Alleged duress is based upon the fact that the state agent of the Home Insurance Company, O. J. Davis, after carrying claimant on the pay roll for more than a year informed him it would be necessary to fill his place with a new man if he could not take care of the territory assigned to him.

As to the ground that the claimant did not understand that commutation means final settlement, a complete bar to further recovery, the record shows that in accordance with unvarying practice at the department the commissioner distinctly informed him of this fact.

Summing up, it may be said: The claimant with full understanding as to his legal rights and of all circumstances involved actually proposed and deliberately entered into the settlement which was commuted by the industrial commissioner. It is the holding of the industrial commissioner that in the absence of fraud or gross irregularity in procedure, settlement of a compensation claim by lump sum settlement must mean just what the statute says—that "the employer shall be discharged from all further liability." On the part of this claimant fraud is not alleged, and irregularity is not in evidence.

In this case the industrial commissioner finds:

1. There is not in evidence any support for the charge of duress on the part of the employer.

2. The record shows that the commuted settlement was in accordance with statutory requirement, and that procedure as to commutation was in due and legal form.

Wherefore, defendants' motion to dismiss application for reopening is hereby sustained.

Dated at Des Moines, this 21st day of October, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

INDEX

CASES REPORTED

GENERAL

TOPICAL

A

B

C

D

E

F

G

H

I

K

L