DETAILED REPORTS

State of Iowa
1928

EIGHTH BIENNIAL REPORT OF THE

Workmen's Compensation Service

For the Period Ending June 30, 1928

AND

REPORT OF DECISIONS

By the Department and State Courts

A. B. FUNK

Industrial Commissioner

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LETTER OF TRANSMITTAL

STATE OF IOWA
WORKMEN'S COMPENSATION SERVICE

Des Moines, September 12, 1928.

Hon. John Hammill, Governor of Iowa.

Sir: In compliance with Section 1432, Code, 1927, I have the honor to transmit to you the eighth 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
Ora Williams.....Secretary
Evelyn Madison.....Stenographer and Chief Clerk
Katherine Willett.....Stenographer
Marie M. Grinstead.....File Clerk
Margaret English.....Settlement Clerk
Jeannette E. Graves.....Stenographer and Report Clerk

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

WORKMEN'S COMPENSATION SERVICE

Workmen's compensation opens the fifteenth year of its existence in Iowa. There is evidence of its uniform growth in favor on the part of workmen, employers and the general public. Because of limited opportunity to draw upon experience elsewhere, the original act was wanting in some particulars but wonder may be entertained that its shortcomings were not more serious under the circumstances. Amendments have much increased the efficiency of the statute but it must be admitted that considerable further change is necessary to the ends of adequacy and to keep Iowa abreast with even the conservative states where industrial conditions have led to the practical development of the service.

While it is not reasonably to be expected that work of the peculiar character devolving upon this department could proceed with absolute satisfaction to all concerned, evidence of approval of administrative service on the part of individuals and interests most involved is gratifying. It has been the unremitting purpose of this administration to give the full limit of possible efficiency to the compensation statute. This has been assumed to mean liberal interpretation in establishing coverage of workmen and dependents and in securing the full measure of their legal claims, while affording to employers and insurers protection against false or excessive demands. The widest invitation has been extended to all who feel the need of department advice, and all inquiries by letter or otherwise have been given prompt and careful attention. It is the department purpose so to use accumulated knowledge and experience as best to serve employers and workmen in the matter of settlement without the irritation of controversy or the expense and delay of needless litigation. In this administration there is opportunity to serve far beyond the limits of actual statutory requirement, and endeavor is exercised to make the most of the appealing situation.

COMPENSATION COVERAGE

Personal injury on or off the premises of the employer by workmen "engaged in agricultural pursuits or in operation immediately connected therewith" is specifically barred from compensation coverage. In two cases recently arbitrated and reviewed before the Industrial Commissioner insurance policies have been introduced giving evidence of engagement to cover farm workers

but it has been necessary to hold against the claimant. On the part of the general assembly intent is evidently to afford definite and far reaching exemption to farm operations and kindred pursuits and the statute rather than the insurance policy must be our monitor. In the United States, with rare exception, agricultural employment is not under compensation coverage in a compulsory sense. In some states, however, provision is made for coverage at the option of the employer in agricultural pursuits. Experience leads to the conclusion that the Iowa law could extend its usefulness by permitting farmers voluntarily to come within the jurisdiction of this system by definite election on the part of each individual farmer who desires this relationship.

It would seem worth while for the general assembly to consider the provisions of statute in some states to the effect that when insurance policies are made to cover employees in exempted employments, such employment shall automatically classify as included in compensation jurisdiction.

Clerical employment is in the exempted class except in cases of injury where the employee is "subject to the hazards of the business." It is found to be exceedingly difficult to define just what is meant by this exception. In one case, (Kent vs. Kent, 208 N. W. 709) the Commissioner was reversed because of mistaken application. In another (Crooke vs. Farmers Mutual Hail Insurance Association, 218 N. W. 513) he was affirmed in his view as to its exercise. It is recommended that clerical employment be wholly removed from the exempted class. There is no reason why one employed in this division of labor should be denied relief where disabled more than others to whom benefits are held to be due.

It does not seem to be generally understood that casual employment has no place in our administration in cases where service is "for the purpose of the employer's trade or business." It cannot be plead in defense except in rare cases where employees are injured in service foreign to the trade or business of the employer and not in exempted employment.

It seems difficult to educate the public as to the statutory limitations of the field of independent employment as evidenced by department inquiry in correspondence and otherwise. In all cases where a workman is held to regular hours of service, under direction, supervision and control as to details of service and subject to discharge at will, the relation of employer and employee exists

and payment is required. On the other hand, where work proceeds under engagement for completed performance with the right of the workman to develop his own methods and control his own time and is held in obligation only in a general way as to the results of his labor, independent employment is indicated for which coverage is not afforded. The line of demarcation is apparently plan but peculiar circumstances sometimes render definite conclusion rather difficult.

Under department holding, school districts in cases of injury arising out of employment are held in compensation obligation to teachers, janitors and other employees and usually to the drivers of school busses. If insurance is not carried, the district is directly responsible.

Incorporated towns and cities are liable in all cases of injury to employees. This does not include officials elected or appointed. Peace officers in town, city and county are protected under section 1422 of the code in cases that classify with the requirements of said section.

In previous reports attention has been called to the fact that the legal rule of computation makes it necessary to discriminate against the Sunday worker and give him less in the way of compensation than is given the worker working in six-day employment. This situation is so grossly unjust as to permit of no possible defense.

Under the peculiar provisions of sub-section 6, 1307 of the code much confusion arises. Many employments in Iowa "customarily shut down and cease operation during a season of each year." In such cases computation must be based upon "the number of working days which it is the custom of such business or enterprise to operate each year." Where the number is in excess of two hundred days, it becomes necessary not only to consider the limitations of such employment as building construction, road making, bridge building, etc., as to weather conditions, but as there is much variation in custom, it behooves us to inquire into the peculiar program of each contractor and employer where controversy arises as to computation basis. It would seem worth while to consider a system of group classification based upon usual conditions and practices as being more consistent with good administration and evident equity.

It would be unbecoming in this department to commend to public favor one insurance company above another, but it is held to

be the part of duty to urge all employers buying compensation insurance to deal with companies maintaining adjustment agencies within the state. Otherwise in case of injury there is always delay and nearly always difficulty in arranging details of settlement. Many companies have Iowa adjusters. Our experience and knowledge suggests that all are reliable and that their rates are no higher than the outsiders who take business without arrangement adequate or just to carry out compensation obligation. Iowa employers owe it to their employees to see that policies are carried where service is assured as needs develop.

PROCEDURE

The prompt filing by employers of reports of injuries as required by section 1434 of the code is important to good administration. This report is the basis of intelligent adjustment and its absence from the department file often leads to delay in settlement which is frequently much more difficult to secure. It ought never to be necessary to impose the penalty provided by statute for failure on the part of employer promptly to report accidents causing more than one day of incapacity.

As soon as obligation is accepted, the insurer or self insuring employer should file here a memorandum of settlement that we may know payments are being made and that the same are in accordance with legal requirement. It should be understood that such settlement is merely tentative and subject to correction if in error. In signing the same, the injured workman relinquishes no right of recovery to the full extent of statutory limit.

Litigation should never occur in cases where settlement is possible. It is often initiated because of misunderstanding as to law or fact. The department offers to workmen and to dependents the full limit of possible service in successful negotiation. Until liability is denied no attorney is needed and even in case of denial we are often able to secure amicable settlement. Of course hearing cannot proceed without legal counsel. When action is clearly necessary delay in bringing same may be unfortunate for all concerned.

In order to save time and expense to the state, it is necessary to arrange arbitration schedules with care as to dates of hearing, but it is intended that the department shall not be responsible for unreasonable delay. Hearings in review may be taken up almost any week of the year and only a very few days are permitted to elapse after the review record is completed before decision is filed.

Under decisions of the supreme court it is necessary to hold that in arbitration or review no evidence may be admitted over objection that is not in the form of deposition or orally submitted.

It should be remembered that except in the rare instances where injury occurred prior to October 28, 1924, the date the present code became effective, no original proceeding for compensation can be entertained after a period of two years from the date of injury.

PLACE OF RE-OPENING HEARING

This procedure functions under sections 1457 and 1458 of the code. Its purpose is the review of settlements of record in cases where parties concerned seek to "end, diminish, or increase the compensation so awarded or agreed upon." The statute provides that all hearings in this process be held at the department. The desired change can be secured only through evidence, usually that of physicians, and to claimants some distance from Des Moines the burden of expense is onerous and in some cases prohibitive. While such arrangement will increase department labor, it will be satisfactory here if provision is made to hold these hearings locally as arbitrations are appointed.

COMPENSATION SECURITY

Where the state, county, municipal corporation or school district is the employer, compensation obligation is arbitrarily imposed, though, as with any other employer, insurance coverage may be provided.

Under the provisions of sections 1477-8, many of the larger employers qualify to carry their own risks. In this state there has never been a defaulted payment on the part of a self insurer. During the existence of this system in Iowa, there has been comparatively an exceedingly small number of cases where insurers have failed to make good on established legal obligation, due to enforced liquidation.

These exceptions have been almost wholly confined to losses sustained in the field of coal mining. This fact has tended to increase rates on such insurance that are now considered by operators as distinctly burdensome. Such losses have not only served to increase mining insurance rates but have caused the exercise of strict discrimination as to working conditions resulting sometimes in prohibitive charges or absolute denial of coverage to some small operators where working conditions are much more menacing than in mines developed by large operators. As compared with the

entire mining industry in the state, these cases of prohibitive rates or coverage denial might be considered as of little importance, but the situation is serious in that it tends to spell ruin to the small operator and disaster to the unfortunate miner.

TOWNSHIP EMPLOYMENT

Difference of opinion has existed between lawyers as to the employment status of civil townships. Decision of the supreme court (Hop vs. Brink et al., 217 N. W. 551) definitely classifies this political unit as without compensation jurisdiction. In years comparatively recent the civil township has come into conditions of increased importance in employment relationship. Enormous increase in highway development has served to bring into its service many workmen under the direction and control of township trustees. The denial of compensation coverage to these employees has no defense in justice or consistency and the general assembly is advised to give this situation its earnest consideration.

STATE CLAIMS

In case of injury to employees on state farms, it becomes necessary to deny compensation payment under the provision of statute excluding agricultural employment from compensation jurisdiction. The law should be so amended as to afford relief in such cases. Men working for the state whether on a farm or otherwise should be given like treatment where an injury arises out of employment.

Provision for relief for peace officers in section 1422 of the code makes unjust discrimination in that maximum compensation payment is allowed regardless of earnings. The peace officers are in no more danger of death or disability than are workmen in many employments and in either case the situation is equally deplorable. There is no reason why the state should treat the injured peace officer more liberally than employees in public or private service.

In this connection it may not be out of place to call attention to the fact that claims allowed by the general assembly for personal injury are usually on a basis much more liberal than is provided for injured employees under the workmen's compensation law. This is probably due to inadvertence as there is no reason why such discrimination should be made. If it shall be urged in support of this practice that the compensation rate seems too low when special appropriation is made, the legislature might easily avoid discrimination by raising the rate of payment to injured

workmen or their dependents. If it is too low in one case, it would seem to be too low in all cases.

BURIAL CHARGES

It is observed with concern that undertakers are frequently disposed to impose hardship unnecessary and unseemly upon surviving members of a family stricken by industrial calamity. In the shadow of great sorrow and under the influence of tender memory, the survivors are often led to approve of service more lavish than is reasonably required without realizing the cost or perhaps the excessive charge. It recently came to the knowledge of the department that a charge of more than one thousand dollars was made by undertakers in a case where the son of parents in very moderate circumstances had lost his life. The bill, a copy of which we have, includes lavish service and high charges. One charge is forty dollars for flowers in the month of June. A few months later the entire charge for the burial of four salesmen was more than one hundred and fifty dollars less, and it is not to be presumed that the service was either shabby or rendered at a sacrifice. It should be borne in mind that the law gives the Industrial Commissioner authority to adjust undertakers' charges and when appeal is made the knife will be used unsparingly to prevent imposition.

COMMUTATION

This process continues to promote anxiety in all compensation jurisdiction. Most workmen and dependents yearn to have their entire award immediately available and in many, perhaps most cases, this yearning cannot be gratified with due consideration for the "best interests" provided by statute as a controlling factor. In permitting or denying lump sum settlement, the most careful and thorough scrutiny of circumstances and conditions is required and if mistake is made it is almost always on the side of approval. In many cases it is wise to refuse because of a measure of disability that may develop when re-opening has been rendered impossible. The amendment which gives to the Commissioner authority to complete the process without appeal to the courts where statutory waiver is submitted results in a great saving in time and money. I do not recall a single case within the past two years where approval of the court has been required in commutation.

AMENDMENT POLICY

In deciding as to the recommendation of amendments to the statute as required by law, expediency must have consideration. In previous reports the Commissioner has made a number of recommendations which in its wisdom the general assembly has, and perhaps several times, declined to adopt. Conviction as to compensation needs and compensation justice has not substantially changed by the lapse of time and the accumulation of experience. It is still believed that:

Iowa should reduce its waiting period as have many other states; that

Iowa is not justified in denying relief to workmen deprived of earnings by occupational disease clearly arising out of employment; that

Iowa should not penalize the workman who through no fault of his own must spend much of the time as lost member value in an abnormal healing period; that

Iowa should see to it that the seven-day worker is not compelled to accept smaller weekly compensation payments than is provided for six-day work; that

Iowa should not make it possible for one child to receive compensation to the age of twenty-two years, while payment to others must be suspended at the age of sixteen years.

The Commissioner does not continue to press these amendment needs upon the attention of the general assembly, because he is any the less in favor of the same but for the reason that further persistence in this connection may serve to reduce the chance of other important proposals without the probability of change resulting as to recommendations that have gone into the legislative discard.

SAFETY FIRST

The compensation service is assumed to deal only with cases in which personal injury has occurred and for which statutory relief is provided. Compensation experience, however, so shockingly demonstrates the need of greater safety provision on the part of workmen and employers as to impel the Industrial Commissioner to take official notice, though the matter is not within his range of statutory requirement.

From a recent speech by Honorable James J. Davis, Secretary of Labor, these facts are emphasized: Twenty-five per cent of the blind population of the country are deprived of vision by industrial accident. To industrial accident is also due annual wage loss in the United States in the sum of nearly a billion and a quarter dollars. Persons permanently disabled every year number 105,000, and 23,000 workmen are killed in employment. The Secretary well says that most of these accidents are unnecessary.

There is on the part of many employers a failure to realize the importance of every possible prevention rule and device which he may exercise to his material advantage and at the same time make contribution of inestimable value to the welfare of the individual workman and to society. The average workman fails to recognize the elements of peril in his daily round of employment. Co-operation between workmen and employers in the matter of safety provision and personal painstaking has wrought wonders in the preservation of life and working capacity, and there is hardly any limit to possibilities in this vital interest.

Within fifteen years the United States Steel Corporation reduced its rate of disabling accidents to the wonderful extent of 84.15 per cent through unremitting effort. The corporation publicly announces that safety work "is not a hobby but a proven practical business proposition based on business principles and classified as an essential feature of successful and efficient plant management."

The Lehigh Portland Cement Association in its March-April bulletin makes this announcement: "For operation 365 consecutive days without accident, twelve mills in the cement industry have been awarded handsomely engraved safety certificates in acknowledgment of their achievement." Co-operation between workmen and employers turned the trick.

The Colorado Fuel and Iron Company submits very favorable records as to department achievement in the matter of accident avoidance. One plant made a record void of casualty for a period of 406 days. Wonderful co-operation and safety organization is mentioned.

It is regretted that we have no figures summarizing plant injury record in Iowa. It is believed many of the larger employers are making more or less organized effort in the interest of industrial safety. The percentage of accidents in proportion to men employed is evidently much against the smaller concern.

Many disabled workmen and numerous widows and orphans, in the shadow of calamity caused by avoidable accident, afford fervent appeal to employers who fail in the introduction of every helpful safety device and every possible element of prevention

and as well to the individual workmen inviting calamity to himself and to his family by indifference to the perils of employment.

The Industrial Commissioner again appeals to the general assembly for larger provisions for inspection service on the part of Labor Commissioner Urick. All he can do under present limitations is grossly inadequate to the demands for better safety service.

MEDICAL, SURGICAL AND HOSPITAL

The maximum limit of $200.00 provided by our statute is adequate in a very large proportion of cases. In the rare exceptions, however, there is wont to be grievous misfortune to the workman and serious sacrifice to hospitals and physicians. While the Commissioner means always to be considerate and conservative in the matter of increasing the compensation burdens of industry, it is believed that justice demands an increase in the statutory allowance for physical relief to injured workmen.

Recommendation to this end is made after investigation showing that the change will only nominally increase the sum total of medical and hospital expense to the employer or insurer. While this statement will be challenged, it is subject to convincing demonstration. These figures are submitted as the experience of six insurance companies leading in compensation coverage in Iowa, withholding names that appear therewith:

No. 1. Cases in which medical, surgical and hospital requirement exceed the $200.00. 1.4 per cent.

No. 2. Limit exceeded in 173 cases out of a total of 9,031 or 1.9 per cent.

No. 3. 20 cases out of 1,600—1.2 per cent.

No. 4. 4 cases out of 1,000—four-tenths of one per cent.

No. 5. 9 cases out of 1,765—five-tenths of one per cent.

No. 6. Very small percentage reached maximum.

It should be understood that in a number of these cases of excess requirement insurers have substantially exceeded the limit of payment, sometimes to the extent of many hundreds of dollars in a single case, for the purpose of reducing compensation obligation, and this investment has usually paid. It is within department knowledge that in many more cases this policy might have been adopted with advantage to the insurer as well as to others.

In view of all these facts and circumstances the general assembly is advised to provide unlimited necessary hospital benefits and to increase the maximum medical and surgical allowance to $200.00.

It is within the knowledge of all familiar with department policy that in cases where unnecessary service is billed or excessive charges made, statements submitted are carefully scrutinized and if it is necessary in the interest of justice, the knife is rigidly applied.

In this connection it is interesting to consider the provisions of other jurisdictions. In about ten states statutory medical and surgical service is practically unlimited. In this list is New York, Illinois, California, Nebraska, Connecticut and Idaho. In a number of other states the supply is within the discretion of the commissioner. In others the statutory limit is as high as $500.00.

PERSONAL

Since the 1926 report Mr. Ray M. Spangler, for nine years our very efficient and faithful secretary, has retired to accept service in the insurance field. We parted with him with great reluctance but since the business world gives much greater promise of reward than the public service, Mr. Spangler took the wise course and retired with the best wishes of the entire department.

It was a matter of rare good fortune to the service and otherwise that we were able to fill this important vacancy by the appointment of Mr. Ora Williams. The new secretary has had a very wide range of experience which adds substantially to his equipment. He has applied himself diligently and effectively to the wide range of duty imposed and few men could have gone so far forward in its requirement during the time he has been with us.

There has always existed in this department a fine spirit of cooperation. While it is realized that the Commissioner is responsible to the state for the performance of full department service, it is also understood that his associates are working, not for him, but with him, to the end of the best possible administrative achievement.

AMENDMENTS RECOMMENDED

I. Admitting to compensation benefits employees on state farms.

II. Removing clerical employment from excluded class.

III. Providing for re-opening hearings in county where injury occurs.

IV. Increase of medical, surgical and hospital benefits.

V. Providing coverage for township employees.

FINANCIAL

Expenditures for department support and estimates for needs of the coming biennium appear in tables following. They speak plainly for economical administration. When this service was established in 1913 there was provided a standing appropriation of $20,000.00 per annum. During the fifteen years intervening, annual expenditures has never reached this sum, modest, indeed, in view of the range of service covered and the saving to the state in reduced court costs. Estimates for the next two years are well within this amount.

In this section of our report showing is also made as to sums expended by the state in payment of claims arising out of compensable injury in state employment. It should be understood that in co-operation between the department and representatives of the state, settlements are made with great care in order to protect the interest of the tax payer as well as to deal justly with employes. Rules in use in private employment are strictly applied.

Figures submitted show that in the fiscal year 1926-7 the sum of $14,497.76 was paid out of the state treasury on these claims, divided as follows: death claims, $3,477.29; disability, $8,336.05; medical and hospital attention, $2,384.42; burial benefits, $300.00.

In the 1927-8 year the sum of these items was $15,157.73. In another table is shown the amount paid on claims arising at each of the several departments and institutions, reporting compensable injuries aggregating amounts as shown above. It will be observed that the Highway Commission figures very prominently in these payments in spite of good management and thorough co-operation on the part of its officials.

In this connection also appear figures covering expenditure under what is known as the peace officer statute (Section 1422 of the Code). In 1926-7 statement it is shown that payment was made by the state as compensation, $5,093.92; medical and hospital, $308.25; burial $150.00; total, $5,552.17. In the year 1927-8 the aggregate payment is $5,716.10.

Where controversy arises as to the obligation of the state in case of injury to employes or to peace officers, the legal department is asked to act for the state in accepting or rejecting liability or in the matter of claim adjustment.

EXPENDITURES AND ESTIMATES

Cost of Administration Industrial Commissioner's Department and Estimate for Future

	Past Biennium		Current Biennium	
	1926-7	1927-8	1928-9	1929-30
	Expended	Expended	Available	Estimated
Salaries	$15,860.08	$16,500.00	$16,500.00	$16,650.00
Travel expense	791.60	928.98	971.02	1,200.00
Medical advice	685.00	540.00	960.00	1,000.00
Library	36.75	37.50	62.50	100.00
Miscellaneous	50.00	63.75	76.25	100.00
Total administration	$17,423.43	$18,070.23	$18,569.77	$19,050.00

DEPARTMENT ACTIVITIES

REPORT OF ACCIDENTS AND SETTLEMENTS APPROVED

July 1, 1926—June 30, 1927

Accidents Reported	10,388
Fatal Cases	131
Settlements Reported	4,645
Compensation Paid in Reported Settlements	$754,582.56
Reported Paid for Medical, Surgical and Hospital	126,259.16

REPORT OF ACCIDENTS AND SETTLEMENTS APPROVED

July 1, 1927—June 30, 1928

Accidents Reported	11,803
Fatal Cases	135
Settlements Reported	5,417
Compensation Paid in Reported Settlements	$537,128.09
Reported Paid for Medical, Surgical and Hospital	121,030.09

ARBITRATIONS, REVIEWS AND SETTLEMENTS

July 1, 1926 to July 1, 1927
to
June 30, 1927 June 30, 1928

Total number of applications filed	222	208
Total number of cases arbitrated	90	80
Total number of cases settled without hearing	92	69
Total number of cases dismissed	30	24
Total number of cases reopened	11	3
Total number of cases decided on review by Commissioner	22	22
Total number of cases appealed to courts	12	16

CASES ARBITRATED DURING BIENNIUM
FIRST YEAR, 1926-1927

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Raisbeck vs. Great Western Coal Co.	Fatal	Cause of death	$3,000.00	No appeal		
Black vs. C., B. & Q. R. R. Co.	T. T.	Out of emp.	Disallowed	No appeal		
Muck vs. Central Iowa Fuel Co.	Fatal	Cause of death	$4,500.00	Reversed	Affirmed	No appeal
Batesole vs. Jones Fruit Co.	T. T.	Out of emp.	Disallowed	Affirmed	Affirmed	No appeal
Miller vs. Burnett	Fatal	Dependency	$ 712.50	No appeal		
Spenkelink vs. Juffer	P. P.	Ext. of injury	351.48 (Reopening)		No appeal	
Germanis vs. C., R. I. & P. Ry. Co.	T. T.	Ext. of injury	393.12	Pending		
Frantz vs. N. W. States Portland Cement Co.	T. T.	Hernia	Disallowed	No appeal		
Lawson vs. Lorenzo	P. P.	Out of emp.	$ 150.00	No appeal		
Boyd vs. Electric Equipment Co.	P. P.	Ext. of injury	1,125.00	No appeal		
Reeves vs. Albia Coal Co.	P. P.	Ext. of injury	990.00 (Reopening)		No appeal	
Wilson vs. Iowa Railway & Light Co.	T. T.	Hernia	Disallowed	No appeal		
Zika vs. Coon River Sand Co.	T. T.	Commutation	Reopening denied		No appeal	
Pulkrap vs. Builders Material Co.	T. T.	Ext. of injury	$ 259.37 (Reopening)		No appeal	
Caldwell vs. Home Insurance Co.	T. T.	Commutation	Reopening denied		No appeal	
Goetzinger vs. Rockford Co-op. Creamery Co.	P. P.	Ext. of injury	Disallowed. (Reopening)		No appeal	
Magennis vs. Fortney	P. P.	Employer	$ 173.00	Affirmed	No appeal	
Vinsant vs. Robinson Bros.	P. P.	Ext. of injury	408.71 (Reopening)		No appeal	
Guadsward vs. Wakonda Saddle Club	T. T.	Hernia	140.00	No appeal		
Tate vs. Cushing	T. T.	Ext. of injury	Disallowed. (Reopening)		No appeal	
Bosten vs. Egypt Coal Co.	T. T.	Ext. of injury	$ 502.50	No appeal		
Mullin vs. Monitor Coal Co.	T. T.	Coverage	Disallowed	No appeal		
Hill vs. Superior Coal Co.	T. T.	Ext. of injury	$ 30.00	Affirmed	No appeal	
Weller vs. Clinton Lock Co.	T. T.	Out of emp.	15.00 weekly	Affirmed	No appeal	
Howell vs. Iowa Electric Co.	T. T.	Out of emp.	Disallowed	No appeal		
Curry vs. Iowa State Penitentiary	T. T.	Hernia	$ 249.50	No appeal		
Jensen vs. Wickham Bridge & Pipe Co.	Fatal	Dependency	4,500.00	No appeal		
Mumey vs. Rockwell	T. T.	Ext. of injury	100.00	No appeal		
Dougherty vs. Scandia Coal Co.	P. P.	Ext. of injury	2,625.00	Affirmed	Affirmed	Mod. & Affirmed
Mueller vs. Jacobsen	P. P.	Out of emp.	225.00	No appeal		
Jacobsen vs. Everist Co.	T. T.	Hernia	Disallowed	No appeal		
Pederson vs. Fullerton Lumber Co.	T. T.	Coverage	Disallowed	No appeal		
Johnson vs. Hanford Produce Co.	T. T.	Out of emp.	$ 87.50	No appeal		
Johnston vs. C. & N. W. Ry. Co.	T. T.	Coverage	8.41 weekly	Affirmed	Affirmed	Pending
Miller vs. Sulzbach	T. T.	Out of emp.	105.60	Affirmed	No appeal	
Skilbred vs. Kimble Construction Co.	T. T.	Out of emp.	109.08	Reversed	No appeal	
Pierce vs. Consolidated Coal Co.	T. T.	Ext. of injury	435.00 (Reopening)		No appeal	
Sulentich vs. Superior Coal Co.	P. P.	Ext. of injury	525.00	No appeal		

CASES ARBITRATED DURING BIENNIUM—Continued

First Year—Continued

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Warburton vs. D. M. Stove Repair Works	T. T.	Out of emp.	Disallowed	No appeal		
Norman vs. City of Chariton	Fatal	Out of emp.	Disallowed	Affirmed	Affirmed	Affirmed
Thomas vs. Snater Construction Co.	T. T.	Ext. of injury	357.14	No appeal		
Holub vs. Edwards Bros.	Fatal	Out of emp.	Disallowed	Affirmed	Affirmed	Pending
Stuart vs. Schlatter	Fatal	Cause of death	Disallowed	Affirmed	No appeal	
Krile vs. C. & N. W. Ry. Co.	T. T.	Coverage	Disallowed	No appeal		
Hoffman vs. K. & F. Cap Mfg. Co.	Fatal	Out of emp.	$4,500.00	Affirmed	No appeal	
Madison vs. City of Des Moines	P. P.	Ext. of injury	1,500.00	No appeal		
Vlaanderen vs. Klinger Co.	T. T.	Out of emp.	50.00	No appeal		
Leair vs. Pershing Coal Co.	Fatal	Dependency	600.00	No appeal		
Williams vs. Central Iowa Fuel Co.	T. T.	Ext. of injury	142.65	No appeal		
Starcevich vs. Central Iowa Fuel Co.	P. P.	Ext. of injury	450.00	Affirmed	Affirmed	Pending
Bowen vs. Central Iowa Fuel Co.	T. T.	Out of emp.	150.00	Affirmed	No appeal	
Wright vs. Iowa Packing Co.	T. T.	Out of emp.	Disallowed	No appeal		
Thomas vs. Colianni & Bros.	T. T.	Out of emp.	Disallowed	No appeal		
Dragovitch vs. Northern Sugar Corp.	T. T.	Ext. of injury	$ 432.12	No appeal		
Smith vs. Leitch	T. T.	Out of emp.	32.44	No appeal		
Berg vs. Des Moines City R. R. Co.	T. T.	Ext. of injury	147.42	No appeal		
Deeds vs. Artificial Ice Co.	T. T.	Ext. of injury	184.28	No appeal		
Chester vs. Chapman Bros.	T. T.	Out of emp.	Disallowed	No appeal		
Myers vs. Majestic Theatre	T. T.	Hernia	Disallowed	No appeal		
Gilbo vs. Wickham Company	P. P.	Ext. of injury	$ 340.50	No appeal		
Armstrong vs. Ford Motor Co.	T. T.	Hernia	Disallowed	No appeal		
Duncan vs. Quaker Oats Co.	T. T.	Out of emp.	Disallowed	No appeal		
Smoltz vs. Leonard Construction Co.	T. T.	Ext. of injury	$ 15.00	No appeal		
Clemens vs. Tama County	T. T.	Ext. of injury	363.43	$204.90	No appeal	
Andrews vs. Hawkeye Foundry Co.	T. T.	Ext. of injury	11.42 wkly. (Reopen.)		Affirmed	No appeal
Burns vs. Wickham Company	P. P.	Ext. of injury	1,500.00	No appeal		
Huffman vs. Denmire	T. T.	Coverage	Disallowed	No appeal		
Murphy vs. Standard Four Tire Co.	T. T.	Ext. of injury	$ 15.00 weekly	No appeal		
Schnizzl vs. Pershing Coal Co.	P. P.	Ext. of injury	15.00 (Reopening)		No appeal	
Crook vs. Shuler Coal Co.	P. P.	Ext. of injury	600.00 (Reopening)		No appeal	
Tooker vs. Armour & Co.	Fatal	Out of emp.	Disallowed	No appeal		
Borgelin vs. Armour & Co.	P. P.	Ext. of injury	$ 489.60	No appeal		
House vs. Postal Telegraph Co.	Fatal	Out of emp.	Disallowed	No appeal		
Krieger vs. Patterson	T. T.	Out of emp.	Disallowed	No appeal		
Hop vs. Sherman Township	P. P.	Coverage	$ 300.00	Affirmed	Affirmed	Reversed
Treynor vs. Key City Gas Co.	P. P.	Ext. of injury	1,012.50	No appeal		
Kutil vs. Floyd Valley Mfg. Co.	Fatal	Coverage	Disallowed	Affirmed	Affirmed	Affirmed
Hagen vs. Farmers & Merchants State Bank	Fatal	Coverage	Disallowed	Affirmed	Pending	
Lewis vs. Oppenheimer Casing Co.	P. P.	Ext. of injury	$ 171.45	No appeal		
Crooke vs. Farmers Mutual Hail Ins. Co.	T. T.	Coverage	Disallowed	Affirmed	Reversed	Affirmed
Snyder vs. Kimball	T. T.	Out of emp.	$ 12.11	No appeal		
Reese vs. Lesserowitz	T. T.	Ext. of injury	99.12	No appeal		
Miller vs. Morris-Jones-Brown Mfg. Co.	T. T.	Ext. of injury	15.00 wkly. (Reopen.)		No appeal	
Morey vs. Three Minute Cereal Co.	T. T.	Hernia	Disallowed	No appeal		
Perotte vs. Winifred Coal Co.	P. P.	Ext. of injury	$ 506.25	No appeal		
Elliott vs. New Barrett Coal Co.	Fatal	Out of emp.	4,500.00	No appeal		
Headburg vs. Tracy	T. T.	Ext. of injury	65.71	No appeal		
Morse vs. Tracy	T. T.	Ext. of injury	15.00	No appeal		
Meros vs. Kepros	T. T.	Out of emp.	Disallowed	No appeal		
Jensen vs. Kimball Bros. Co.	Fatal	Cause of death	$4,500.00	No appeal		

Second Year, 1927-1928

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Lundquist vs. C., R. I. & P. R. R. Co.	Fatal	Coverage	$4,500.00	Affirmed	Affirmed	Affirmed
Roe vs. Garden Grove Township	T. T.	Coverage	198.00	Affirmed	Pending	
Servoss vs. Armour Creameries	T. T.	Ext. of injury	327.60	No appeal		
Kincheloe vs. Lyle Mfg. Co.	T. T.	Out of emp.	Disallowed	No appeal		
Jones vs. Ford Motor Co.	T. T.	Out of emp.	Disallowed	Pending		
Johnston vs. Glide Automotive Elec. Co.	Hernia	Out of emp.	Disallowed	Affirmed	No appeal	
Hurley vs. Sac City Canning Co.	T. T.	Out of emp.	$ 6.92 weekly	Affirmed	Affirmed	No appeal
White vs. Dallas County	Fatal	Cause of death	Disallowed	No appeal		
Denham vs. American Lith. & Printing Co.	T. T.	Out of emp.	Disallowed	Affirmed	No appeal	
Belcher vs. Des Moines Electric Co.	Fatal	Cause of death	$4,500.00	Affirmed	Affirmed	Pending
King vs. Adams Rodeo Co.	Fatal	Employer	Disallowed	No appeal		
Fromme vs. C., R. I. & P. R. R. Co.	T. T.	Coverage	$ 15.00 weekly	No appeal		
House vs. C., N. W. Ry. Co.	Fatal	Coverage	Disallowed	Affirmed	No appeal	
Larson vs. Arthur Neumann Co.	P. P.	Out of emp.	Disallowed	Affirmed	Affirmed	No appeal
Wagner vs. Maytag Co.	T. T.	Out of emp.	$ 15.00 weekly	Affirmed	No appeal	
Davenport vs. Folwell-Ahlskog	Fatal	Dependency	360.00	No appeal		
Sisson vs. Iowa Walnut Co.	P. P.	Coverage	Disallowed	Affirmed	Affirmed	Pending
Trawver vs. Iowa Auto Market	Fatal	Coverage	Disallowed	Pending		
Neades vs. Troy Laundry	T. T.	Out of emp.	Disallowed	No appeal		
Schroder vs. Quaker Oats Co.	T. T.	Out of emp.	Disallowed	No appeal		
Hoffman vs. Iowa Railway & Light Co.	T. T.	Out of emp.	Disallowed	No appeal		
Fuller vs. Artificial Ice & Fuel Co.	P. P.	Ext. of injury	$ 843.75	No appeal		
Boesen vs. City of Waverly	P. P.	Ext. of injury	320.00	No appeal		
Lanning vs. Iowa Dairy Separator Co.	T. T.	Out of emp.	Disallowed	Reversed	Settled	
Anderson vs. Morrell & Co.	Fatal	Cause of death	Disallowed	Affirmed	Affirmed	Pending
Franklin vs. Bell	Fatal	Employer	$3,462.00	Affirmed	No appeal	

CASES ARBITRATED DURING BIENNIUM—Continued

SECOND YEAR—Continued

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Munger vs. C. G. W. R. R. Co.	T. T.	Out of emp.	12 weeks	No appeal		
Wells vs. Kelly Atkinson Const. Co.	Fatal	Cause of death	$4,436.25	Pending		
White vs. Reed	Fatal	Coverage	Disallowed	Pending		
Schueler vs. Hart-Parr Co.	Fatal	Out of emp.	$4,500.00	Affirmed	Pending	
Kyle vs. Greene High School	Fatal	Out of emp.	2,430.00	Affirmed	Affirmed	Pending
Truitt vs. Morey Clay Products Co.	Fatal	Cause of death	Disallowed	No appeal		
Cary vs. Rutledge Coal Co.	Fatal	Out of emp.	$4,500.00	Affirmed	Affirmed	Pending
James vs. C. & N. W. R. R. Co.	T. T.	Ext. of injury	1,042.99	No appeal		
Mahling vs. Armour Co.	P. P.	Ext. of injury	327.50	No appeal		
Naryka vs. Swift & Co.	T. T.	Hernia	Disallowed	No appeal		
Mapes vs. Western Asphalt Paving Co.	P. P.	Coverage	$1,500.00	No appeal		
McCormick vs. Griffen	P. P.	Out of emp.	865.00	No appeal		
Stearns vs. Schultz	T. T.	Employer	13.84 weekly	Pending		
Quaintance vs. Rowan School District	Fatal	Dependency	865.00	No appeal		
Myers vs. Marshall Canning Co.	T. T.	Hernia	Disallowed	No appeal		
Elkins vs. Salter & Salter	Fatal	Dependency	Disallowed	Pending		
Williams vs. Central Iowa Fuel Co.	T. T.	Out of emp.	$ 142.65	No appeal		
Doons vs. Central Iowa Fuel Co.	T. T.	Out of emp.	Disallowed	Pending		
Patrick vs. C. G. W. R. R. Co.	Fatal	Coverage	$4,500.00	No appeal		
Cleary vs. Swift & Co.	P. P.	Out of emp.	Disallowed	No appeal		
Spears vs. Burkley	P. P.	Employer	$ 675.00	No appeal		
Bontoft vs. Sioux City Brick & Tile Co.	Fatal	Out of emp.	Disallowed	No appeal		
Dorow vs. Woody	P. P.	Coverage	Disallowed	No appeal		
Susich vs. Norwood-White Coal Co.	P. P.	Out of emp.	$ 750.00	Reversed	Affirmed	Pending
Medino vs. C. N. W. R. R. Co.	T. T.	Coverage	Disallowed	No appeal		
Frisby vs. John Deere Tractor Co.	P. P.	Ext. of injury	Disallowed (Reopening)		No appeal	
Hodge vs. Musson Bros.	Fatal	Out of emp.	$4,500.00	No appeal		
Turner vs. Northeastern Power Co.	T. T.	Out of emp.	Disallowed	No appeal		
Belville vs. Iowa Soda Products Co.	T. T.	Ext. of injury	Disallowed (Reopening)		No appeal	
Jensen vs. Reliance Battery Co.	T. T.	Out of emp.	Disallowed	No appeal		
Earlywine vs. Harrison County	T. T.	Hernia	$ 187.28	No appeal		
Adams vs. Wilder-Murrell Co.	T. T.	Out of emp.	Disallowed	No appeal		
Wykoff vs. Quaker Oats Co.	T. T.	Out of emp.	$ 140.00	No appeal		
Malmoed vs. Shuerman Bros.	P. P.	Out of emp.	Disallowed	Pending		
Waddle vs. United States Gypsum Co.	T. T.	Out of emp.	Disallowed	No appeal		
Wagner vs. C., St. P. & M. & O. Ry. Co.	T. T.	Out of emp.	Disallowed	Pending		
Strozadas vs. Armour & Co.	T. T.	Hernia	Disallowed	Pending		
Steepy vs. Sioux City Mattress Co.	P. P.	Out of emp.	$1,020.00	No appeal		
Davis vs. Pelletier Co.	Fatal	Cause of death	2,295.00	Pending		
Miller vs. Jones & Stipe	T. T.	Coverage	Disallowed	No appeal		

Bell vs. Lundgren-Reis Co.	Fatal	Out of emp.	$2,976.00	Affirmed	Settled	
Soto vs. C. N. W. Ry. Co.	T. T.	Coverage	Disallowed	No appeal		
Sokol vs. Block Co.	Fatal	Out of emp.	$4,206.00	Affirmed	No appeal	
Lloyd vs. Hatch & Brookman Lbr. Co.	Fatal	Cause of death	Disallowed	Pending		
Roberts vs. Quaker Oats Co.	T. T.	Ext. of injury	$ 750.00	No appeal		
Baker vs. Council Bluffs Water Works	T. T.	Out of emp.	Disallowed	No appeal		
Smith vs. Condon & Cole	T. T.	Ext. of injury	Disallowed (Reopening)		Pending	
Preston vs. Adams County	P. P.	Coverage	Disallowed	Pending		
Mallinger vs. Webster City Oil Co.	Fatal	Coverage	Disallowed	Affirmed	Pending	
Beaman vs. City of Des Moines	T. T.	Hernia	$ 215.00	No appeal		
Grimm vs. Grimes Canning Co.	T. T.	Out of emp.	Disallowed	Pending		
Zahller vs. Matthias & Co.	T. T.	Out of emp.	$ 10.82 weekly	Affirmed		
Pfund vs. Des Moines Saw Mill Co.	T. T.	Hernia	Disallowed	Affirmed	Pending	
Getz vs. Taft Co.	T. T.	Out of emp.	Disallowed	No appeal		

CASES REVIEWED AND APPEALED DURING BIENNIUM

FIRST YEAR, 1926-1927

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Hughes vs. Egypt Coal Co.	Fatal	Cause of death	$4,500.00	Affirmed	Affirmed	No appeal
Howe vs. Egypt Coal Co.	Fatal	Out of emp.	4,500.00	Affirmed	Affirmed	No appeal
Wittner vs. Dexter Mfg. Co.	T. T.	Out of emp.	Disallowed	Affirmed		
Muck vs. Central Iowa Fuel Co.	Fatal	Cause of death	$4,500.00	Reversed	Affirmed	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	Affirmed	No appeal	
Dougherty vs. Scandia Coal Co.	P. P.	Ext. of injury	2,825.00	Affirmed	Affirmed	Mod. & Affirmed
Batesole vs. Jones Fruit Co.	T. T.	Out of emp.	Disallowed	Affirmed	Affirmed	No appeal
Heinz vs. Hubinger Bros. Co.	T. T.	Out of emp.	Disallowed	Affirmed	No appeal	
McGintus vs. Fortney	P. P.	Employer	$ 173.00	Affirmed	No appeal	
Johnston vs. C. N. W. R. R. Co.	T. T.	Coverage	8.41 weekly	Affirmed	Affirmed	Pending
Hoffman vs. K. & F. Cap Mfg. Co.	Fatal	Out of emp.	4,500.00	Affirmed	No appeal	
Holub vs. Edwards Bros.	Fatal	Out of emp.	Disallowed	Affirmed	Affirmed	Pending
Bowen vs. Central Iowa Fuel Co.	T. T.	Out of emp.	$ 150.00	Affirmed	No appeal	
Weller vs. Clinton Lock Co.	T. T.	Out of emp.	15.00 weekly	Affirmed	No appeal	
Starcevich vs. Central Iowa Fuel Co.	P. P.	Ext. of injury	450.00	Affirmed	Affirmed	Pending
Skilbred vs. Kimble Const. Co.	T. T.	Out of emp.	109.08	Reversed	No appeal	
Hill vs. Superior Coal Co.	T. T.	Ext. of injury	30.00	Affirmed	No appeal	
Miller vs. Sulzbach	T. T.	Out of emp.	105.60	Affirmed	Affirmed	No appeal
Hop vs. Sherman Township	P. P.	Coverage	300.00	Affirmed	Affirmed	Reversed
Crooke vs. Farmers Mutual Hail Ins. Co.	T. T.	Coverage	Disallowed	Affirmed	Reversed	Affirmed
Clemens vs. Tama County	T. T.	Ext. of injury	$ 363.43	$204.00	No appeal	

CASES REVIEWED AND APPEALED DURING BIENNIUM—Continued

SECOND YEAR, 1927-1928

Title of Case	Injury	Issue	Arbitration	Review	Dis. Court	Sup. Court
Kutil vs. Floyd Valley Mfg. Co.	Fatal	Coverage	Disallowed	Affirmed	Affirmed	Affirmed
Norman vs. City of Chariton	Fatal	Employer	Disallowed	Affirmed	Affirmed	Affirmed
Johnston vs. Glide Automotive Elec. Co.	T. T.	Hernia	Disallowed	Affirmed	No appeal	
Lundquist vs. C., R. I. & P. Ry. Co.	Fatal	Coverage	$4,500.00	Affirmed	Affirmed	Affirmed
Roe vs. Garden Grove Township	T. T.	Coverage	198.00	Affirmed	Pending	
Hurley vs. Sac City Canning Co.	T. T.	Out of emp.	6.92 weekly	Affirmed	Affirmed	No appeal
Belcher vs. Des Moines Electric Co.	Fatal	Out of emp.	4,500.00	Affirmed	Affirmed	Pending
House vs. C. N. W. R. R. Co.	Fatal	Coverage	Disallowed	Affirmed	No appeal	
Denham vs. American Lith. & Printing Co.	T. T.	Out of emp.	Disallowed	Affirmed	No appeal	
Wagner vs. Maytag Co.	T. T.	Out of emp.	$ 15.00 weekly	Affirmed	No appeal	
Hagen vs. Farmers & Merchants State Bank	Fatal	Coverage	Disallowed	Affirmed	Pending	
Anderson vs. Morrell & Co.	Fatal	Cause of death	Disallowed	Affirmed	Affirmed	Pending
Sisson vs. Iowa Walnut Co.	P. P.	Coverage	Disallowed	Affirmed	Affirmed	Pending
Carey vs. Rutledge Coal Co.	Fatal	Cause of death	$4,500.00	Affirmed	Affirmed	Pending
Larson vs. Arthur Neumann & Co.	P. P.	Out of emp.	Disallowed	Affirmed	Affirmed	No appeal
Franklin vs. Bell	Fatal	Employer	$3,462.00	Affirmed	No appeal	
Kyle vs. Greene High School	Fatal	Out of emp.	2,430.00	Affirmed	Affirmed	Pending
Stuart vs. Schlatter	Fatal	Cause of death	Disallowed	Affirmed	No appeal	
Susich vs. Norwood-White Coal Co.	T. T.	Out of emp.	$ 750.00	Reversed	Affirmed	Pending
Lanning vs. Iowa Dairy Separator Co.	T. T.	Out of emp.	Disallowed	Reversed	Settled	
Sokol vs. Block Co.	Fatal	Out of emp.	$4,206.00	Affirmed	No. appeal	
Bell vs. Lundgren-Reis Const. Co.	Fatal	Out of emp.	2,976.00	Affirmed	Settled	

FATAL CASES REPORTED DURING BIENNIUM

Employer	Employee	Cause	Amount	Dependent	Adjusted
American Beet Sugar Co.	Peter Jensen	Crushed	$1,000.00	Parents (Partial)	By agreement
American Bridge Co.	Albert Dennington	Fall			Illinois case
Armour & Co.	Fred Tooper	Not known	Denied	Widow	Arbitration
Abshire & Strehle	C. A. Strehle				Not compensable
Armand Co.	J. T. Miller	Struck by train	250.00	No dependents	No claim filed
Beck Coal Co.	Thomas Peck	Electrocuted	1,350.00	Mother (Partial)	By agreement
Betzenderfer, J. C.	Ella Ricker	Infection	377.62	No dependents	No claim filed
Bogardees, E. W.	J. W. Paxton	Cave in		Children	Pending
Bell, C. M.	R. Franklin	Auto accident	3,462.00	Widow	Arbitration
Crescent Mac. & Crac. Co.	John Mueller	Fall	3,405.00	Widow	By agreement
Central Service Co.	O. Overton	Not shown	4,206.00	Widow	By agreement
Cedar Falls Electric Co.	C. F. Petersen	Car overturned	4,500.00	Widow	By agreement
C. & N. W. Ry. Co.	Demetri Bosta	Hernia	1,100.00	Widow	Compromise
C. & N. W. Ry. Co.	J. W. House	Electrocuted	1,100.00	Widow	Arbitration
Carter, W. B.	W. Churchill	Cave in	Denied	Widow	By agreement
Cedar Rapids & Iowa City Ry.	W. U. Hobson	Electrocuted	4,500.00	Widow	By agreement
C. G. W. Ry. Co.	B. Potter	Struck by train	4,500.00	No dependents	No claim filed
C., R. I. & P. Ry. Co.	Chas. Spicer	Not shown		Parents (Partial)	By agreement
Castone Products Co.	Leo Vaverka	Fall	1,176.00	Widow	Pending
Dodd & Struthers	R. E. Perrin	Fall		Widow	By agreement
Des Moines Mun. Water Plant	I. Smith	Fall of rock	3,250.00	Widow	By agreement
Dubuque Stone Products Co.	F. Arthofer	Flying rock	720.00	Widow	By agreement
Dubuque Stone Products Co.	A. Jones	Flying rock	4,500.00	Widow	By agreement
Deere, J., Tractor Co.	A. Iverson	Fall	4,185.00	Widow	By agreement
Des Moines Electric Co.	C. Belcher	Heat exhaustion	4,500.00	Widow	Arbitration
Dolese Brothers	C. Anderson	Crushed	4,500.00	Widow	Compromise
Dunker, H. F.	F. Berriman	Run-away team	1,000.00	No dependents	No claim filed
Davis & Banks	M. Hunter	Struck by train			Not compensable
Davidson, W. J.	Ed. Spears	Fall		Widow	By agreement
Domback, C. M.	J. B. Crandall	Paralysis	4,413.00	Widow	Pending
Dallas Coal Co.	C. Cervetti	Fall of slate		Mother	By agreement
Eaves, Charles	Ed. Robinson	Crushed	1,500.00	Children	Arbitration
Eliasen, John	Wm. Peterson	Cave in	4,050.00	Widow	By agreement
Floyd Valley Mfg. Co.	S. F. Kutil	Auto collision	2,787.00	Widow	Arbitration
Farmers & Merchants State Bk.	A. N. Hagen	Not shown	Denied	Widow	Arbitration
Franklin County	N. Peterson	Explosion	Denied		Not compensable
Fort Madison Gas Light Co.	E. E. Howell	Asphyxiated		Widow	Pending
Farley & Loetscher	J. Walsh	Infection		Widow	By agreement
Gerske, A.	T. Guegel	Struck by train	2,250.00		Illinois case
Gerske, A.	Hugo Koenig	Struck by train		No dependents	No claim filed
Graham, O.	Harold Mason	Cave in	150.00	No dependents	No claim filed
Greene High School	J. Kyle	Struck by auto		Widow	By arbitration
Hara Motor Co.	G. O. Forman	Auto collision	2,430.00	Widow	By agreement
Hulson Grate Co.	J. Mason	Electrocuted	2,250.00	Widow	By agreement
Henkel Constr. Co.	C. H. Nelson	Struck by crane	4,500.00	Widow	By agreement
Hocking Coal Co.	T. Lawson	Explosion	4,167.00	Widow	By agreement
Iowa Southern Utilities	C. O. Smith	Electrocuted	4,500.00	Widow	By agreement
Iowa Southern Utilities	Wm. Gerke	Struck by auto	4,500.00	Widow	By agreement
Iowa Railway & Light Corp.	A. L. Wylie	Electrocuted	2,500.00	Daughter	Pending
Iowa Railway & Light Corp.	F. Oakley	Electrocuted		Widow	By agreement
Iowa Railway & Light Corp.	G. A. Liebendorfer	Electrocuted	4,155.00	Widow	By agreement
Iowa State University	Joe Bock	Cancer	4,500.00	Widow	Not compensable
Indian Valley Gloss Coal Co.	B. Wallace	Fall of slate		Widow	By agreement
Iowa Packing Co.	J. A. McCann	Electrocuted	4,500.00	Widow	By agreement
International Stock Food Co.	H. M. Dougherty	Struck by train	4,500.00		Minnesota case
Iowa Light, Heat & Power Co.	Geo. Graves	Crushed		Widow	By agreement
Iowa Light, Heat & Power Co.	H. T. Layman	Struck by insulator	4,500.00	Widow	By agreement
Interstate Concrete Co.	H. Dean	Not given	4,500.00	Widow	By agreement

FATAL CASES REPORTED DURING BIENNIUM—Continued

First Year—Continued

Employer	Employee	Cause	Amount	Dependent	Adjusted
Iowa Auto Market	W. L. Trawver	Auto collision	5,203.49	Widow	Arbitration
Iowa Electric Co.	R. W. Ballman	Electrocuted	Denied	Widow	By agreement
Illinois-Iowa Roofing Co.	Fay Stevens	Fall	4,203.00	Widow	By agreement
International Harvester Co.	D. B. Cole	Not given	2,076.86	No dependents	By agreement
Iowa State University	H. Hoar	Infection	100.00	Widow	By agreement
Johnson Biscuit Co.	J. W. Conroy	Fall	3,456.00	Widow	By agreement
Jenner Brothers	C. S. Byers	Explosion	3,600.00		Pending
Johnson, V. D.	R. S. Menzier	Fall of coal		Widow	By agreement
K. & F. Cap Co.	Chas. Hoffman	Fall	4,500.00	Widow	Arbitration
Key City Gas Co.	Wm. McLaughlin	Struck by engine	4,500.00	Children	By agreement
Keokuk Box Co.	K. W. Brown	Caught in shaft	780.00	Widow	By agreement
Keokuk Electric Co.	C. L. Browning	Fall of car	4,170.18		Not compensable
Kimball Bros. Co.	H. Jessen	Blood poisoning		Widow	Arbitration
Kelly Atchison Constr. Co.	Ed. Wells	Struck by beam	4,500.00	Widow	Arbitration
Loetscher & Burch Mfg. Co.	G. Smith	Burned by steam	4,436.25	No dependents	No claim filed
Loetscher & Burch Mfg. Co.	W. Ivery	Scalded		Widow	By agreement
Leonard Constr. Co.	W. G. McCoy	Fall	3,966.00	Widow	By agreement
Lowe, G. A.	A. J. Fitch	Fall from wagon	4,338.51	No dependents	No claim filed
Lingo, John	L. W. Johnson	Struck by train		Widow	By agreement
Milligan, B.	George Buck	Fall	2,250.00		Not compensable
Morrell & Co.	W. Ulin	Crushed		Parents	By agreement
Mason City Electric Co.	Nich Myers	Electrocuted	1,524.00	Widow	By agreement
Mehmken Oil Co.	C. J. Graham	Fractured skull	4,500.00		Pending
Marso-Rodenborn Mfg. Co.	T. Rodenborn	Fall		Parents	By agreement
Manhattan Oil Co.	O. P. Kenwood	Struck by car	1,800.00	Mother	By agreement
McAtee Grocery	R. G. Breememan	Infection	300.00	Widow	By agreement
McCarthy Improvement Co.	L. Lambert	Cave in	4,500.00	Widow	By agreement
McLellan Stores Co.	I. Pfahl	Infection	4,500.00	Parents	Not compensable
Monona County	G. Rosenbaugh	Fall from wagon		Widow	Pending
Murray Iron Works	Geo. Hunter	Fall		Widow	By agreement
Nichols & Freeman Coal Co.	W. H. Caswell	Fall of slate	4,500.00	No dependents	No claim filed
National Power Constr. Co.	E. Sipe	Crushed in hoist		No dependents	No claim filed
Northwestern Stamping Co.	E. B. Brown	Explosion	207.85	Widow	By agreement
New Barrett Coal Co.	N. Elliott	Cave in	4,500.00	Widow	Arbitration
Ottumwa Iron Works	Frank Preston	Struck by steel	3,519.00	Widow	By agreement
Osceola Co-operative Creamery	C. Bork	Explosion	1,785.00	Widow	By agreement
Polk County	Dewey Marshall	Shot	4,500.00	Widow	By agreement
Peoples Gas & Electric Co.	G. J. Ferguson	Electrocuted	4,500.00	Widow	By agreement
Prairie City Coal Co.	M. Jabaal	Fall	4,500.00	Widow	By agreement
Peoples Ice Co.	M. Stephens	Crushed by ice	4,500.00	Widow	By agreement
Pearson Coal Co.	C. Langlass	Fall of rock	4,500.00	Widow	By agreement
Peoples Gas & Electric Co.	C. J. Brown	Asphyxiated		No dependents	No claim filed
Pollard Oil Co.	Chas. Lainsbaugh	Shot		Widow	Pending
Postal Telegraph Cable Co.	Geo. Winford House	Fall from bicycle	200.00	Parents	Arbitration
Prudential Ins. Co.	E. J. Stewart	Murdered	4,320.00	Widow	By agreement
Quaker Oats Co.	Chas. Hubbard	Caught between cars	4,500.00	Widow	By agreement
Quaker Oats Co.	A. Nelson	Explosion	4,500.00	Widow	By agreement
Quaker Oats Co.	McCarty	Cave in	4,500.00	Widow	By agreement
Quaker Oats Co.	J. McManma	Explosion	150.00	No dependents	No claim filed
Rutledge Coal Co.	J. C. Carey	Cave in	4,500.00	Widow	Arbitration
Reed, Chas.	D. F. White	Dragged by team	Denied	Widow	Arbitration
Ristwedt, C. J.	Peter Haerem	Fall	350.00	No dependents	No claim filed
Richardson Coal Co.	Dell Martin	Fall	4,152.57	Widow	By agreement
Rathbun Coal Co.	Sam Pozarich	Struck by conveyer	4,500.00	Widow	By agreement
Rath Packing Co.	Carl Larson	Fall of	4,192.40	Widow	By agreement
Rowan Consolidated School	L. Quaintance	Auto collision	Denied	Parents	Arbitration
Red Oak, City of	M. Block	Not given			Pending
Sioux County	K. VanDenBerg	Car turned over	900.00	Widow	Compromise
Stamas, Harry	A. E. Johnson	Cave in	3,114.00	Mother	By agreement
Stusak, Wm.	J. Dougherty	Fall	4,500.00	Children	By agreement
Scandia Coal Co.	J. Geofredi	Explosion	4,500.00	Widow	By agreement
Superior Coal Co.	R. L. Hale	Fall		No dependents	No claim filed
Scandia Coal Co.	Tom Ryan	Fall of slate	4,500.00	Widow	By agreement
Salter & Salter	E. Elkins	Tetanus	Denied	Mother	Arbitration
Tri Cities Stone Co.	Albert Peterson	Electrocuted	4,500.00	Widow	By agreement
Union Coal Co.	D. J. Dahl	Fall from wagon	122.50		Not compensable
United States Gypsum Co.	E. Stephenson	Fall	156.00	No dependents	No claim filed
United Lead Co.	H. G. Brown	Burned	4,500.00	Widow	By agreement
Van West Grain Co.	H. W. Stephens	Fractured skull	3,924.00	Son	By agreement
Van Patten, J. P. & Sons	R. Coombe	Fall	4,140.00	Widow	By agreement
Wapello County	O. Smith	Burned	469.02	Father	By agreement
Wickham Bridge & Pipe Co.	H. T. Jensen		4,500.00	Widow	Arbitration
Western Union Telegraph	E. E. Craft	Crushed	4,500.00	Widow	By agreement
Webster City Oil Co.	W. B. Mallinger	Struck by train		Widow	Arbitration
Western Union Telegraph	M. Hain	Struck by truck		No dependents	No claim filed
Western Union Telegraph	J. T. Laughman	Uncertain	1,500.00	Widow	Compromise

Second Year—Continued

Employer	Employee	Cause	Amount	Dependent	Adjusted
Atlantic, City of	Geo. Wilken	Struck by engine		No dependents	No claim filed
Atlantic, City of	O. Carlson	Auto collision	795.00	Sister	By agreement
Ames, City of	Ed. Brown	Cave in	3,649.28	Widow	By agreement
Adams & Son	E. D. Parcel	Overcome by gas		Widow	Pending
Afton, City of	Geo. Porter	Electrocuted			Pending
Blaul's Co., John	F. E. Samp	Shot	496.50	Widow	Compromise
Builders Line & Cement Co.	Henry Suhd	Struck by rod	180.00	No dependents	No claim filed

FATAL CASES REPORTED DURING BIENNIUM—Continued
SECOND YEAR—Continued

Employer	Employee	Cause	Amount	Dependent	Adjusted
Bilz Sign Co.	R. E. Madson	Fall	4,500.00	Widow	By agreement
Bettendorf Company	I. N. Stark	Blood poisoning	4,320.00	Widow	By agreement
Block Co.	J. Sokol	Electrocuted	4,206.00	Widow	Arbitration
Block Co.	R. W. Clark	Pneumonia			Not compensable
C. G. W. Ry. Co.	A. M. Patrick	Fall	4,500.00	Widow	Arbitration
C. G. W. Ry. Co.	F. Hatfield	Fall		Widow	Pending
C. & N. W. Ry. Co.	B. Valen	Explosion	1,500.00	Mother	By agreement
C. & N. W. Ry. Co.	Fred Jenzen	Run over by car		Widow	Pending
C., R. I. & P. Ry. Co.	F. McDermott	Fall	1,298.62	Sister	By agreement
Carbon Coal Co.	E. Clouse	Explosion		Widow	Pending
Carbon Coal Co.	H. Phillips	Explosion	4,500.00	Widow	By agreement
Central Iowa Fuel Co.	C. B. Payne	Fall of slate		No dependents	No claim filed
Cunningham, W.	Frank Cunningham	Poisoning	760.00	No dependents	By agreement
Citizens National Bank	J. Phillips	Crushed	3,456.00	Widow	By agreement
Council Bluffs, City of	Eugene Roarty	Struck by auto	2,766.00	Widow	By agreement
C., B. & Q. Ry. Co.	Wm. Saben				Interstate Com.
Cohen Brothers	W. Swafford	Stepped on nail			Pending
Decatur County	C. McConnell	Shot	4,500.00	Widow	By agreement
Des Moines Asphalt Co.	Sam Burnett	Fall from truck			Pending
Dewey Portland Cement Co.	W. H. Parker	Caught in machinery	4,500.00	Widow	By agreement
Deere, The John Co.	R. Frasier	Electrocuted	600.00	Mother	By agreement
Des Moines Sawmill Co.	L. Conner	Struck by wood	4,200.00	Children	By agreement
Deitering, H. J.	L. Haywood	Struck by auto			Pending
Dallas Products Co.	J. Reilley	Fall of slate		Father	Pending
Dubuque Stone Products Co.	Jas. Leitner	Pinned under rock	4,500.00	Widow	By agreement
Des Moines Water Works	W. J. Simpson	Heart trouble			Not compensable
Economy Housing Co.	J. Fors	Struck by block	4,500.00	Widow	By agreement
Frank Foundries	M. A. Thiessen	Crushed	4,500.00	Widow	By agreement
Ferris, Earl	Christensen, S.	Natural	200	Widow	Not compensable
Garton, S. B.	F. G. Durr	Infection	1,800.00	Not given	By agreement
Glover, J. B.	Wm. Boland	Auto collision		Widow	Pending
Gibson Coal Co.	F. Kozial	Falling timber	4,500.00	Widow	By agreement
Gibhardt & Becker Co.	K. DeLapp	Auto turned over	1,200.00	Mother	By agreement
Haring, Daniel	A. Munzke	Fall	3,168.00	Widow	By agreement
Harrison Engineering Co.	Wm. Becika	Run over by truck	1,379.52	Parents (Partial)	By agreement
Holvick, G. A.	C. Rasmussen	Crushed	4,500.00	Widow	By agreement
Herrick Refrigerator Co.	C. Abernathy	Not given		Widow	Pending
Hulson Granite Co.	O. L. Yocum	Struck by train		Widow	Illinois case
Higgins, W. J.	Nels Paulson	Not given	3,600.00	Widow	By agreement
Harrison Engineering Co.	Frank Bock	Crushed	4,500.00	Widow	By agreement
Hi-Test Coal Co.	John Quist	Fall of coal	4,500.00	Widow	By agreement
Hawarden Ice Co.	W. Heddon	Drowned	4,155.00	Widow	By agreement
Haskins Bros.	E. Johnson	Fall	4,500.00	Widow	By agreement
Huttig Mfg. Co.	H. Brunow	Struck by auto		Widow	Pending
Iowa Walnut Co.	E. W. Brammer				Not compensable
Iowa State Juvenile Home	F. Conklin	Fall			Not compensable
Iowa Railway & Light Corp.	Glen Belcher	Electrocuted	4,500.00	Widow	By agreement
Indian Valley Gloss Coal Co.	C. Kirkpatrick	Falling slate	4,500.00	Widow	By agreement
Iowa Electric Co.	M. Woods	Electrocuted			Pending
Iowa Electric Co.	M. Woods	Electrocuted			Pending
Iowa Electric Co.	D. Williams	Electrocuted			Pending
Indian Oil Corp.	G. Williams	Explosion	3,528.00	Widow	By agreement
Iowa Southern Utilities	T. E. Jeffrey	Fall		Widow	Pending
Indian Valley Gloss Coal Co.	E. Robertson	Electrocuted	4,500.00	Widow	By agreement
Iowa Public Service	J. A. Roose	Electrocuted	4,500.00	Widow	By agreement
Jensen Constr. Co.	A. S. Jorgensen	Cave-in	3,669.00	Widow	By agreement
Klein Brothers Grain Co.	H. H. Boeyink	Struck by train	4,152.00	Widow	By agreement
Keokuk Box Co.	Earl Paris	Shot	1,045.00	Widow	Compromise
Lindwood Cement Co.	G. Richter	Caught in machinery		Widow	Pending
Lundgren-Reis Co.	E. T. Bell	Auto accident	2,976.00	Son	Arbitration
Lehigh Portland Cement Co.	R. DeLucco	Drowned			Not compensable
F. L. Lainson	Joe Cupit	Struck by rod		Widow	Pending
Marble Rock School Dist.	H. Arthur	Bus struck by train		Widow	Pending
Members Mutual Oil Co.	J. L. Fay	Burned			Pending
Mississippi River Products Co.	H. K. Fry	Electrocuted		Widow	Pending
Morrell, John & Co.	L. Greaver	Scalded	3,681.00	Widow	By agreement
Management & Engineering Co.	S. M. Hoskins	Auto collision		No dependents	No claim filed
Marx Feed Milling Co.	T. S. Kerr	Cave-in	4,500.00	Widow	By agreement
Morrell, John & Co.	C. E. Brooks	Electrocuted		Widow	Pending
Marshalltown Mfg. Co.	J. F. Steele	Fall		Widow	Pending
Marshall Lodge, No. 312, B. P. O. E.	H. Flippings	Thrown from auto	3,515.36	Widow	By agreement
Michigan Silo Co.	A. G. Halsey	Not given		Parents	Pending
Morey Clay Products Co.	H. A. Truitt	Natural	Denied	Widow	Arbitration
M. M. Moen Co.	P. A. Wepler	Fall		Widow	Pending
Minneapolis & St. Louis Ry.	Joe Gilando	Not shown			Pending
Norwood White Coal Co.	Wm. Post	Fall of slate	4,500.00	Widow	By agreement
Norwood White Coal Co.	Chas. White	Fall of slate	4,500.00	Widow	By agreement
Nichols Wire Sheet Co.	John Ewoldt	Fall	3,873.00	Widow	Pending
Nevada Poultry Co.	Carl Bye	Infection		Father	Pending
Oskaloosa Home Tele. Co.	B. H. Fowler	Electrocuted	4,500.00	Widow	By agreement
Petroleum Iron Works Co.	B. C. Mahaffey	Fall	4,500.00	Widow	By agreement
Pershing Coal Co.	R. W. Wilson			Widow	Pending
Pyles Brothers Iron Preserving Co.	Dale Shultz	Crushed		Widow	Pending
Pershing Coal Co.	J. Key	Fall of slate	4,500.00	Widow	By agreement
Pratt-Malory	R. E. Davidson	Car turned over		Widow	Pending
Pollard Oil Co.	C. Lausbach	Shot		Widow	Pending
Quaker Oats Co.	Wm. A. Hlas	Electrocuted			Pending

FATAL CASES REPORTED DURING BIENNIUM—Continued

SECOND YEAR, 1927-1928

Employer	Employee	Cause	Amount	Dependent	Adjusted
Quaker Oats Co.	J. Burlingame	Fall		No dependents	No claim filed
Quaker Oats Co.	A. M. Hemsky	Fall	4,500.00	Widow	By agreement
Roxana Petroleum	W. C. Crosby	Not given		Children	Pending
Richards, E. C.	Ed. Swenson	Fall	4,500.00	Widow	By agreement
Red Ball Transp. Co.	C. Peterson	Chest injury			Not compensable
Rusterholz, J. C.	L. M. Dewy	Motorcycle collision	1,000.00	Parents	By agreement
Rock Valley Coal Co.	S. B. Arnamon	Crushed	500.00	Widow	Compromise
Red Rock Coal Co.	J. Mercer	Fall of slate	4,500.00	Widow	Arbitration
Roberts, U. N. Co.	E. S. Berrigan	Infection		Widow	Pending
Strauss, Harry	A. E. Johnson	Poison gas	3,114.00	Mother	By agreement
Shuler Coal Co.	W. C. Carlo	Explosion			Pending
Swift & Co.	J. Humphrey	Appendicitis	50.98		Not compensable
Steigleder, S. F.	B. E. Ellis	Cave-in	1,800.00	Children	By agreement
Sioux City Brick & Tile Co.	T. Bantoft	Crushed			Arbitration
Security Fire Ins. Co.	J. Shumway	Exposure			Wisconsin case
H. L. Triplett	C. Kline	Not given	350.00	Parents	By agreement
Teale Motor Co.	Frank Morhead	Auto collision	3,117.00	Widow	By agreement
Teale Motor Co.	L. D. Richards	Auto collision	3,117.00	Widow	By agreement
Teale Motor Co.	J. W. Owens	Auto collision	4,500.00	Widow	By agreement
Teale Motor Co.	C. E. Stuber	Auto collision	3,503.85	Widow	By agreement
Tolerton & Warfield	R. Wentz	Blood poisoning			Pending
Trans-Mississippi Grain Co.	Wm. McCalet	Fall	4,500.00	Widow	By agreement
Utilities Power & Light Co.	J. Hoskins	Auto collision	Burial	Parents	By agreement
Union Coal Co.	L. Johnson	Electrocuted	4,500.00	Widow	By agreement
Union Coal Co.	V. Lester	Electrocuted	1,500.00	Parents (Partial)	By agreement
Union Constr. Co.	D. D. Way	Cave-in	1,500.00	Mother	Arbitration
Van Busen Light Co.	Francis Allen	Burned		Widow	Pending
Wachter, J. H.	F. B. Pelham	Uncertain	120.00	Daughter	By agreement
Webster, City of	J. N. Beckner	Struck by drag line	4,500.00	Widow	By agreement
Wardell, H. A.	A. Warthan	Auto turned over	790.67	Parents (Partial)	By agreement
Weart & Lysought Co.	Wm. Hartman	Struck by lift	3,528.00	Widow	By agreement
Whitlatch, Warren	E. Sarver	Electrocuted	2,833.00	Widow	By agreement
Waterloo, Cedar Falls N. Ry. Co.	B. E. McNaie	Fall	4,500.00	Widow	By agreement
Wilton, City of	I. Barhart	Fall of tree	3,322.60	Widow	By agreement
Younker Brothers	Jennie Lamb	Caught in elevator	155.00	No dependents	No claim filed
Zwack, Anton	Eric Allen	Struck by shovel		No dependents	No claim filed

PEACE OFFICER LAW—PAYMENTS UNDER SEC. 1422, CODE OF IOWA

DEATH CASES

Date of Injury—	Burial	Medical	Prev. Pd.	1926-1927	1927-1928
August 13, 1925—Frank Mommer, Marshal, Traer	$ 150.00	.....	$ 690.00	$ 533.57	.....
September 16, 1924—Henry Reel, Special, Missouri Valley	100.00	.....	2,109.36	.....	.....
June 7, 1925—V. J. Margretz, Special, Waterloo	150.00	$ 15.00	825.00	795.00	$ 765.00
September 15, 1925—Orin L. Case, Deputy Sheriff, Harrison Co.	150.00	171.10	615.00	795.00	750.00
October 12, 1925—L. P. Hemmer, Deputy Sheriff, Dubuque Co.	150.00	.....	555.00	795.00	750.00
December 14, 1925—J. W. Armstrong, Marshal, Logan	150.00	200.00	420.00	795.00	750.00
March 8, 1926—N. F. Collings, Sheriff, Union County	150.00	200.00	240.00	525.00	765.00
October 30, 1926—Dewey Marshall, Deputy Sheriff, Polk County	150.00	.....	.....	.....	750.00
July 7, 1927—Clint McConnell, Deputy Sheriff, Decatur County	150.00	32.00	.....	.....	.....

DISABILITY CASES

Previous reported—Nine cases	.....	$ 862.20	$1,219.29	.....	.....
June 27, 1926—W. J. Phelan, Marshal, Lake Mills	.....	75.25	.....	$ 60.35	.....
July 22, 1926—Louis Schwenke, Police, Cedar Falls	.....	33.00	.....	.....	.....
September 16, 1927—W. T. Dilworth, Dep. Sheriff, Black Hawk Co.	.....	200.00	.....	.....	.....
September 16, 1927—H. R. Crumrine, Police, Waterloo	.....	54.10	.....	.....	.....
Totals	$1,300.00	$1,843.55	$6,673.65	$5,093.92	$5,280.00

Of the medical and burial items above, there was paid in 1926-1927 $458.25, and in 1927-1928 $436.10, remainder had been previously paid.

in its affairs, merely moving and doing and being under the rigid control of Oliver himself.

The operating agreement hitherto mentioned as Exhibit "A" seems to be important in this connection. It recites as a reason for its execution the fact that "the party of the first part needed additional capital for the purpose of transacting business to a larger extent, and also to enable it to have larger earning capacity." Furthermore, that "the first party has made application to parties of the second part for assistance along financial lines and for securing of credit and the services of second party, and parties of the second part are willing to give such assistance as they are capable of giving on the terms hereinafter set forth." Continuing:

"Now therefore it is mutually agreed between the parties hereto that Coomer & Small Company, who is represented on the Board of Directors by R. M. Coomer and Charles I. Small, shall take over the active management and control of the operations of the Company and all matters pertaining thereto in conjunction with the Board of Directors and continue the same until all the obligations of the Floyd Valley Manufacturing Company now owing or shall be owing to Coomer & Small Company, shall be fully paid.

Parties of the second part agree so far as they are able to secure credit for first parties and render services from time to time as the party of the first part and parties of the second part shall mutually agree upon as may be necessary for the demands of the business."

It is well to remember that Kutil retained the presidency of the Floyd Valley Manufacturing Company, as well as his membership on its board of directors, to which was reserved the power of directing and managing in conjunction with Coomer & Small. Mutual agreement between the contracting parties is evidently fundamental in control and management.

It appears from the record that President Kutil had been out in the trade territory of his company soliciting orders for a period of about a year and a half (see testimony of Mrs. Kutil, transcript page 9) before the arrangement with Coomer & Small was in effect, and he continued in this capacity, as Coomer says, because business was bad and he was a better salesman than manager of the factory, and that it was best for him to sell goods on the road and have charge of sales.

Defendant's Exhibit "1" is a statement outlining the actual relations of the deceased Kutil with the business of the company duly signed by R. M. Coomer and E. G. Oliver, which follows complete:

"I, R. M. Coomer, state that I am President of the Floyd Valley Manufacturing Company; that I succeeded S. F. Kutil in such capacity; that I have general supervision and direction of the Company as President and devote approximately one half of my time to the business of the company; that prior to his death S. F. Kutil for approximately a year was in charge of sales and on the road selling goods a great deal of the time. Part of the time he was in the factory designing new furniture or out on the road collecting bad accounts. In fact he did everything to help the business along. When he was in the factory Kutil consulted with E. G. Oliver, manager, and myself with reference to the conduct of the business. S. F. Kutil was on the board of directors and we held directors meetings and took up the affairs of the business when he happened to be in town. Business was bad in 1926 and we all felt that it would be best that Kutil sell goods on the road and have charge of sales. He received $35.00 a week and $35.00 expense allowance with a commission if his sales ran above a certain mark. An ordinary year would enable him to sell about $40,000.00 of goods for which he would receive

$4,000.00. Kutil had six salesmen under him and was ganeral salesmanager.

Prior to the Employers Mutual taking over the compensation insurance the Globe Indemnity had the compensation insurance and premiums were paid the Globe on Mr. Kutil and he was listed on the payroll as an employee.

Coomer and Small of which I am a member, in October, 1925, made an arrangement with the Floyd Valley Mfg. Co. to secure credit for them and to assist in the management of the business for which services a financial arrangement based on a division of profits was made.

Kutil had about $1,400.00 in stock of the company and in 1926 was the second highest paid man in the company. Kutil rendered his services for a salary paid by the company.

R. M. Coomer.

I have read the foregoing and the statements therein contained are correct. I am now Vice President and manager and was at the time of Kutil's death. Coomer, myself and Kutil looked after the general administration of the business but I was in the office all the time and was in charge of the office.

E. G. Oliver,
Vice President & Mgr."

This statement is identified in the record by Coomer and Oliver and it stands as a deliberate and admitted recital of facts and circumstances made shortly after the death of S. F. Kutil. It plainly indicates that the deceased President was authorized, expected to, and did exercise authority as an official and as an employer; that he distinctly did stand in a representative capacity of the manufacturing company.

Both Coomer and Oliver state that: "Prior to his death S. F. Kutil for approximately a year was *in charge of sales* as well as on the road selling goods a great deal of the time." "He did everything to help the business along." "When he was in the factory Kutil consulted E. G. Oliver, manager, and myself, with reference to the conduct of the business." He was "on the board of directors and we held directors meetings and took up the affairs of the business when he happened to be in town." "Business was bad in 1926 and we all felt it would be best that Kutil sold goods on the road and *have charge of sales.*"

In the supplemental statement signed by E. G. Oliver, he states: "Coomer, myself and Kutil looked after the general administration of the business but I was in the office all the time and was in charge of the office."

It is impossible to justify the oral testimony of these witnesses with their signed statements which are in no particular repudiated on the witness stand. In the discharge of administrative duty it becomes necessary to scrutinize all facts and circumstances and statements appearing in the record, and in the exercise of this responsibility the conclusion is irresistible that S. F. Kutil was at the time of his death in deed and in fact "holding an official position" in the Floyd Valley Manufacturing Company, and in his relationship with this corporation, of which he was president and director, he uniformly stood "in a representative capacity of the employer."

In Section 1421 of the Code in subsection 3 thereof, certain persons are named who "shall not be termed workmen" "or employes." In this list is included "a person holding an official position or standing in a

representative capacity of the employer." No such provision appears in the compensation statute of any other state.

It was evidently in the mind of our general assembly not only that no employer should be his own employe, but that no man in whom resides the right to direct, control and manage employment in a distinctly influential capacity shall classify as an employe within the meaning of our law.

Counsel for claimant recites no cases in support of this claim because there are none in the books. In no case has any court filed a decision involving interpretation of a statute even similar to ours in this respect.

It is accordingly held that:

1. At the time of his fatal injury, S. F. Kutil was in deed and in fact a person holding an official position;

2. In his relations with the Floyd Valley Manufacturing Company, S. F. Kutil distinctly stood in a representative capacity of the employer.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 21st day of July, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by District and Supreme Courts.

CLERICAL EMPLOYMENT—AWARD DENIED

Mrs. T. H. Crooke, Claimant,

vs.

Farmers Mutual Hail Association of Iowa, Employer,
Employers Mutual Casualty Company, Insurance Carrier, Defendants.

Hal W. Byers, for Claimant;
Miller, Kelly, Shuttleworth & McManus, Oliver H. Miller appearing for Defendants.

In Arbitration and Review

This case was submitted to the Industrial Commissioner, May 9, 1927, for decision in arbitration and review as per stipulation of record.

September 17, 1926, Mrs. T. H. Crooke was in the employ of these defendants as supply clerk and in general office work. Along in the afternoon of that day claimant left her own desk to use a typewriter in another part of the room in which she was working. In returning to her desk her foot caught on an electric cord running from a plug in the wall to an adding machine across a passageway in common use. The fall occasioned resulted in a broken hip which has totally disabled claimant since the date of accident.

Section 1421 of the Code provides that certain persons shall not be deemed "workmen" or "employes" and among these is:

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

Defendants contend that this provision denies coverage to the claimant in that existing injury is not due to any hazard contemplated by the statute.

Claimant relies substantially upon the decision of the Iowa Supreme Court in *Kent vs. Kent*, 208 N. W. 709. In the cited case claimant was

engaged in clerical work only occupying in such service a platform reached by a short flight of steps. In descending to the floor of the store she was injured by tripping over the arm of a platform scale projecting through an open riser of the stairway. The court held that claimant was subjected to a hazard of the employer's business and, hence, award was justified.

Obviously the offending electric cord in the instant action is more suggestive of hazard than the scale arm in the Kent case, hence, an affirmative decision herein would upon casual consideration seem to be foreshadowed. In the desire to follow the leading of the court, however, it is necessary carefully to weigh judicial reasoning. Speaking for the court, Justice Vermillion says:

"The sole contention of appellee is that her injury was occasioned by a hazard of the business. It is further conceded, as we think it must be, that the 'hazards of the business' means the hazards of the employer's business, not a hazard incident to the clerical employment of the employee. The business of the employer was the operation of a grocery store. The inquiry is, therefore, whether appellee's injury was proximately caused by a hazard of her employer's business of conducting a grocery store, as distinguished from a hazard incident merely to her clerical employment."

Furthermore:

"The scale was a thing in no manner connected with appellee's clerical employment. Obviously, its use was confined to the operation of the grocery business. If or when the scale, in combination with the stairway, constituted or became a hazard, it was a hazard, not of the appellee's clerical employment, but of the grocery business conducted by the employer. If articles for sale in the grocery store had been stored or placed on the stairway, and appellee's injury had been caused thereby, we think it could not be contended that the hazard was not a hazard of the grocery business, as distinguished from a hazard of her clerical employment only."

It is further declared that a hazard of the business "means anything connected with the business of the employer as distinguished from clerical employment that is the proximate cause of injury to one whose employment is clerical only."

Finally:

"The statute affords protection to a clerical employee who is subjected to the hazards of the business, and receives an injury caused thereby and arising out of and in the course of the employment, without regard to whether the thing being immediately done by the employee pertained to the clerical work or to other work of the employer. To so construe the statute denies to the clerical employee compensation for an injury caused by a hazard of the clerical employment, but affords protection when such an employee is subjected to a hazard of the employer's business, aside from the clerical employment, and receives an injury, arising out of and in the course of the employment, proximately caused by a hazard of such business."

It is clearly apparent that in the Kent case the claimant recovered because she was subjected to a hazard of the grocery business as clearly distinguished from her clerical employment.

Mrs. Crooke was engaged in clerical work. The insurance business of her employer is manifestly clerical. No hazard "as distinguished from clerical employment" is involved in this injury and this is the test applied in the Kent case.

Under the plain admonitions of the Supreme Court in the case of *Kent vs. Kent*, it becomes necessary to hold:

1. That Mrs. T. H. Crooke at the time of her injury was engaged in clerical work only;

2. That she was subjected to no "hazard of the business" within the meaning of the statute.

Wherefore, the finding of the Commissioner in arbitration and review is for the defendants.

Dated at Des Moines, this 23d day of May, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Reversed by district court. Affirmed by supreme court.

HEAT EXHAUSTION—DEATH NOT DUE TO NATURAL CAUSES

Mrs. Rose Belcher, Claimant,

vs.

Des Moines Electric Light Company, Defendant.
Emmert and James, for Claimant;
Bradshaw, Schenk and Fowler, for Defendant.

In Review

In the course of his employment with the Des Moines Electric Light Company Claude Belcher met instant death August 27, 1927. In arbitration September 7th succeeding it was found that his death arose out of employment and award was made on statutory basis.

Defendant resists compensation payment on the ground that the death of Belcher did not arise out of his employment but was "due to other natural causes".

The deceased had for nearly eight years been in the employ of the defendant light company. At the time of his death he was engaged in the capacity of boiler inspector. Between the hours of three and four P. M. attention was called to the fact that he had not been seen for some time. Search soon discovered the body of Belcher at a boiler manhole.

Claimant's exhibit "A", the certificate of death filed by Coroner Guy E. Clift, M. D., gives the cause of death as "Organic Heart Lesion—Heat Exhaustion".

The record shows that when found the body of Belcher down to the hips was inside the boiler in question through a manhole thereof. The boiler was on a deck or platform some fifteen feet above the floor of the boiler room. In the boiler room were eighteen boilers, six of which were under a steam pressure of 180 to 185 degrees. It is admitted that at the time of Belcher's death mercury in the shade outside indicated 95 degrees of temperature.

Ralph H. Lyman, a city fireman, who was called to the light plant to use a pulmotor in the endeavor to resuscitate Belcher, recalls in testimony it was a very hot day. Went up a ladder to boiler No. 11 where deceased was found. Thinks temperature up there at least 5 to 10 degrees hotter than on the floor.

William Mattson, also a fireman, was assisting Lyman. Says at boiler

No. 11 it was exceedingly warm, at a guess 10 to 15 degrees warmer than on the floor. He noticed he perspired more freely up on the boiler platform than on the ground.

Testifying for defendant, Nels Christensen, chief engineer, says he thinks it was hotter in the sun than at boiler No. 11. There was "plenty of draft", "quite a circulation", only 2 or 3 degrees difference between temperature on platform and on the floor, ventilators and skylights open.

H. G. Laughridge, fireman of the light plant, testifies August 27th was "no warmer than any other August day"; "boiler room well ventilated"; "never found any excessive heat in boiler room"; temperature not "great sight higher on platform than on floor"; "temperature would be hotter of course in the sun than in there".

W. E. Huffman, an employe, thinks "it might be just a little bit warmer up there than it was on the floor"; "not noticeable"; "was not warmer than usual that day".

Walter Darr, defendant employe, does not "think it was as hot up there (platform) as down on the floor".

Relying on the testimony of these employes one might get the impression that on a hot day, with the mercury soaring well into the nineties this boiler room with six boilers under pressure would be a rather desirable retreat for one disposed to suffer from high temperature, and that Belcher was in luck to have a job that day at boiler No. 11. The testimony of other witnesses as to the temperature in the boiler room as compared with outdoors and as to tendency to increase in temperature on the higher levels with artificial heat is more consistent with common knowledge and common experience.

Defendant contends that the death of Claude Belcher was due to heart conditions disclosed in post mortem, practically unaffected by temperature. Testifying for claimant, Dr. Harry Burns is not shaken in his conclusion that the death of Belcher was due to heat exhaustion, caused by excessive temperature.

Called by defendant, Dr. R. H. Crawford, in direct examination, testifies he is "unable to give any opinion as to whether death was due to heat exhaustion"; "in a person who has a heart disease no question that that death could be produced by heat more easily than it would in a person, of course, who was normal". (Trans. p. 145.) In cross examination the Doctor emphasizes these facts.

Dr. L. E. Kelley, testifying for defendants, says it "may be possible but not the rule" for heat exhaustion to bring death immediately. Testifying further, on direct, he says (page 151) "I would accept the coroner's diagnosis that the man died from organic heart disease and the added information as to heat exhaustion would merely be the opinion of one who was familiar with the facts of the case. I think that would be a correct diagnosis he died from heart disease on a hot day."

Dr. Nelle S. Noble, in deposition, testifies for claimant. She had been Claude Belcher's family physician about nine years. Had examined him many times and treated him frequently in acute ailments, usually of minor character. Summing up she says: (dep. p. 6,) "I am very positive that Claude Belcher had none of the diseases enumerated, and to the best of my knowledge and belief, he had no serious physical or mental ail-

ment. He was a man in average good health for the full period that I knew him of nine years, and he talked to me in a normal manner over the 'phone between 12 and 1:15 the day he died." (Talk was relative to condition of Mrs. Belcher.)

At the review hearing Dr. M. M. Myers, a heart specialist of standing, testified at length for defendant. His evidence is entirely on a hypothetical basis, as he never saw the deceased workman. Careful examination of the transcript fails to find in this evidence anything of value in reaching a conclusion. The witness testified much as to his experience in such cases but in cross examination admitted that he had never treated a case of heat exhaustion and that his opinions were based on the books. While some of his statements might give a measure of support to defendant's contention, there is afforded support to this claim, and especially in that it is his opinion that one with an impaired heart would be more susceptible to heat exhaustion than one without such impairment.

The elaborate and able argument of defendant's counsel is read with thoughtful care. It frequently occurs that on the part of lawyers of large and successful experience in general, but with little compensation practice, the fundamentals of compensation jurisdiction are not well understood.

Counsel contends "if the heat to which an employe is exposed is no greater * * * * than workmen generally engaged in the same character of work are exposed, * * * it cannot be said that death was due to an injury arising out of employment." He will have difficulty in supporting this contention with compensation authority for this is not by any means the rule. Counsel is in error in assuming the case of claimant is weakened because the post mortem disclosed pre-existing heart trouble. As a matter of common experience, this fact tends to strengthen rather than weaken this claim. The employer takes the workman as he finds him. Where he is more susceptible to injury because of pre-existing conditions which lowers resistance, there is less requirement as to the burden of proof that injury or death is due to incident of employment. This holding is common.

There is nothing in the record which affords support to the contention "that Claude Belcher would have as likely died while tending the garden at his home". He had a good record for steady service. No attempt is made to show that he was in any degree impaired in working capacity prior to the day of his death. Mrs. Belcher testifies he said in the morning he never felt better in his life. Ira Huddleston, a fellow workman, testifies Belcher was "pretty jolly that day with me". This was the lunch hour. Dr. Noble deposes that in 'phone conversation with the workman between twelve and one on the day of his death "his voice sounded clear and vigorous". She is of the impression that she asked him how he was feeling and that he replied "fine". So it would appear from all the record in this connection that Belcher was by no means in a dying condition and there is nothing to justify the statement of counsel as to sudden death under ordinary circumstances.

Counsel declares as to compensable injury: "it must be catastrophic or extraordinary. There can be no accident or injury within the meaning of the terms of the compensation act in the absence of violence, casualty or vis major."

The books are full of awards for heat exhaustion, freezing, drinking impure water, pneumonia resulting from exposure, infection from slight injury, inhaling gas and from many other causes, by no means involving in inception anything in the nature of "violence", "casualty", "catastrophe" or "extraordinary" incident. The word "accident" is practically eliminated from our compensation law, the word injury being adopted into common use, and injury means anything arising out of employment which deprives a workman from earning and but for which disability would not exist or death would not have occurred. In only a very few states does the statute require that injury must be based on trauma and Iowa is not in this limited number.

Attention is given to the long list of authorities submitted by the defendant. Most of these are cited under very erroneous impression as evidenced by argument of counsel. He submits in alleged support of his contention that "the mere fact that a workman is found dead at his post without any evidence whatever as to the cause of death" will not justify award. This is true, of course, but the record in this case suggests no such conclusion. Many of the cases cited are perfectly good in their place but they merely support premises not herein logically established. Other citations definitely support the case of claimant under the rule of well established compensation principles and purposes.

The Sparks case upon which he relies substantially was based upon circumstances not to be compared with the record here.

Decisions in support of this claim are numerous. Attention is especially directed to the following:

City of Joliet vs. Industrial Commissioner, et al., 126 N. E. 619.

An engineer died of heat stroke in an engine room on a hot day. Holding for the claimant, the Supreme Court of Illinois concludes:

"In the cases, respectively, of a laborer on the streets, an employe working in a gravel pit, a fireman in a boiler room, and an employe working in a heated sheet iron building with tarred roofing on a hot day, the courts of various states have held that the workman's being overcome by excessive heat was an accident arising out of the employment. *State vs. District Courts*, 138 Minn. 250, 164 N. W. 916, L. R. A. 1918F, 918; in *re McCarthy*, 230 Mass. 429, 119 N. E. 697; *Walsh v. River Spinning Co.*, 41 R. I. 490, 103 Atl. 1025; *Young vs. Western Furniture & Manf. Co.*, 101 Neb. 696, 164 N. W. 712, L. R. A. 1918B, 1001."

Walsh vs. River Spinning Company, 103 Atl. 1035, submitted by defendant, supports this claim. It cannot be shown that Belcher with the mercury at 95 degrees outside, on a platform fifteen feet high, with six furnaces making steam, and with his head and shoulders in a boiler was less exposed to excessive heat than claimant Walsh.

United Paper Company vs. Lewis, 117 N. E. 277. Defendant again supports claimant with citation. Boiler 11 in an overheated room with the manhole blocked with his body was hotter to Belcher than the basement was to Lewis.

Texas Employers Insurance Assn. vs. Moore et al., 259 S. W. 516.

In the state of Texas the statute requires that all compensable injury must be based on trauma. Nevertheless in this case its supreme court

affirmed an award for death from heat exhaustion. The workman was exposed to excessive heat but so was Belcher on a hot day in a boiler with the manhole closed. The opinion is interesting and instructive.

Hughes vs. Trustees of St. Patrick's Cathedral et al., 156 N. E. 665.

In a decision filed in May, 1927 compensation was denied for want of statutory notice. The court, however, proceeded to record important opinion in these words:

"Per Curiam. (1) 1. Heat prostration is an accidental injury arising out of and during the course of the employment, if the nature of the employment exposes the workmen to risk of such injury. *Madura vs. City of New York*, 238 N. Y. 214, 144 N. E. 505. Although the risk may be common to all who are exposed to the sun's rays on a hot day, the question is whether the employment exposes the employee to the risk. *Katz vs. A. Kadams & Co.*, 232 N. Y. 420, 134 N. E. 330, 23 A. L. R. 401."

King vs. Buckeye Cotton Oil Co., 296 S. W. 3,

This is perhaps the latest word on heat exhaustion as the decision was filed by the Supreme Court of Tennessee July 15, 1927. As fireman in a boiler room with mercury indicating 99 degrees temperature outside, claimant was stricken. At a hospital two days later he developed pneumonia and died two days subsequently.

Says the Court:

"Nothing unusual occurred at the place where King was stricken except the fact of his misfortune. * * * * Whether the condition be caused solely and entirely by the excessive temperature of the room or place in which the employee is at work, or whether the excessive temperature of the place and the present physical condition of the workman combine to produce the result, there is an element of sudden, unforeseen, and unexpected casualty and misfortune in the result."

"If the heat prostration suffered by the workman in the case at bar is to be classed as a disease, then it is assignable to the fact that at a particular identified time the workman, while in the course of his employment, became overheated, a condition unusual, unexpected, and casual. For the reasons stated hereinabove, and in the authorities cited, we are of the opinion that the heat prostration described in the findings of fact of the trial court amounted to an injury by accident, within the meaning of our compensation statute."

"(5) We are of the opinion that whenever an injury by accident can be said to have been the moving, exciting, or contributing cause of a resulting disease, such disease must be said to have 'naturally resulted' from the injury, and it is wholly immaterial whether such disease often or usually results from similar injuries. It is sufficient in a particular case if a requisite casual connection is established between the injury and the disease."

Summing up, it may be said: Claude Belcher had for eight years been holding a steady job with the defendant. No attempt is made to show that his work indicated any degree of impairment in health. For practical purposes he was an able-bodied man. On the day of his death he is reported to have given evidence of good feeling, even of jollity. He was called boiler inspector but he was also to a degree boiler repairer. The room contained eighteen boilers, six of which were under pressure. After noon Belcher went to work on boiler No. 16 next to No. 18 which was fired up. His service was next required at boiler No. 11 but before going there he complained of headache and dizziness; wanted to lie down but went on with his work. Boiler No. 11 is on a platform some fifteen feet above the floor, temperature outside 95 degrees in the shade, on his level obviously much higher. He went head first to his waist into the boiler through a manhole filled by his body, and here he died.

Can there be any reasonable doubt but that the excessive general heat of the day, the more intense heat of the deck or platform, the stifling condition in the boiler closed by his body were the immediate, adequate, definite and obvious causes of the death of this workman?

While heart trouble had not previously been in evidence, the post mortem disclosed a condition which might easily have made the workman more susceptible to heat prostration but this probability makes it the more manifest that death from heat exhaustion arose out of employment. The doctors testifying all practically agree that one with an impaired heart is more susceptible to heat prostration than one without such impairment.

In Honnold on Workmen's Compensation at page 460 it is well and wisely stated:

"Susceptibility to risk does not prevent recovery for an injury or death proximately caused by an injury arising out of the employment. Every workman brings with him to his employment certain infirmities. They may be disabilities of age, or disabilities of infirmity not connected with age. That a workman put in a dangerous position is more liable to accident by reason of the disability which he brings with him, * * *, will not relieve the employer from liability. The accident arises out of the employment none the less because the remote cause is an infirmity existing when the employment was undertaken."

Can it be doubted that but for exposure to extreme conditions of temperature at his post in the closed boiler, Belcher would be doing his regular work today? At the time of his death in the discharge of duty he was where he was expected to be, trying to do what he was required to do. The demands of industry have deprived his family of support and it is the intent of the law that in such cases industry must contribute to loss of support sustained.

The arbitration decision is affirmed.

Dated at Des Moines this 25th day of November, 1927.

Affirmed by district court. Pending in supreme court.

A. B. FUNK,
Iowa Industrial Commissioner.

EMERGENCY CALL—AWARD FOR DEATH OF WORKMAN ON WAY TO PLACE OF EMPLOYMENT

Mrs. Mary Kyle, Claimant,

vs.

The Greene High School, Employer,
The Fidelity and Casualty Company of New York, Insurance Carrier,
Defendants.

Dunn and Dunn, B. R. Dunn appearing for Claimant;
Carl F. Jordan, for Defendants.

In Review

For a period of seven or eight years John Kyle, husband of this claimant, was in the service of the defendant employer as janitor. On his

way from his home to the high school building the night of December 11, 1926, he was run down by an automobile, death resulting some days later.

Arbitration decision filed November 29, 1927, finds for claimant at the rate of $8.10 a week for a period of 300 weeks, together with other statutory benefits.

It is the contention of the defendants that since this fatal accident occurred while deceased was on his way to the site of his general employment the injury is without statutory coverage. This defense is absolutely good and sufficient under the general rule applying to workmen going to or returning from their work. All the citations submitted by the defense, with probably one exception, are in support of this general rule, which needs no support at this department, because it is uniformly held that in the ordinary course of employment relationship such passing to and fro is entirely at the risk of the employe. This case, however, involves a significant, important and evidently controlling factor not included under the general rule referred to.

The usual hours of employment in the service of John Kyle were in the early part of the forenoon and the later part of the afternoon. It is of record that sometimes in his usual round of labor and upon his own motion he appeared at the school house in the evening.

On the day of his fatal accident, he had returned to his home before the evening meal and understood his work for the day was completed. The record further shows, however, that for the evening of that day provision had been made for a basket ball contest. About the hour of seven o'clock the principal of the high school, Mrs. Lena Hecker, called the janitor, Mr. Kyle, requesting his immediate appearance at the school building because of necessary service in connection with the electric lighting. In pursuance of this request on the part of one who had the right to make such request, a request which in this case amounted simply to an order, the janitor started for the school house. On his way he was run down and fatally injured.

The circumstances of this case take it out of the class of usual procedure of going to and returning from service. It is commonly held that if on his way to or returning from his place of employment a workman is performing some mission for his employer, carrying out some instruction given by one authorized to direct and control in such cases, injury has complete statutory coverage. There is no question but that, had John Kyle been called to appear at the school house with instruction to proceed to a store down town to procure some article required in school service, coverage would have existed in case of injury. In this case the workman was as completely under direction and control. He was not carrying out his usual program. An emergency had arisen requiring his assistance and under the specific direction of one who had a right to direct. He proceeded to the performance of an extra service not on his working program. The distinction is decidedly marked between this case and the usual case of a workman going to or returning from service.

At the time Mr. Kyle was run down he was in the street, walking

parallel with the sidewalk. The defendants contend that this circumstance took the workman out of the scope of his employment as he had no right to abandon the sidewalk provided for pedestrian use.

The reason for this abandonment of the sidewalk is not conspicuously set out in the record but it would appear to be rather definitely indicated. In the testimony of Gerald Kuhn, driver of the car which injured the deceased, on next to the last page of the transcript, appears the following:

"Q. And go ahead and tell in your own way just how the accident happened, what you were doing and what Mr. Kyle was doing.
A. I was coming to Greene on Saturday night and just as I went to go down hill the first thing I saw was a man.
Q. Where abouts?
A. Up by the school house. I set my brakes as soon as possible and the car skidded—the front end pulled out of the tract and if I let loose of the brakes the back end would come out but I held them tight and they didn't; * * *"

On the next page appears the following:

"Q. Where was he when you saw him?
A. Right in the track. The streets were icy."

The skidding of the car as described by this witness strongly suggests an icy condition of the streets while later, as appears above, the witness definitely states the streets were icy.

It is a matter of common knowledge and experience that when the surface of a sidewalk is icy, safer footing can be found off the sidewalk than on the same. This would appear definitely to account for the fact that when injured the workman was making his way as best he could along the slippery street parallel with the walk, a proceeding that is not held to take him out of the scope of his employment.

Summing up the entire situation, it appears just and reasonable to hold that:

1. John Kyle was called to the school building by one who had authority to make the call and expressly directed to appear at once to meet an emergency due to the failing of electric lights;

2. Called outside the usual hours of employment for specific service under specific direction the workman was under statutory coverage from the time he left his home in response to such call.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 8th day of March, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Pending in supreme court.

LOSS OF VISION—ALLEGED NEGLECT UNAVAILING AS DEFENSE —MEASURE OF LOSS

John Daugherty, Claimant,

vs.

Scandia Coal Company, Employer,
United States Fidelity & Guaranty Company, Insurance Carrier, Defendants.

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

Arbitration and Review Combined

Stipulation of record provides that at a single hearing this case shall be submitted to the Industrial Commissioner in arbitration and in review, with the same force and effect as though a decision had been previously rendered in arbitration proceeding and both parties had petitioned for review thereof within the time and in the manner prescribed by statute.

The record reveals that John Daugherty sustained an injury to his right eye from a foreign substance, September 25, 1925, while working in the coal mine of the defendant employer near Madrid. Going to the office of Dr. Shaw, at Madrid, the same evening, he received treatment and was directed to call again the following morning. This he did, when he received further treatment, with the understanding that on the same day he was to call on Dr. Martin, zone surgeon of the defendant employer, as he passed through Des Moines on the way to his home near Lovilia.

Claimant states that he made diligent effort to locate the office of Dr. Martin, which was unsuccessful, whereupon he went on down home, arriving about dark the same evening. The injured member had as yet been the source of very little distress, and this condition continued until Wednesday, the 30th. Sunday morning, however, treatment with boric acid solution was applied, and this treatment was evidently followed with diligence and precaution until Thursday. On Wednesday, upon the advice of a neighbor, a potato poultice was applied for about an hour.

Meanwhile, heavy and continuing rainfall interrupted the purpose of claimant to return to Des Moines on Monday. On Tuesday and on Wednesday the roads were in such condition as to make it almost impossible to get to the station at Lovilia, a distance of about five miles, though persistent effort was made so to do. On Thursday the rain had ceased and the roads were more passable, but it evidently took more than an hour to negotiate the five muddy miles.

Reporting to Dr. Martin, claimant was that day sent to the office of Doctors Howland and Chambers, eye specialists. After examination intermittently for several hours by Dr. Chambers, he went to the Lutheran hospital. Several weeks later the eye was enucleated.

Defendants admit the fact of injury, but they allege "that whatever disability was sustained by the claimant on account of any alleged injury was the result of his own negligence and carelessness in not following the instructions and directions of the company's doctor, which directions were given him immediately following the injury, and deny the right of the claimant to compensation in any sum whatever."

As a basis of such denial defendants submit the following testimony from the deposition of Dr. Shaw:

"I told him the only thing for him to do was to go to an eye specialist at once, and I told him to go to Dr. Martin, and he would send him to one. The delay of twenty-four hours oftentimes works the loss of an eye, and I insisted several times, and the last thing when he went out of the door I told him to be sure and stop."

Defendants contend that claimant did not use due diligence in his endeavor to find Dr. Martin and that the delay due to this neglect, together with the home treatment from Sunday to Thursday is the proximate cause of the loss of the right eye.

Claimant emphatically denies receiving any such direction or admonition from Dr. Shaw as his deposition recites. On the witness stand he states Dr. Shaw advised him "when you go through Des Moines maybe you better stop and see Dr. Martin, though I don't consider this a serious case, but we will be on the safe side anyway." Over and over again, claimant repeats in substance this statement as to the instructions he received from the doctor, and his testimony is not in the least shaken in rigid cross-examination.

Claimant further states that Dr. Shaw did not give him any address of Dr. Martin other than Des Moines, Iowa, with the further oral suggestion that the doctor was located in the "Street Railway Station building." Insists he made diligent inquiry of a number of persons in the course of an hour or more, spent in this endeavor. He says Dr. Shaw's instructions as to seeing Dr. Martin were not at all insistent, and from the further fact that as yet the injured member had pained him but little, he finally abandoned search and went on home.

The home treatment would seem to have been applied with unusual diligence and care. Boric acid has scientific and common recognition as of remedial value in eye trouble. It usually has a place among household remedies. It would appear that water used in solution was boiled, and instruments coming in contact with the powder were sterilized, as was also the gauze applied to the eye.

The condition of the weather and the roads between the home and the railway station would seem to afford reasonable excuse for delaying return to Des Moines in accordance with the evident desire and purpose of claimant.

As witnesses at this combined hearing, John Daugherty, his wife, and his son, William, invite the confidence of the Commissioner by their candid manner and evident veracity. They are in substantial agreement as to circumstances of importance. The son was working with his father in the mine. He went home with him the day following the accident. He testifies to the statement given him by his father as to the directions of Dr. Shaw relative to the call on Dr. Martin. He supports claimant's statements as to the effort to locate Dr. Martin's office. Of course, this is hearsay, but we are authorized in this jurisdiction to give such evidence consideration.

Counsel for the defense in argument expresses respect and regard for John Daugherty, who he has known with some degree of intimacy for a number of years, but he seems to discount to the point of repudiation his statements as to what he was told by Dr. Shaw, while the doctor's

statements are taken at par. Without reflecting upon Dr. Shaw, the Commissioner would make a more evidently equitable adjustment. Neither witness need be regarded as otherwise than honest. More than a year elapsed between the office conference and the date of testifying. Lapse of memory is liable to shade recollection. It would seem, however, that out of his full experience with manifold cases and circumstances, Dr. Shaw might be less liable to remember details of conversation than the claimant, with much less to confuse his memory.

Claimant is very hard of hearing. It is possible to reach his understanding only through the elevation of the voice almost to the point of shouting. This fact may have to do in some measure with the discrepancy of statement, but the adoption of this theory cannot impair the case of claimant as he can be held responsible for his conduct only within the limits of his understanding. Surely, John Daugherty on the witness stand establishes claim to candor and veracity.

In denying the right of claimant to any award whatever on grounds stated, the burden of proof automatically shifts, as stated by defendant's counsel in argument. It is then incumbent upon the defendants to prove:

1. That claimant through flagrant neglect failed to avail himself of medical services tendered; and
2. That but for such unreasonable conduct the loss sustained would not have occurred.

The record does not adequately support the contention of defendant as to "negligence and carelessness." But if it did, in order to defeat his claim, it would still be necessary to show by preponderance of evidence that such conduct actually resulted in the loss of the eye which otherwise would have been saved.

For this purpose the depositions of Doctors Howland and Chambers are submitted. No amount of inquiry couched in the most ingenious terms of counsel serves to commit these specialists to the proposition that but for acts of omission or commission on the part of claimant the vision in the injured eye, in whole or in part, would have survived.

Dr. Chambers had the case immediately in charge. In his deposition appears this testimony:

"Q. Now, I wish you would state Doctor, what your opinion would be that if this man Daugherty had reported to you the day after he saw Dr. Shaw, being the day that Dr. Shaw told him to come down here, if he had reported to you on that day instead of five or six days later and you had rendered the treatment that is usually rendered in such a case, what is your opinion as to whether the probability would be you could have saved that eye?

A. Oh, I wouldn't want to make any such statement as that."

Q. Of course, you don't know what the condition of the eye was when Dr. Shaw saw it, you just know what it was when it came to you, but what would you say to it being probable that if you had seen that eye within a day or two after the alleged injury that you could have prevented the spread of this infection from the ulcer.

A. Oh, I couldn't say that at all.

Q. Well, what is the probability?

A. Well, the probabilities is sometimes almost fifty-fifty. It all depends so much on other things."

Again asked as to the probability that the eye would have been saved if claimant had come to him the day after Dr. Shaw saw him, the reply

was: "Well, I would rather say that it was more of a possibility, rather than a probability."

Dr. Chambers says repeatedly that the chances of recovery would have been better had he received earlier special treatment, but this is as far as he seems willing to go in contributing to a preponderance of evidence.

Questioned by counsel for claimant, Dr. Howland testifies as follows:

"Q. * * Could you say positively that he wouldn't have lost the eye if he had come to you or some other good specialist the second day after the injury?

A. No, sir, I couldn't.

Q. Could you say under the assumed statement of facts which I have given you, which you may assume to be true in the answer you make that it is reasonably probable that you could have saved the eye had he come to you the second day after the injury?

A. I couldn't answer that question intelligently because I have no knowledge of the condition of his eye at the time he left Dr. Shaw and I couldn't give you an intelligent answer as to what I would have been able or unable to have accomplished had I been able to have seen the man at the time Dr. Shaw referred him down here."

Dr. Howland agrees with the statements of Dr. Chambers that there would have been a better chance for successful treatment had the case been promptly submitted.

Many decisions submitted by claimant indicate that the course of John Daugherty in the days following his injury cannot be considered as constituting wilful misconduct, flagrant disobedience or unreasonable indifference to his physical condition. They also emphasize the fact that in their endeavor to show that vision in the injured eye was sacrificed on account of the course he pursued, defendants have definitely failed.

It is established in the record that because of accidental injury in 1919, existing vision in the left eye of claimant at the time his right eye was injured was only twenty-five per cent of normal.

In section 1396 of the Code it is provided:

16. For the loss of an eye, weekly compensation during one hundred weeks.

17. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.

It cannot be held that because of the limited vision remaining in the left eye no consideration should be given to paragraph 17. The statute definitely recognizes the importance of function remaining in case of loss of vision. In this case the condition of claimant is changed by this injury from practically full, useful vision to that bordering on industrial blindness. Limited sight existing may afford much of personal satisfaction in usual intercourse, but it gives very little promise of earning capacity, which is the real test as to statutory value.

In distinct recognition of these conditions the General Assembly gave to a single surviving eye double the value of the first eye to be lost. In this statutory distinction is ample justification of the theory of claimant that the loss of his right eye which leaves him so little useful vision must hold the employer in obligation for payment much in excess of the statutory value of a single eye with one-half of full normal vision remaining.

The reasoning of the Iowa Supreme Court in Pappas vs. North Iowa

Brick & Tile Company, 206 N. W. 146, seems substantially to support this theory.

Findings of fact and rulings of law in this case are as follows:

1. The record does not show that claimant wilfully or unreasonably neglected his right eye in the days immediately following his injury.
2. There is no weight or preponderance of evidence in the record tending to show that vision of the right eye would have been saved, in whole or in part, had claimant promptly submitted himself to expert medical treatment.
3. It clearly appears in the record that at the time the right eye was injured the left eye had only twenty-five per cent of normal vision.

In accordance with these findings the defendant insurer is held in payment to John Daugherty in the sum of $15.00 a week for a period of one hundred and seventy-five weeks, and is also ordered to pay all statutory costs accruing in this action.

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

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Modified and affirmed by supreme court.

IDENTIFICATION OF EMPLOYER—POLICY COVERAGE

W. C. Magennis, Claimant,

vs.

L. O. Fortney, Employer, and an unknown insurance carrier, Defendants.
John M. Shaupp, Jr., for Claimant;
John F. Hynes, for Employers Mutual Casualty Company, for Defendant.

In Review

L. C. Fortney has for many years been in the housemoving business at Fort Dodge, and in connection with this service he has had a good deal of other business activity.

M. J. Gosz is a general contractor at Fort Dodge. During the spring of 1926, while engaged in the construction of a building for a Mr. Shaupp, he made a deal with Fortney which called for the use of a considerable equipment of tools, etc., together with the personal service of the latter. Payment was at the rate of $25.00 a day. It was also agreed at the time of this engagement that Fortney should put into this work, as he said, "a couple of men I would like to use."

A few days prior to this engagement Fortney had taken into his employ the claimant, W. C. Magennis. After a few days of work of various sorts, as one of the "couple of men" above referred to, Magennis was taken to the Shaupp job under the agreement recited between Fortney and Gosz.

On May 28, 1926, shortly after entering this service, while in the course of moving structural steel, claimant lost the first phalange of his second finger of his right hand. The injury is clearly compensable, but controversy arises as to the identity of the employer, and also as to policy coverage.

In arbitration it was held that Magennis at the time of his injury was in the employ of Fortney, and that liability involved was covered by a policy issued by the Employers Mutual Casualty Company, which was

ordered to pay claimant the sum of $13.84 a week for a period of twelve and one-half weeks, as provided by statute.

At the arbitration hearing special appearance was made by M. J. Gosz and the Travelers Insurance Company, his insurer, also in behalf of L. O. Fortney. Issues herein involved are:

1. As to whether L. O. Fortney or M. J. Gosz was the employer of this claimant at the time of his injury;
2. As to whether or not the Employers Mutual Casualty Company is liable in the event that claimant is found to be in the employ of Fortney.

Since it appears of record that Fortney hired Magennis and re-engaged his services to Gosz, that Fortney paid the wages to claimant for this service; that while Gosz had the right to put claimant out of the job under his control, claimant would still have been in the employ of Fortney, under the holding of this department, supported by the decision of the Iowa Supreme Court in Knutson, et al., vs. Jackson, 183 N. W. 391, Fortney is held in obligation as the employer of the claimant at the time of his injury, May 28, 1926.

It remains to be seen whether or not this employer was protected from compensation liability by his insurance contract with the Mutual Casualty Company.

The Industrial Commissioner is not assumed to have intimate relations with insurance policies, but when one issued to an employer of labor is submitted as a bar to compensation recovery from an insurer and the said policy appears as an exhibit in the arbitration hearing, the consideration of its terms would seem to be necessary.

In this policy, appearing in the record as claimant's Exhibit "A," under the heading "Classification of Operations" appears the typewritten entry "(a) building moving and shoring." The insurer contends coverage was limited only to building moving, and shoring. Claimant insists the language may fairly be construed to mean building, moving and shoring; (mark the punctuation in both cases) that it may be reasonably inferred that coverage is afforded to building, as well as to the process of building moving; that "shoring" is a term indefinite and more or less comprehensive.

In his evidence Fortney says his business is as a housemover, but he testifies further that his usual activity embraces "truck work," "excavating," and "all kinds of work—just combination work." Asked if the "job on the Shaupp building is the first job of steel construction you have done," the reply is "No, we have done this work all our lives. The past twenty-eight years."

If this insurance coverage was framed to cover only the moving of buildings and the indefinite activity of shoring, evidently the agent who sold the policy was careless or indifferent or worse in affording to this patron coverage so obviously inadequate to his plans and purposes and usual performance. It may be urged with some force that the assured should have been more mindful as to policy technicality, but it is a matter of common knowledge and experience that this burden is, as a matter of business prudence and policy, usually cheerfully assumed by the representative of an insurance carrier out to promote the interest of his employer.

It is a well settled rule that where there is any ambiguity in the terms of an insurance policy it will be construed against the insurer.

In Maryland Casualty Company vs. Industrial Accident Commission, 173 Pac. 993, it is declared that in resolving uncertainty as to an insurance contract "we are to be guided by the rule that in such a case the contract is to be interpreted most strongly against the party who caused the uncertainty to exist. This policy was drawn by the insurer. It caused the uncertainty to exist."

It therefore becomes necessary to hold:

1. That W. C. Magennis at the time of his finger injury, May 28, 1926, was in the employ of L. O. Fortney;
2. That as his insurer, the Employers Mutual Casualty Company must assume all financial obligation created by this injury.

Wherefore, the arbitration decision is affirmed.

Dated at Des Moines, this 28th day of January, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

MEDICAL SERVICE—CHANGE OF DOCTORS WITHOUT CAUSE—AWARD DENIED.

Emil Hill, Claimant,

vs.

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

In Review

Due to injury of claimant in the employ of this defendant coal company, November 10, 1925, said defendant was in arbitration held in payment to Emil Hill, in the sum of $30.00 for temporary disability during a period of four weeks.

In review the claimant seeks to establish the fact that temporary disability existed from November 10, 1925, to January 5, 1926. Claimant also asks that the account of $108.00, submitted by Dr. C. J. Musser for professional services, be included as part of the award in this case.

The record does not tend to show that Emil Hill was necessarily incapacitated from earning for a period longer than the four weeks, as found in arbitration. Injury in this case would seem to have been due to a fall of slate. Immediately after leaving the mine claimant was examined by Dr. Cook, one of the doctors provided for the defendant in service of such cases.

Claimant testifies that after making examination in the first aid room the doctor took him in his car and left him at his home with the remark that if he needed him, to let him know. Without further consulting Dr. Cook, Emil Hill soon sent for Dr. C. J. Musser, who treated him into the month of January.

A statement from Dr. Cook appearing in the record as Exhibit "D-1" states that at the time of his first aid examination he estimated disability at two weeks; that as claimant did not call for further attention, he supposed he had returned to work.

The statute provides that the employer "shall furnish reasonable medical, surgical and hospital services." This language is assumed to mean that the employer or his insurer shall select and supply such services as required. Employers and insurers are always admonished to exercise this obligation with discretion. In cases where there is reasonable excuse for departure from this rule, and where services rendered are evidently reasonable and helpful, we find little difficulty in securing agreement to the settlement of accounts rendered.

In this case there would seem to be no worth while reason for abandoning the doctor furnished by the employer. No suggestion as to lack of skill on the part of Dr. Cook appears in the record. The testimony of Dr. Musser suggests doubt as to the value of his services, and is not at all reassuring as to any reason for making this change of doctors on the part of claimant. It is not unreasonable to assume that with treatment by Dr. Cook, earlier return to service would have been reported.

Wherefore, these conclusions are reached:

1. The record does not justify award for disability in excess of four weeks;
2. For the reason that the unauthorized attendance of Dr. C. J. Musser is not to be regarded as statutory medical benefits, his account of $108.00 for services in this case is not approved.

The arbitration decision is affirmed.

Dated at Des Moines, this 12th day of April, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

DEATH IN ELEVATOR SHAFT—AWARD

Sara E. Hoffman, Claimant,

vs.

K & F Cap Manufacturing Company, Employer,
Federal Surety Company, Insurance Carrier, Defendants.
Dunshee & *Brody*, for Claimant;
Parrish, Cohen, *Guthrie*, Watters & Halloran, for Defendants.

In Review

This action in review is based on appeal of the defendant employer from arbitration award.

The record shows that Charles Hoffman, husband of this claimant, on or about July 30, 1926, was found in the pit of an elevator shaft, on the premises of the employer, in a dying condition.

On the part of defendants it is contended that facts developed do not justify the conclusion that this injury and death arose out of and in course of employment.

About a week prior to the date of injury claimant entered the employ of the K & F Cap Manufacturing Company as shipping clerk. E. A. Kaplan, president of the company, testifies that in this capacity it was incumbent upon Hoffman to attend to various duties on the first, second and third floors of this manufacturing enterprise. Such duties made necessary the frequent use by claimant of the elevator on the premises. This elevator was constructed with especial reference to freight service

and intended incidentally for carrying passengers in working connection with the business of the employer.

Circumstances intimately related with this fatal incident are not and cannot be known, as such knowledge could not be imparted by the dying employee, and there was no eye witness. In lowering the cage, when near the bottom of the shaft, a fellow employee heard a feeble moan from the pit. Investigation developed the awful condition of the unfortunate workman unable to make any explanation. It is known that he returned from lunch about one o'clock p. m. He had changed from street to working clothes. He had taken keys used at entries of the several floors from the elevator shaft from a desk some ten or twelve feet from the elevator, as these were found near his person at the bottom of the pit.

Counsel suggest various theories as to what might or might not have happened in support of contentions submitted, but each has its origin in conjecture. Whether either or neither is guessing right as to circumstantial detail is not material. All developments of record tend definitely to connect the injury with the requirement of employment. Use of the elevator by claimant was absolutely necessary, and frequent trips to the several floors was unavoidable. Suicide is not plead. Self-service is not suggested by defendant. Hence, there is no logical escape from the vital conclusion that in the usual course of his employment Hoffman was meeting the requirements of duty and thence arose the incident resulting in injury and death.

In support of his contention counsel for defense submits several decisions of the Iowa Supreme Court:

Sparks vs. Consolidated Indiana Coal Company, 190 N. W. 593. In that case there was substantial basis for doubt as to whether or not death was due to injury, and this doubt was resolved by the court against claimant. No such doubt exists in this case.

In *Buncle vs. Sioux City Stock Yards Company*, 185 N. W. 139, allegations of traumatic incident was far fetched, and any resulting disability exceedingly doubtful. Analogy is not apparent.

In *Flint vs. City of Eldon*, 183 N. W. 344, there was slim support for the contention that death was due to trauma. No such question is suggested herein.

In *Guthrie vs. Iowa Gas & Electric Company*, 204 N. W. 225, the court held that there was failure to connect the infection to which amputation was due, with an incident of employment occurring several years previously. There is no such long range involvement in this case.

Familiarity with all these department cases suggests no weight of support to denial of obligation to the widow of Charles Hoffman because of circumstantial relationship so obviously remote.

In support of award the New York Supreme Court decision in *Donnolon vs. Kips Bay Brewing and Malting Company*, W. C. L. J., 429, is significant. The body of a workman was found at the bottom of an elevator shaft. How it came there, to what sort of an accident death was due, was wholly unknown. The court held that it must be presumed the deceased was present on the ground floor for some legitimate purpose of

employment and that while so present he accidentally fell down the elevator shaft.

Humphrey vs. Industrial Commission of Illinois, 120 N. E. 816, is in point. A boy met his death in an elevator. There was no eye witness. Various circumstantial theories were developed. The court held that there was nothing to indicate anything but an accident, and that the proof amply sustained the finding that the accident arose out of employment.

There is substantial support to award in this case in *Grant vs. Fleming Brothers*, 176 N. W. 640.

The record shows that the accident fatal to Charles Hoffman occurred at a place where it was his right and his duty to be; that the injury he sustained was reasonably incident to the requirement of his employment; that award in this case is sustained, not by surmise or conjecture, but by a preponderance of the evidence.

The arbitration decision is affirmed.

Dated at Des Moines, this 8th day of February, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. No further appeal.

MYOCARDITIS—DUE TO HEAVY LIFTING

William Weller, Claimant,

vs.

Clinton Lock Company, Employer,
The Hartford Accident & Indemnity Company, Insurance Carrier,
Defendants.

F. L. Holleran, of Davenport, for Claimant;
Thomas M. Healy, of Fort Dodge, for Defendants.

In Review

This action was brought to recover for incapacity due to "strained heart muscles and ruptured heart valve, caused by heavy lifting" June 24, 1926.

In arbitration award was made for maximum weekly payment from June 24, 1926, to date, and to continue until claimant is able to resume work.

At the date set for review hearing no appearance was made by William Weller, for the reason as given by counsel that claimant was not able to meet the required expense. Thomas M. Healy appeared for the defendants, making brief oral statement and filing written brief and argument in support of appeal from arbitration.

At the arbitration hearing, as shown by the transcript of evidence, much inquiry was made as to the origin of existing disability. On the part of defendants doubt was manifest as to liability. Development in the record is of interest.

Claimant testifies that he was required by his employment to do much heavy lifting, some boxes of metal handled weighing from 250 to 800 pounds, that his frequent request for aid in such lifting was refused. Says he first noticed pain in his chest in February, of 1925, while lifting

a box weighing 830 pounds. Could hardly get his breath and this condition lasted about four days. A doctor told him the trouble was caused by the strain of lifting. June 24, 1926, in lifting a box of steel of 450 pounds weight, he was badly broken down by pain and shortness of breath, and on consulting a doctor he says he was forbidden to work at the peril of his life. Alleges he has since been without earning capacity.

August 9, 1926, claimant was examined at the request of defendants by Doctors F. M. Keith, W. M. Walliker and F. A. Honenshuh. Dr. Keith testifies that in his judgment "this man had an enlarged heart from continuing exertion or sudden strain." Thinks he might do light work. Dr. Hohenshuh says the heart condition found is "due to heavy lifting and intensified by the acute accident or strain." Could not be expected to do heavy work, but might come back to light employment. Dr. Walliker says he agrees absolutely with statements of two doctors just quoted. Dr. George B. Maxwell testified "to serious heart trouble, due to sudden strain."

Dr. Sugg examined William Weller August 29, 1926, at the request of the defendants. Found him suffering from "cardiac lesion known as aortic obstruction." Thinks this condition pre-existed the incident of June 24th and "as a result of lifting a heavy object, and putting a heavy strain on the heart he developed the symptoms from which he complained that day." The doctor further testifies:

"The history of these cardiac lesions is that the individual may have it for many years, and experience no discomfort from it, but the condition is progressive. The heart muscles gradually degenerate, as well as the muscle fibers in the large aorta, and eventually they will have manifestations of heart incompetency. This will progress and eventually these symptoms will manifest themselves from ordinary every-day routine, but may be aggravated or suddenly appear as a result of some extra strain or unusual exertion."

Dr. Sugg later testifies that in his opinion the condition he found was not produced by heavy lifting. In view of the doctor's opinion quoted, as to the effect of "aggravating" and "developing" of heart trouble, his conclusion that the existing disability was not *produced* by heavy lifting is of little value. Dr. Sugg does not testify definitely as to whether or not at the time of his examination claimant was without earning capacity, but he seemed to regard the situation as rather grave.

The testimony of five doctors tending to show that the incapacity of claimant arose out of employment, evidently constitutes a preponderance of evidence.

Development in connection with the review proceeding indicates that the defendants were not at that time denying liability. The written argument submitted reaches this conclusion:

"The ultimate question for determination is whether or not the employer in this case can be taxed at the maximum rate for an indefinite period because of the industrial depression in Iowa or because Weller cannot lift six or eight hundred pound weights, which labor was a mere incident of his employment as the operator of a stamping machine. Many men with chronic heart trouble, lumbago and hernia seek and fill positions as machine operators and bench workers."

At the request of counsel for the defendants, William Weller was called in for examination by Dr. O. J. Fay, department medical counsel, as to

claimant's present physical condition and ability to perform ordinary labor. His examination was made April 12, 1927, the concluding paragraph of Dr. Fay's report reading as follows:

"I am of the opinion that Mr. Weller's present disability is due to a chronic myocarditis. He is not now able to work. I would suggest that Mr. Weller continue under treatment, in particular looking toward the clearing up of his throat trouble, and then return for examination after some months."

Conclusions based on the record in this case justify these findings:

1. The existing disability of claimant is due to injury arising out of and in course of his employment by these defendants:

2. In his present physical condition claimant is without earning capacity.

The arbitration decision is affirmed.

Dated at Des Moines, this 21st day of April, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Settled.

OIL DELIVERY AS INDEPENDENT EMPLOYMENT

Mrs. Lillian Mallinger, Claimant,

vs.

Webster City Oil Company, Employer,
United States Fidelity and Guaranty Company, Insurer, Defendants.
C. J. Rosenberger and V. L. Sharp, for Claimant;
Fred C. Huebner, for Defendants.

In Review

December 8, 1926, W. B. Mallinger, husband of this claimant, lost his life at a railway crossing. The question involved herein is as to whether or not his death arose out of employment by the Webster City Oil Company.

It was held in arbitration that the deceased at the time of his fatal injury was not an employe of the defendant employer within the meaning of the compensation law.

The record shows that for more than a year prior to his death W. B. Mallinger had been selling and delivering merchandise from the Webster City Oil Company under the provisions of a contract and agreement appearing in this record as claimant's Exhibit "M." On the date of his death he was collecting bills covering sales he had made within his prescribed territory of operation.

Counsel contends that this contract and other evidence of record proves that at the time of his death W. B. Mallinger was an employe of the Webster City Oil Company, which makes valid the claim of this dependent widow.

In Norton vs. Day Coal Company, 180 N. W. 905, the Iowa Supreme Court develops this cogent reasoning.

"The relationship of master and servant does not exist unless there be the right to exercise control over methods and detail—to direct how the result is to be obtained. The power to direct must go beyond telling what is to be done—to telling 'how it is to be done'."

Also:

"One is not an employee if he may choose his own method of working—the mode and manner of doing the work. * * * It has been summed up by the statement that it is immaterial that there be power to prescribe what is to be done, unless it includes the power to say 'how it is to be done'. * * * It is not enough that there be power to see to it that the work is done to the satisfaction of the one who gives it. This power is control over ultimate results, and not over methods, means and details. * * * It is not direction looking to the final results, but as to means, that is controlling."

(In Pace vs. Appanoose County, 168 N. W. 916, and in Storm vs. Thompson, 170 N. W. 403, this court makes definite and comprehensive statement in drawing the line between wage earning and independent employment.)

Claimant's Exhibit "M" may be searched in vain for terms and conditions outlined in this judicial diagram and the transcript of evidence at the arbitration hearing is wholly wanting in the matter of facts and circumstances conforming therewith. The fact that the deceased was furnished with tank truck and other equipment is wholly consistent with independent employment. A salesman whose engagement may be terminated within ten days at the will of his supply house could not be expected to invest perhaps $2,000.00 in an outfit for which he would have no use in other employment and which he would doubtless have to sell at a sacrifice. It is equally consistent with independent contracting that the agreement should provide conditions for extending credit in the interest of the party of the first part.

In usual wage earning written contract is not required, neither is a bond demanded for faithful performance.

Under the terms of this contract Mallinger was furnished with equipment. He was authorized to call for merchandise at any time and in any quantities to suit his purpose. There is nothing whatever prescribing the manner in which he should secure orders or make delivery. Within the limits of his defined territory he was free to make his own plans and carry out the same without consulting in any manner or to any extent the Webster City Oil Company. As to how, when, where or to whom he should sell, the contract is silent. He is on his own as to time. He might work six or twelve hours a day at his own pleasure or he might, as suited his purpose, suspend work entirely for a day or for a week and give his time and attention to other business activity or to personal indulgence. He was not subject to discharge within the usual meaning of this term as applied to wage relationship.

W. B. Mallinger was killed while on a tour collecting accounts for sales he had made on credit. He was driving his own car at his own expense, a circumstance not at all suggestive of employe relationship.

Claimant further contends that:

"There is no mutuality of obligation such as would be necessary to create independent contractor relationship. There is no provision in said contract wherein the Webster City Oil Company obligates itself to furnish its products to Mallinger."

As consistently it might be alleged that Mallinger does not agree in this contract to sell the merchandise of the Oil Company. As a matter of fact this contract was conceived in mutuality of purpose to sell merchandise to the advantage of both contracting parties. It is grossly inconsistent to assume it to have been made as mere idle gesture wholly without force or effect. Men do not enter into formal agreement without definite purpose which seeks to provide for practical performance.

There can be no doubt as to the intent of these contracting parties. The record plainly shows it to have been understood that the Webster City Oil Company was to furnish W. B. Mallinger merchandise to sell for mutual benefit, that he was to be entirely free as to the means of serving this mutuality of purpose and held accountable only as to the results of his salesmanship, including practical care of equipment in use and proper accounting for merchandise with which he was supplied.

It therefore becomes necessary to decide that there is no error in the arbitration decision which holds that at the time of his fatal injury W. B. Mallinger was not an employe of the Webster City Oil Company within the meaning of the Iowa Compensation Law and the same is hereby affirmed.

Dated at Des Moines, Iowa, this 1st day of August, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Appealed.

MONOXIDE GAS POISONING—FAILURE TO ESTABLISH AS CAUSE OF DISABILITY

John L. Skilbred, Claimant,

vs.

L. O. Kimball Construction Company, Employer,
Southern Surety Company, Insurer, Defendants.
B. R. Dunn, for Claimant;
T. A. Long, for Defendants.

In Review

Defendants appeal from arbitration award of $109.08, representing compensation payment of $8.08 a week for a period of thirteen and one-half weeks.

John L. Skilbred testifies that while in the employ of L. O. Kimball Construction Company on the 23rd day of October, 1924, he was incapacitated from earning from the effects of carbon monoxide gas. Says this injury was due to the escape of gas fumes from the truck engine through a leaky valve in the exhaust pipe, which reached him through opening in the floor of the cab. Says cab was tight except that one window in a cab door, measuring about 12x18 inches, was out. Claims disability from October 23, 1924, to January 27, 1925. Says he had reported condition of truck engine to a company mechanic, whose name he does not remember; also to John Weed, a Kimball foreman. Further says he told the employer, L. O. Kimball, about it. While he had testified that the only opening in the cab was the window referred to, he later reads from a signed statement of his own, saying the door of the cab on the right side had been taken off.

Claimant testifies that he first went to Dr. Denny, who gave him some medicine and told him the cause of his trouble was gas from the truck engine. Dr. Denny's knowledge of the case is not in evidence.

Dr. Irish, of Forest City, testifies he later treated Skilbred. Says he found him suffering from acute nephritis, the effect of monoxide gas poisoning. Treated him for some two months for resultant kidney trouble. Claimant was not able to do manual labor.

Other medical testimony tended to show that the alleged difficulty of claimant could, and that it could not reasonably be due to the experience he recites.

John Weed, Kimball foreman, has no recollection of being notified by Skilbred as to any repairs being necessary to the truck, as testified by claimant.

In deposition, taken December 7, 1926, L. O. Kimball testifies that the first knowledge he had of any alleged injury to claimant arising out of employment was through a Forest City doctor, who submitted a bill for medical services. Says the last two days claimant was in employ in October, 1924, "he said he had the grippe and bad cold." Denies that claimant notified him of defect of any kind in truck he was driving. Says truck was inspected between October 19 and 23, 1924; that said truck had no muffler on it as testified by claimant. Said "cab had one door off," "being opened on one side" "and back window in cab was out."

The department file shows that the report required by law of the employer was made out some seven weeks ofter the alleged disabling exposure, not by the employer, nor by anyone for him, but for the employe, by Dr. H. R. Irish, the Forest City doctor referred to. This is an unusual proceeding.

The department record further shows that notice of action in this case was filed September 1, 1926, nearly two years after the alleged injury. In rare cases reasonable explanation exists as to extreme delay. It has occurred that disability from definite injury develops months after its proximate cause. In this case incapacity is said to have immediately followed the alleged gas exposure, and it is admitted to have ceased more than eighty weeks before application for arbitration was filed, and there is no evidence of settlement negotiation in the meantime. There is in the record no suggestion as to the cause of this remarkable delay.

It is conceivable that in spite of these dubious circumstances evidence most impelling as to actual occurrence and inherent probability might in remote cases be submitted, but no such situation exists herein. Case history as given by claimant is not reassuring. The statement as to the menacing condition of the truck engine has hardly any support. But assuming it to have existed, it is fairly presumable from the record that one door was off and the back window was broken out of the cab, and in this situation the disabling exposure to gas fumes is by no means probable.

Claimant having failed to sustain the burden of proving that any disability he may have suffered arose out of his employment by these defendants, the arbitration decision is reversed.

Dated at Des Moines, this 12th day of April, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INJURED WHILE AIDING FELLOW WORKMAN—AWARD

Fred Miller, Claimant,

vs.

F. J. Sulzbach, Employer,
Builders & Manufacturers Mutual Casualty Company, Insurer, Defendants.
E. J. Stason, of Sioux City, for Claimant;
Jepson, Struble, Anderson & Sifford, of Sioux City; G. T. Struble, appearing, for Defendants.

In Review

This action was brought by Fred Miller to recover for loss of earnings alleged to be due to injury arising out of employment. In arbitration award was made for payment by defendants of the sum of $10.56 a week for a period of ten weeks, together with statutory medical, surgical and hospital benefits.

Circumstances involved in this case are substantially as follows:

The defendant employer, J. F. Sulzbach, is a Sioux City contractor. In the month of February, 1926, he was remodeling a building known as the Metz Bakery. Among his workmen was Fred Miller, the claimant herein, a mortar mixer; also T. L. McKenzie, a brick mason.

On Sunday, the 21st of February, it became necessary for McKenzie to get possession of his tools, locked away in the Metz building, in order to take a train leaving in the afternoon, to enter upon another working engagement. It would appear from the record that he failed in his endeavor to communicate with the employer, F. J. Sulzbach, but he reached by phone a son, Fred P. Sulzbach. Submitting his emergency need to this son, he was directed to this claimant who had a key to the building. When McKenzie told Miller what he wanted, and as to the direction of the son, claimant went to the working premises, unlocked a door, and the two proceeded to the basement where the desired tools were located. There were no electric lights, and the only light available was from matches used. While in the basement, claimant fell, breaking his right leg.

It is the contention of the defendants that Miller was not a foreman and that neither he nor the son had any right to open the building on Sunday. Furthermore, that in so doing, Miller was moving for the convenience of McKenzie, and not for the purpose of advancing the interests of his employer.

Defendants concede that McKenzie had a "right to his tools," but they insist that he could not "demand that his employer shall leave his home on Sunday or such other business as he may have on hand, if any, and go with the employe to secure those tools." Perhaps not, but employment is usually so organized that someone representing him may attend to such details without taking the employer out of church or away from a banquet in order that the workman may realize upon the conceded "right to his tools."

It would seem that the "right" conceded naturally carries with it the further concession necessary to the enjoyment of such right. The employer had to a degree placed the building in the custody of Miller in giving him a key. While this was said to be, and doubtless was, chiefly

due to the fact that claimant, because of his peculiar relation to the work, needed to be first on the job, the circumstance carries with it a degree of trust and responsibility. Having a "right to his tools," McKenzie sought opportunity to secure the exercise of this right through the employer. Failing in this, he appealed to the son. This seems natural. Though at the arbitration hearing the father denied authority on the part of the son, Miller testifies that he had always considered orders from the son "when Mr. Sulzbach wasn't around just the same as the old gentleman, exactly." There must have been in working relationship some substantial basis for this assumption. So Miller would seem to have been justified in becoming a factor in making the right of this workman to his tools a practical reality.

Injuries frequently arise out of employment, though at the moment of his misfortune the workman is not in specific performance doing anything to advance the interests of his employer. The limits of employment obligation are by no means confined to the definite range of profitable service. There is no profit to employment in the statutory provision that a workman shall have relief for injuries occurring before he takes up his tools, or after he has laid them down, while on the premises of the employer. It is no money in the employer's pocket to have accidents occur from negligence on the part of the workman, but he is held in obligation just the same.

The conceded right of McKenzie to his tools was a right the employer in common obligation was bound to respect, and the trend of circumstances leading up to this injury is consistent with the recognition of this right on the part of the employer.

In this case an emergency situation arose. McKenzie did not know on Saturday that he would need his tools before Monday. Subsequent developments made it to his interests to leave the city Sunday afternoon, and the failure to secure his implements of employment on that day would have entailed serious inconvenience and perhaps loss more or less substantial. It was due to no whim or trivial circumstance that he needed to assert his right to his tools.

Some citations given by defendants seem to deal only with vague generality as to working relationship, while others seem to be submitted on the theory that Fred Miller was out merely to suit the convenience of a fellow workman without meeting any obligation on the part of the defendants. Since this assumption is not justified by the record, the citations are not in point.

In this situation the decision of the Iowa Supreme Court in *Mitchell vs. Consolidation Coal Company*, 192 N. W. 145, is important. Claimant had been discharged from service. Several days later he went to the mine in which he had been employed to square up his room and secure his working tools. He had later gone to the top. Failing to find the tools, for which he had sometime previously applied for hoisting, he went back into the mine to hurry movement to meet his requirements. On the return trip he sustained injury which resulted in his death. The court affirmed the department award. It will be observed that Mitchell was not at the time of his injury rendering any service to his employer. Indeed, he was a discharged workman, almost a trespasser, acting only in

his own particular concerns. He was merely asserting "the right to his tools," and in this proceeding the employer was held in obligation for injury sustained.

The arbitration decision is affirmed.

Dated at Des Moines, this 30th day of April, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. No further appeal.

MORE THAN ONE PHALANGE HELD TO MEAN ANY PORTION OF SECOND PHALANGE

Angelo Starcevich, Claimant,

vs.

Central Iowa Fuel Company, Defendant.

Clarkson & Huebner, for Claimant;

Sargent, Gamble & Read, A. B. Howland appearing, for defendants.

In Review

It was held in arbitration that by reason of injury to the index finger of his right hand, resulting in the loss of the terminal phalange, together with a portion of the second phalange, this claimant is entitled to payment of $15.00 a week for a period of thirty weeks, said injury constituting statutory loss of the entire finger.

From this holding defendant appeals on the ground that the degree of loss of the second phalange of the finger does not constitute a substantial portion of said phalange.

Claimant contends that any measure of loss of the second phalange of the finger under the statute requires payment for the full member value; further, that the measure of loss in this case constitutes a substantial portion of said phalange.

The record shows that the injury to the finger of Angelo Starcevich extended beyond the first or distal phalange. Much testimony in the transcript and in exhibits in evidence is devoted to the purpose of proving extent of loss in the second phalange. This evidence tends to show that a wedge shaped fraction of the bone of the second phalange was removed. Counsel for claimant insists the loss equals ten per cent of the phalange, but it is difficult to reach a definite conclusion from the statements of doctors testifying. However, the defendant would seem justified in the contention that this severance can not be consistently deemed a substantial loss of the second phalange.

This finding, however, by no means justifies the conclusion that award in this case should be for only one-half the finger.

The issues in this case depend solely upon the interpretation of paragraph 7, of Section 1396 of the Code, which reads as follows:

"The loss of more than one phalange shall equal the loss of the entire finger or thumb."

Since workmen's compensation had its origin in Iowa, this department has uniformly held that any measure of loss by injury beyond the terminal phalange constitutes loss of the entire finger. It is not recalled that in all these years there has previously been a single protest against settlement on this basis.

In the case of *Brugioni vs. Saylor Coal Company*, et al., 197 N. W. 470, controversy arose as to a peculiar phase of finger loss. Actual loss by accident was confined to the terminal phalange. In surgical expediency it was deemed necessary to amputate a portion of the second phalange, and the question arose as to whether or not the employer should be held for the additional loss under such circumstances. In accordance with precedent in some other states this department held to the negative. As we now realize, the Supreme Court logically and wisely refused to adopt this rule.

Counsel on both sides of this proceeding rely upon the Brugioni case to sustain their contention. In that case, as the court recites:

"The construction contended for by the plaintiff is that the loss of any substantial portion of the second phalange constitutes the loss of 'more than one phalange' and entitles the plaintiff to compensation for the loss of the entire finger; whereas, the construction contended for by the defendant is that 'more than one phalange' means more phalanges than one phalange, and that therefore only a loss of substantially all the second phalange will constitute a loss of 'more than one phalange' and entitle plaintiff to compensation as for the loss of the entire finger."

The court promptly sustained the contention that the words of paragraph 7 heretofore quoted, "more than one phalange" does not mean "more phalanges than one." It was asked definitely to decide only as between the contention of claimant that the loss of a substantial portion of the second phalange constituted the loss of the entire finger, and that of defendant that only the substantial total loss of the second phalange constituted entire member loss. Choosing between these contentions, the court held with claimant. In this holding the court does not assume to decide or to intimate as to just what is meant by the words "more than one phalange." It was not asked for any such interpretation. The propositions submitted did not involve ruling further than their terms plainly stated, and courts of last resort are understood uniformly to refrain from volunteering opinion beyond the range of actual issues submitted.

Consistently assuming that the Supreme Court has interposed no bar to this course, the Industrial Commissioner will now consider only the clear issue in this case, to-wit: Do the words, "more than one phalange" used in paragraph 7 admit of any qualification? Must it be assumed that the legislature had in mind such shades of meaning as a little more, much more, substantially more, distinctly more, definitely more, in the expression of this statutory limitation? Can there be any reasonable doubt that the assembly meant it to be understood to mean any more whatever, that is to say, that any loss beyond the first phalange shall be considered as full finger loss? Is there basis for doubt that the dividing line between the half and the full finger loss is at the joint?

In making provision for compensation adjustment for permanent disability, the General Assembly went as far as possible in fixing definite standards. It is not possible to establish specific limitations for all cases of permanent disability. For instance, it is not practicable to make definite rules as to obligation in case of injury to the human trunk, either in its exterior structure or its interior functions, or to the human cranium. Hence, adjustment in case of such injuries must be made according to circumstances in each individual case. But it is possible to evaluate

members of the human body, and therefore the legislature incorporated into the statute a schedule with definite provisions for the adjustment of compensation where specific rules are available. In so doing, many cases are taken out of the range of speculation and guess work, and much litigation is avoided.

In the very nature of the case the schedule provisions are arbitrary in character. In the instant proceeding counsel stresses the argument that the injury to the second phalange does not affect the usefulness of the member. If this test is to be applied, the permanent schedule is of little value. It provides for definite payment for the loss of toes that have no relation to earning power. A man losing one eye and one leg retains much earning capacity, but he is arbitrarily given payment for total permanent disability. If he loses a second eye, having previously lost its mate, he gets one-half as much, though this loss entirely destroys his earning power. It is provided that two hundred weeks shall be paid for the loss of an arm amputated two-thirds of the way from the elbow to the shoulder. If the amputation is one inch farther along, he must be paid for twenty-five weeks more, though this additional inch has nothing whatever to do with ability to earn. These rules are never questioned in administration.

These illustrations serve to show that schedule limitations are intended to be definite and arbitrary, not subject to controversy as to their logic or their justice. This is necessarily so if the schedule is to serve the purpose of avoiding involved situations and expensive litigation.

In its measure of probable recovery this case is not very important, but it is strongly pressed by counsel, who desire to establish a precedent. This precedent is exceedingly important to the department. The Industrial Commissioner needs to know whether or not a new source of controversy is to be developed by the ultimate decision of issues involved herein. He knows, as does no one else outside of this department, what it will mean to remove what has always been taken as a definite rule in administration, a rule that has been complied with practically without protest for nearly fifteen years. And this is why he knows:

The statute provides that for "the loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger." It is conservative to say a thousand contentions have arisen over this language. What constitutes a phalange? How much flesh and bone must be sacrificed to meet this qualification? Early in this administration it was held that the loss of any substantial portion of the terminal phalange should constitute the loss of half a finger. Then it has to be argued interminably how much is a substantial portion? In this controversy we are able to stress the fact that the loss of the finger end blunts or destroys the sensory nerve, so important to the sense of feeling, a function of value to the member, in order to appeal for something more than temporary disability which might afford no compensation whatever beyond the waiting period of two weeks, though a club finger in all after life would inflict inconvenience upon the workman. There can be no such appeal as to the second phalange. The club condition already exists. This part of the finger has no sense of feeling such as exists in the finger tip. In actual loss of function it matters not whether

this loss as to the second phalange is substantial or insignificant. The functional loss is the same.

Claimant submits the reasoning and the finding in re *Petrie*, 151 N. Y. Supp. 307. In this case controversy arose as to award where "about one-third of the distal phalange was cut off. The Supreme Court of New York held that such loss constituted the loss of one-half the finger. This holding is not material in the case at bar as it relates to the terminal phalange only. Reasoning in this decision, however, is most significant herein.

Quoting:

"To get the true spirit of the act, we have only to read the 'phalange' clause in full, where, after providing that the loss of the first phalange shall 'be considered to be equal to the loss of one-half of such thumb or finger,' it continues: 'The loss of more than one phalange shall be considered as the loss of the entire thumb or finger,' etc. That is, the loss of any part of the second phalange, however slight or immaterial, shall be construed as a loss of the entire finger; and yet we are asked to hold that in the case of the first phalange the destruction must be entire to warrant a holding that this constitutes a loss of one-half of the finger. Obviously the taking of one-half of the second phalange of a finger would not result in the relative loss that the taking of the first half of the first phalange would. After the first phalange is gone, what remains of the second, be it greater or less, is comparatively unimportant, yet the statute clearly and unmistakably provides that, where the loss involves 'more than one phalange,' the loss of the whole finger shall be held to have resulted. This, it seems to us, is a legislative construction upon the clause here under consideration. The substantial injury of the first phalange, requiring amputation, is to be understood as involving the loss of one-half of the finger, and, if the injury extends beyond the first phalange, then it is to be construed as involving the entire finger. No intelligent reason, we believe, can be suggested why the Legislature should provide that the loss of any part of the second phalange should result in an award for the full value of the finger, while a like substantial injury to the first phalange should not carry an award for one-half of the finger, where the statute has attempted to provide the standard by which the compensation should be awarded, and has provided for an award in the case of one-half the loss of the finger, in connection with a provision for an award for the full loss."

In this statement the court interprets the New York statute, identical with our own, as demanding payment for the full finger when any portion of the second phalange, however minute, is taken. No doubt can exist as to the conclusion of the court.

Defendant relies substantially upon *Baron vs. National Metal Spinning and Stamping Company*, 169 N. Y. Supp. 337. Herein award for the second phalange was denied because the small portion taken did not constitute a substantial loss of the second phalange of the thumb. This was in reversal of the Industrial Commission. Careful reading of the following quotation from this opinion discloses its utter lack of value in the pending proceeding.

Quoting:

"Whether the award should have been for the loss of the entire thumb, or for the loss of only one-half the thumb, depends very much upon the construction which should be given the last sentence above quoted. If the sentence means that the loss, however slight, of more than one phalanx of a thumb or finger, shall entitle a claimant to an award of compensation for the loss of the entire thumb or finger, then the taking off

of the most minute sliver of the second phalanx, without regard to whether it in fact disabled the second phalanx, would entitle the claimant to an award for the loss of an entire finger. However, *if the sentence should be construed as requiring the loss of more phalanxes than one in order to constitute the loss of an entire finger, then the loss of a portion of the second phalanx must be so substantial as to entitle the claimant to an award, if it were the only phalanx injured.*"

In this statement it is apparent that award was denied because the statutory term "more than one phalange" was by the court taken to mean more phalanges than one. Our supreme court in the Brugioni case definitely holds to the contrary. It is clearly stated by the New York tribunal that if the quotation from the statute does not mean "more phalanges than one" "then the taking off of the most minute sliver of the second phalange, without regard to whether it in fact disabled the second phalange, would entitle the claimant to an award for the loss of an entire finger."

In the *Brugioni* opinion, Justice Evans makes this significant expression:

"The very purpose of the workmen's compensation act is to fix definite rules for the measure of compensation for specific injuries. To that end it is essential that simple words be simply construed and that definite terms be not opened up to indefinite construction."

This language of the court applies with extraordinary force to the situation involved in the instant case. It clearly diagrams the purpose and practice of the Industrial Commissioner in administrative assumption that the words "more than one phalange" must be understood to mean any more than one phalange, without qualification or equivocation.

As to finding of fact and ruling of law, it is therefore held:

1. That claimant did not sustain the loss of a substantial portion of the second phalange of his index finger, nevertheless;

2. Claimant having lost more than one phalange of the said finger, such loss is equal to the loss of the entire finger within the meaning of paragraph 7 of Section 1396 of the Code.

The arbitration decision is affirmed.

Dated at Des Moines, this 7th day of April, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Pending in supreme court.

NEURASTHENIA—FAILURE TO CONNECT DISABILITY WITH INJURY

George Heinz, Claimant,

vs.

J. C. Hubinger Brothers Company, Employer,
American Mutual Liability Insurance Company, Insurance Carrier, Defendants.

E. W. McManus, for Claimant;
G. A. Brugger, and Ed A. Kurt, for Defendants.

In Review

In arbitration decision filed April 22, 1925, it is held that "claimant

has failed to prove the disability for which he seeks recovery results from injury arising out of employment."

It appears from the record that since the 22nd day of June, 1923, claimant has been totally incapacitated from earning. It further appears that existing disability is proximately due to neurasthenic condition. It is the contention of claimant that neurasthenia from which claimant suffers, had its origin in an incident of employment occurring June 22, 1923.

Claimant testifies that on the above date he went to work at six o'clock in the morning in usual good health. At about seven he says: "I got dizzy and a creeping sensation came over my feet and head." Unusual sensations increased, but he continued at work until the noon hour. When he left the plant he walked to the office of a doctor, a distance of about eleven blocks, and before he reached home he walked four blocks further. Then ensued a long period of doctoring, including operations for the removal of the gall bladder and the appendix and the extracting of teeth believed to be factors contributing to incapacity which, however, failed to relieve the disabling neurasthenia.

January 7, 1924, settlement was made between the claimant and employer under which Heinz received the sum of $375.00. Claimant contends this agreement carries with it such confession of obligation on the part of the employer as to bar him from later successful denial as to the compensable character of the disability involved. In this Memorandum of Settlement, appearing in the department files, it is expressly stated that the employer "denies liability for any alleged injury of employe." This instrument cannot be held as admission of obligation to claimant no more than as a bar to further claim on his part.

In this jurisdiction it is uniformly held that disability definitely resulting from heat exhaustion arising out of excessive heat exposure due to employment is within compensation coverage. Also, that disabling neurasthenia, distinctly due to traumatic incident, affords substantial basis for compensation obligation. If the workman has sustained the burden of proving that his disability had its inception in heat exhaustion arising out of employment on June 22, 1923, as alleged, the employer must be held in payment.

On behalf of claimant it is contended that in view of his steady application in service without loss of time for a considerable period prior to the date named, and that since that date he has been wholly incapacitated from earning, there is no escape from the conclusion that physical conditions developing at that time arose out of employment.

When controversy arises over this issue the incident upon which claim for compensation is based becomes a vital factor. It becomes necessary to make diligent inquiry as to alleged causes and to decide as to inherent probability that any existing disability is due to such causes.

On the day of the alleged injury claimant was pursuing his usual round of employment duty. Beginning at six o'clock in the morning he put in about forty-five minutes oiling machinery, then he proceeded with the regular work in what is called the lump starch department. He said he had been in this specific employment for six or seven years. It does not appear that in any particular the work of that day was more onerous

or the conditions involved were different from hundreds of other days in his experience thereat.

The endeavor of claimant to show that heat unusual or excessive prevailed is not successful. Witness C. E. Hadley qualifies as observer of the United States Weather Bureau in the Keokuk office. Heinz says that he first felt the sensations developed into incapacity about seven o'clock. Hadley says that at that time mercury registered seventy-nine degrees. Claimant says he got worse between nine and ten o'clock. At nine o'clock the thermometer indicated eighty-three degrees, and at ten o'clock eighty-five degrees. Provision for ventilation in the working rooms seems, at least reasonable. Humidity is reported as normal. These conditions are by no means suggestive of sunstroke.

It is most unusual for heat prostration to fail to prostrate. First feeling the sensations complained of about seven o'clock, claimant continued to work until noon. He was then able to walk a distance of about fifteen blocks before suspending activity. This is most unusual in disabling cases of heat exhaustion.

Physicians testifying hypothetically or from actual contact with the case are by no means in agreement as to causes and effects, but the weight of medical evidence fails to support the contention of claimant.

There is urgent appeal in the pitiful condition of George Heinz. He seems to be a physical wreck. His incapacity may be due to his employment in that he had for many years been in the strenuous grind of twelve hour daily service, seven days in the week, but that it arose out of his employment in any such incident as to afford sufficient basis of award on account of compensable injury, would seem to be grossly improbable.

The burden is on the claimant. It is necessary for him to establish his claim by a preponderance of evidence. Probable inference or appealing conjecture are distinctly inadequate. Furthermore, it is not incumbent upon the employer to establish even probable explanation for disability so obscure in origin in order to relieve himself from obligation in payment.

It therefore becomes necessary to hold that disability suffered by George Heinz did not arise out of his employment by these defendants on the 22nd day of June, 1923, as alleged, and hence, award therefor must be denied.

Wherefore, the arbitration decision is affirmed.

Dated at Des Moines, this 25th day of January, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INTERSTATE EMPLOYMENT NOT ESTABLISHED

Chicago, Rock Island & Pacific Railway Co., Employer,

vs.

Cecil Lundquist, Employe.

Sargent, Gamble and Reed, A. B. Howland appearing for Employer;
Parsons and Mills, John A. Pendy appearing;
Tantges, Wilder and McDonald, Robert McDonald appearing for Claimant.

In Review

Cecil Lundquist was injured at Cedar Rapids October 3, 1926, in the employ of the Chicago, Rock Island and Pacific Railway Company, sustaining very serious injury from electrical accident.

Arbitration proceeding was instituted by the employer May 11, 1927. Making special appearance by counsel at the arbitration hearing, the claimant resists this proceeding on grounds numerous and varied, chief of which would seem that

1. Cecil Lundquist, at the time of his injury, was engaged in interstate employment; that

2. This proceeding cannot legally be entertained here because it "interferes or tends to interfere with the jurisdiction of the District Court in Dakota County, state of Minnesota"; that

3. The contract for service between employer and employe was made in the state of Illinois.

In arbitration it was held that Cecil Lundquist at the time of his injury, October 3, 1926, was engaged in employment within the jurisdiction of the compensation statute; that his injury resulted in total disability of permanent character; that, therefore, the employer is held in payment to claimant at the rate of fifteen dollars ($15.00) a week for a period of four hundred (400) weeks, together with statutory medical, surgical and hospital charges; also for the costs of this action.

Some months previous to the accident Lundquist, then living at Stratford, sought employment through the telegraph division of the Chicago, Rock Island and Pacific Railway. He reported at Roland, Arkansas, where he went on transportation supplied by the employer. He was assigned to duty at Roland by a representative of the Railway Company. After several weeks of service in Arkansas, he was ordered back to Iowa, continuing in telegraph work. After several months in such activity at various points in this state, client was assigned to service at Cedar Rapids.

During the year 1926 the Quaker Oats Company made extensions to its Cedar Rapids plant at the expenditure of seven millions of dollars. Under the requirements of this expansion, it became necessary to provide large additions to trackage for the promotion of the shipping of its products. Therefore five new side tracks, some twenty-seven hundred feet in length, were constructed. These tracks were located in an area occupied in part at least by equipment of the Western Union Telegraph Company, together with lines of the Railway Company.

In pursuance of stated requirement, it became necessary to re-locate the wires of the Western Union Telegraph Company and also the Railway Company. In the development of this project, it was decided to provide for this change through construction of a submerged conduit for carrying the transmission wires. In order to clear the proposed new track section, pending the completion of the conduit project, it became necessary to erect poles and string wires to carry the telegraph service. In this work of temporary construction, while the temporary line was still incomplete and incapable of service, Lundquist sustained his injury October 3, 1926.

Once installed in transportation service, inter and intra state railway trackage is regarded as identified with interstate commerce, and all subsequent repairs or improvements to such trackage classifies as interstate employment.

It is no less clearly established that new railway construction, prior to its use in actual commerce is essentially intrastate in character and all working engagements in connection therewith, is within the jurisdiction of workmen's compensation.

In this case the claimant relies upon the fact that the removal of the telegraph equipment and construction in this connection must classify as interstate employment because it is not disassociated from service long since established and continually maintained. There could be no escape from this contention if this work of construction was due to inadequacy of equipment or the necessity for repairs and improvements in the promotion of efficiency. In this connection, however, no showing is made as to any such basis for this work. The construction in process was not to increase efficiency nor to enlarge capacity. The sole and only reason for the plan for submerging the wires, which made necessary the construction of temporary lines, was that the area occupied by the telegraph equipment was required by the expansion of the Cereal Company and that preliminary thereto was provision for the five new tracks.

There is nothing to show that the construction in which claimant was engaged was in the nature of maintenance of equipment hitherto used in telegraph service of the employer. On the contrary there is much to indicate definitely that such work was required only because of new track construction. Hence this claim for personal injury arising out of employment must take the same course as if it had arisen as a result of injury in actual construction of these sidings, the requirement for which is the source of reconstruction of telegraph lines in the involved area.

As to the second ground for resistance previously noted, alleging that this proceeding "interferes or tends to interfere with the jurisdiction of the District Court of Dakota County, state of Minnesota.". The record shows that proceeding for the adjustment of this claim was instituted through the Department at a date considerably previous to the bringing of action in the said court.

It is held to be seemly, expedient and even obligatory upon this administration to extend the jurisdiction of workmen's compensation to the full limit of authority and consistency. In furtherance of this policy and in view of the circumstances involved, it has seemed reasonable and justifiable to regard this case as distinctly within the range of Iowa compensation jurisdiction. At the arbitration hearing action at that time pending in the Minnesota Court was made an outstanding contention but there was conspicuous neglect of this issue in review proceeding. Common report as to judicial development in Dakota County may afford suggestion as to this significant silence.

As to the third ground of resistance featured: The record shows that Lundquist made application for employment to the Rock Island Superintendent of Telegraph at Chicago. Prompt reply stated there was nothing to offer at that time but that vacancy in the near future was probable

and an application form was returned with this information mailed to Lundquist. This form was duly filled out, signed and returned to Chicago. A little later transportation was sent to claimant with the direction: "You will report to Foreman F. D. Grant at Roland, Arkansas, for work as helper at the rate of 47c an hour.". This communication, of course, did not complete the contract of employment for it was still optional with claimant as to whether or not he should accept these conditions. In practical acceptance of the same, Lundquist boarded a train for Roland and by this act the contract of employment was completed in the state of Iowa.

Upon the record in this case it must be held, as to findings of fact and rulings of law:

(1) At the date of his injury, October 3, 1926, Cecil Lundquist was engaged in intrastate employment, therefore:

(2) This case is clearly within workmen's compensation jurisdiction and not within the control of the District Court of Dakota County, Minnesota.

(3) This contract of employment was completed in the state of Iowa, which brings this case within the jurisdiction of the Iowa Industrial Commissioner.

The arbitration decision is affirmed.

Dated at Des Moines, this 9th day of September, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme court.

INTERSTATE COMMERCE ESTABLISHED

Goldie House, Claimant,

vs.

Chicago, Northwestern Railway Company, Employer, Defendant.
H. L. Bump and H. E. Miller, for Claimant;
Davis, McLaughlin & Hise, James C. Davis, Jr. appearing for Defendant.

In Review

In arbitration at Boone September 14, 1927, it was held that "at the time of his fatal injury the deceased, John W. House, was engaged in interstate commerce".

The record discloses that on the 29th day of March, 1927, the deceased workman was engaged with a signal gang in the service of this defendant employer. The site of employment was at the intersection of Story Street with the Northwestern Railway in the city of Boone. The particular activity on the part of these workmen at the hour of the sudden death of John W. House was preparatory to the installation of a transformer of improved type to serve in the stead of a transformer to be discarded.

The transformer at this point is part of the regular equipment of the system of automatic train control required by Federal authority in the service of this corporation. It is obviously and definitely an instrumentality of interstate commerce, and hence all labor performed in connection with its repair, replacement or installation must classify as interstate commerce within the meaning of the statute.

It is, therefore, held that:

1. At the time of his untimely death, John W. House was engaged in interstate commerce, and, therefore,

2. The case of claimant, Goldie House, is without the jurisdiction of the workmen's compensation service of the State of Iowa.

As far as consistent with these findings, the arbitration decision is affirmed.

Signed at Des Moines, Iowa, this 1st day of December, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Settled.

INTRA-STATE EMPLOYMENT—AWARD

Perry A. Johnston, Claimant,

vs.

Chicago & North Western Railway Company, Defendant.
H. W. Hansen, for Claimant;
Davis, McLaughlin & Hise, for Defendant.

In Review

In November of 1925, Perry A. Johnston entered the employ of the Chicago & North Western Railway Company in the capacity of station helper at Algona. His duties as such station helper included the unloading of freight, when not otherwise engaged, upon the arrival of trains.

December 23, 1925, while transferring shipments from Refrigerator Car No. 14742 to the station platform claimant sustained physical injury uncertain as to its ultimate loss of earnings and requiring medical, surgical and hospital service indefinite as to extent and final expenditure involved.

Arbitration finding is for claimant.

The defendant corporation resists this claim on the ground that the employment of Perry A. Johnston at the time of his injury was interstate in character.

Train Number Five was at that time a way freight on its regular run from Eagle Grove, Iowa, to Elmore, Minnesota. It was composed in part of interstate shipments. Refrigerator Car Number 14742 was on its way to a point without the state of Iowa, but its contents were wholly intrastate in character.

It is the contention of the defendant carrier that since it was necessary to remove the freight consigned to Algona station in order that the train might proceed to its destination without the state, the incident of injury cannot be considered otherwise than occurring in interstate commerce.

In usual railway service there are four distinct divisions of employes—train men, track men, shop men and stationmen. The two former are almost invariably found to be in interstate employment, while the employment of the two latter usually classify as intrastate. The activity of this claimant as station helper was chiefly intrastate in character. In such classification he should be given the benefit of compensation coverage, except it plainly appear that at the time of his injury he was distinctly barred by definite rule of law. Injured while handling in itself

merchandise distinctly intrastate taken from a car containing no interstate consignments, there would appear to be no substantial basis for the contention that he should be denied relief on the ground that he was engaged in interstate employment. The fact that the said refrigerator car was to proceed beyond state boundary after discharging its contents is no more material to this issue than the fact that the engine which drew the train was interstate in character.

Counsel on both sides submit numerous citations in support of contention, but they seemed to find none that snugly fit into this situation, and search of the authorities seem to indicate that none can be found. Defendants rely it seems wholly on cases involving train men, presumed to be engaged in interstate service, while in the case of this station helper the presumption is to the contrary.

While this is admitted to be a border line case, the law and the facts would seem to justify finding for claimant.

The decision of the arbitration committee is affirmed.

Dated at Des Moines, this 1st day of February, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Pending in supreme court.

EPILEPSY DUE TO INDUSTRIAL INJURY

Everett W. Wagner, Claimant,

vs.

The Maytag Company, Employer,
Travelers Insurance Company, Insurer, Defendants.

C. W. Lyon, for Claimant;
C. F. McCormick, for Defendants.

In Review

The arbitration record in this case shows that in the employ of The Maytag Company, Newton, Iowa, this claimant at the time of his injury was engaged in the work of polishing and finishing aluminum washtubs, working on the night shift. On the 2nd day of October, 1926, along in the evening, he was observed lying on the floor near the machine used in his employment in an unconscious condition.

At the hospital a few hours later claimant regained consciousness. He left the hospital within a few days. He returned to the Maytag plant within a week and for the ensuing six or seven weeks worked with some degree of irregularity. He was then discharged as incapable of meeting working requirements and apparently for the further reason that he was by the company doctor believed to be subject to epileptic seizure, which made him more liable to injury in the work he was called upon to perform. When claimant was picked up in an unconscious condition at the base of his machine, the power belt thereon was found to have parted at the point of interlacing. It is the contention of claimant that a stroke from this belt felled the workman and that this blow is the inciting cause of unconsciousness and of all subsequent disability.

The insurance carrier resists this claim on the ground that any measure of disability existing on the part of Everett Wagner is not due to injury arising out of employment.

In the voluminous transcript, it becomes apparent that counsel regard as vital and controlling the question as to whether or not Wagner was subject to previous epileptic attack. A number of witnesses who have known him as neighbors for many years state they never heard of any such tendency on his part. It does not appear that any member of his family was ever so afflicted.

Called by defendant, Dr. F. M. Roberts, of Knoxville, testifies that in August, 1923, he was called to treat Wagner; that he found him in "a rather dazed state of mind"; thought he "had been overheated while working at the Knoxville Clay Products Company".

"Q. Did you have any suspicion at that time from what you saw that it may have or might be an epileptic spell?"

"A. Well, if it were such, it was a very mild type known as petit mal; if there was anything of that kind I am not prepared to say. That was the situation."

The witness seemed wholly unwilling to say that his examination showed epilepsy to exist at that time.

Several witnesses testify to incidents of conduct previous to October 26th which they call queer but which would not seem at all suggestive of epileptic symptoms.

In deposition, Dr. H. D. Henry, specialist in nervous and mental diseases, testifies upon call of the defendant, that he examined claimant March 14, 1927. He states he believes it is epilepsy but declines to say whether it is or is not of traumatic origin. Thinks "the evidence would point toward some injury". Also that a blow on the head "might produce brain injury in one individual and might not in another".

Dr. W. E. Wolcott, in general practice, testifying in deposition, for the defense, says "a person can be struck on the head with sufficient force to cause traumatic epilepsy without there being left some mark of violence on the head or scalp". From his examination on November 14, 1927, says "I do not question much that the fellow has epilepsy".

Dr. F. A. Ely, specializing in mental and nervous diseases, called by claimant, testifies at arbitration hearing. Examined Wagner at his office March 31, 1927. Developments of the examination in connection with the history of the case and the weight of medical authority produce the impression that he was suffering from the nervous effects of a head injury. Asked "What in your opinion is the matter with Mr. Wagner,—what is his ailment?", the reply was "traumatic epilepsy—due to head injury". Asked how severe a blow it would take to produce this condition, Dr. Ely replied "I do not know that I can answer that; sometimes it seems a very insignificant blow will do what a very serious one will not and at another at least the mere fact of jarring the head severely might cause an internal and oftentimes does cause an internal injury". Dr. Ely concludes that the claimant is disabled to the extent of 75 per cent of total permanent disability.

Dr. J. W. Young, physician for The Maytag Company, testifies on direct as to examination of claimant shortly after the injury of October 2, 1926. Did not find any evidence of "cutting or grazing of the skin on his head". Temperature and respiration normal, as was his blood pressure. Does not know whether or not there was concussion of the brain. In rebuttal

the Doctor testifies to the belief that Wagner was pre-disposed to epilepsy. States that sometime later claimant entered the hospital a second time because of "a seizure of some kind". Again recalled Dr. Young says claimant was refused further work because he "did not think he was a safe man to have around machinery" because "in all probability he had epilepsy".

Claimant's exhibit C is report of the employer to the Industrial Commissioner in which the nature of injury is given as "concussion of the brain".

The Industrial Commissioner has received from Dr. O. J. Fay a report of physical examination made November 14, 1927, at the request of the defendant insurer. Since this report is submitted under stipulation on file, it is given consideration on its merits. Summing up the Doctor says:

"If it is established that this man had had previous attacks suggestive of epilepsy, then I believe that the accident of October 2, 1926, is to be considered either co-incidental, or the result rather than the cause of an attack. The fact that there have apparently been more frequent attacks beginning some three months following this incident is not significant; aggravation of the epileptic's condition, at some time and for no determinable cause, is common to the history of this malady. If, on the other hand, it can be established that he had never had an epileptic seizure prior to October 2, 1926, and there is evidence that he received a head injury at this time, I am of the opinion that a possible relationship between accident and epilepsy must be admitted even in the absence of any physical evidence of injury. From a scientific standpoint, such a relationship could not be considered proven, but from a compensation standpoint, this would be in accord with the accepted policy of giving the workman the benefit of the doubt. In other words, if the epileptic seizures had not occurred prior to the incriminated accident, the latter might be considered a possible cause of their development. The permanent disability would then be considerable."

In view of legal questions involved, this report would seem to be rather more favorable to the claimant than to the defense.

Claimant's exhibit "A" is a piece of steel wire one-quarter inch in length. Dr. H. E. White, of Knoxville, testifies that on February 20, 1927, he removed from the head of Mr. Wagner this identical piece of steel or one looking exactly like it. This piece of pointed wire is identified by a fellow workman as being part of the clamp or lacing which holds the ends of the belt together. Claimant's exhibit "B" is evidently the end of a belt containing wire lacings in which appear pointed hooks apparently identical with exhibit "A".

That this claimant, before October 2, 1926, ever gave evidence of epilepsy is far from conclusive in record disclosure. It shows by a preponderance of medical evidence that in the period following this date he has been subject to epileptic seizure.

If, however, it were held that pre-existing epilepsy is established herein and that the injury of which claimant complains is due to a fall in such seizure, the weight of authority supports award.

On page 64 of our 1922 biennial report appears the Helia case. Joseph Helia was killed in a passenger elevator under circumstances plainly indicating that death was due to epileptic seizure. Award was made and the able and discreet counsel for defense did not appeal.

The following from Honnold on Workmen's Compensation, at page 461, is strongly suggestive:

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

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

Miller vs. Bell, 127 N. E. 567 is a case in which an epileptic employe during a seizure fell into a tank of water and was drowned. Award was affirmed.

Decision in the Cusick case was filed by the supreme court of Massachusetts July 5, 1927, and it is reported in 157 N. E. 596. The employe was found unconscious at the foot of a stairway and died from a fractured skull. Award is affirmed and sustained by very cogent reasoning.

Cases cited show that disability due to a fall, involving actual peril because of epileptic seizure is compensable. Much other authority exists in support of this conclusion. Disposing of this ground of defense submitted, what is the situation?

Obligation is clearly established in all compensation cases where it appears from the record that disability or death is due to a specific incident of employment.

Everett Wagner had for a considerable period been doing the work of an able-bodied man. He went to his night shift about five o'clock the evening of October 2nd in usual health. A little later he is found unconscious near his polishing machine. The power belt some eighteen feet in length and five inches in width is broken. Workmen testify this is no uncommon occurrence and that when such break occurs the ends usually drop without incident but that occasionally the man at the machine gets more or less seriously rapped. Circumstances of record make it inherently probable that the breaking of the belt caused the stunning

and prostration of Wagner. No possible conjecture can develop any other theory. And if anything more is necessary to prove this fact, the finding of the steel wire driven into the scalp of claimant is proof fairly conclusive. There appears in the record no endeavor to deny with proof or even by assumption that the wire point was lodged at the time of the accident on the evening of October 2nd. This little exhibit "A" is most convincing as to the dealing of a heavy blow to the head of claimant and it is of substantial importance as corroboration.

The record bears evidence of good faith on the part of Wagner. At times he appears irascible and perhaps arbitrary but there is no indication of falsehood or deceit. It seems impossible to study this record with any other conclusion than that but for the incident of October 2nd, Everett Wagner would have continued indefinitely in full earning capacity. This incident was due to employment and all disability involved manifestly arose out of employment.

In arbitration defendants are ordered to pay claimant at the rate of $15.00 a week from the date of injury to the date of arbitration, less seven weeks, and to continue such payments from that date during the period within statutory limit that the claimant remains totally disabled as a result of the injury. Defendants are also ordered to pay statutory medical, surgical and hospital expense and costs of this action.

The arbitration decision is hereby affirmed on the grounds that:

(1) The record shows that prior to October 2, 1926, there was manifest no evidence of existing epilepsy on the part of claimant.

(2) If it fails so to show, injury due to epileptic seizure is not barred from compensation benefit when such injury is due to peril incident to employment.

(3) The record conclusively shows distinct connection between the injury of October 2, 1926, and existing disability on the part of the claimant.

Dated at Des Moines, Iowa, this 15th day of December, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Award accepted.

DURATION OF DISABILITY

Harry Bowen, Claimant,

vs.

Central Iowa Fuel Company, Defendant.
Clarkson & Huebner, for Claimant;
Sargent, Gamble & Read, A. B. Howland appearing for Defendants.

In Review

Arising out of his employment Harry Bowen sustained injury to his back and to his left knee while mining coal on the 7th day of July, 1926.

In arbitration February 8, 1927, it was held that this claimant was totally disabled from July 7th to November 2, 1926.

Hearing in review was asked by defendant on the ground of excessive arbitration award.

In his deposition, taken January 7, 1927, Dr. O. J. Fay testifies that on August 2, 1926, he examined Harry Bowen with the benefit of X-ray

demonstration. Found no objective symptoms which would account for pain in either his back or his knee. Physical examination entirely negative. Saw no relation between disability complained of and the injury of July 7th. Did not find that condition of left knee required application of cast immobilization of the joint for a period of five or six weeks. Nothing disclosed in condition of claimant which would prevent him from returning to employment.

In deposition, Dr. Harnagel testifies to examination of claimant on or about August 30, 1926. X-ray disclosed no fracture of the lumbar spine. X-ray of left knee showed no abnormality. Did not regard the application of cast advisable. Thought claimant "in condition to resume work using some caution in the beginning on account of his muscles not being hard, but that he was able to go to work at that time."

Dr. Thomas A. Burcham testifies in deposition January 7, 1927, that he X-rayed spine of Harry Bowen on or about August 2, 1926. No fracture was disclosed. X-ray of left knee indicated no injury to bone. Nothing developed as to condition of left knee which would require immobilization of the knee in a cast.

A report of Dr. W. E. Wolcott as of date September 6, 1926, appears in this record as Exhibit "C", in which these findings are submitted:

1. Probably a fracture of right lumbar transverse process which has healed very nicely;
2. Traumatic arthritis of left knee.

Disability—Temporary total, from two to three months during a major portion of which time the knee should receive rest in cast.

Deposition of Dr. Wolcott, taken December 27, 1926, is in support of and in interpretation of the report of September 6, 1926.

December 28, 1926, Dr. T. E. Gutch deposed in part, as follows: Examined claimant the day of injury, July 7, 1926. X-ray showed fracture of transverse process of fourth lumbar vertebrae. X-ray of knee disclosed no abnormality. Ordered rest in bed, strapping and hot packs to knee. On account of so much complaining on the part of claimant on July 30th "advised him to see Dr. Fay the following week, and then sometime between August 28th and September 1st, I think, he saw Dr. Wolcott." In accordance with direction of Dr. Wolcott, witness put left knee in cast September 1st. Did not believe cast was necessary. In the opinion of witness claimant would have been able to return to work by September 15th but for the application of cast. Dr. Gutch had for years been the attending physician of claimant. Says "he was neurotic and nervous and tended to magnify amount of trouble he had both in sickness and injury."

In this record Doctors Fay, Harnagel and Burcham are in actual agreement as to pathological finding and differ little as to necessary duration of disability. Dr. Gutch joins these three in the conclusion that the cast treatment was unnecessary, if not inadvisable. In order to accept the diagnosis and justify the treatment prescribed by Dr. Wolcott, it is necessary not merely to discredit, but to absolutely reject a preponderance of eminent medical, surgical and scientific testimony. In this situation it becomes necessary to say that the defendant should not have been prejudiced by the extension of disability occasioned by the cast treatment.

There is some difference of opinion between Doctors Fay, Harnagel and Gutch as to the date at which the disability period should terminate. In close contact with the case, and with full knowledge of all its phases, it seems most reasonable to accept the estimate of Dr. Gutch. He says this date should be September 15, 1926.

Therefore, the defendant, Central Iowa Fuel Company, is held in payment to Harry Bowen in the sum of $15.00 a week from July 7, to September 15, 1926, less payments already made, and as so modified the arbitration decision is affirmed.

Dated at Des Moines, this 1st day of April, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

FOOT INJURY—EXTENT OF DISABILITY

William Johnson, Claimant,

vs.

Central Iowa Fuel Company, Employer,
United States Fidelity & Guaranty Company, Insurance Carrier, Defendants.
Clarkson & Huebner, for Claimant;
Mabry & Mabry, for Defendants.

In Review

It appears from the record that on May 7, 1925, claimant sustained an injury to his right foot while digging coal in the mine of the defendant coal company, at Tipperary. After finishing the loading of his car he walked, as he says, a distance of from a quarter to half a mile to a mine elevator.

On the advice of Dr. Brittell, he says, he went into the mine the next day and hurt his foot again. He was attended further by Dr. Fisher, then by Dr. Gutch, of Albia. A little later he was sent to Des Moines for examination by a zone surgeon, Dr. J. W. Martin.

Testifying in deposition Dr. Martin is subjected to exhaustive inquiry as to his examination of June 16, 1925, in which inquiry various ailments of the claimant, their cause and effect, is considered with final conclusion on the part of the doctor, that he could find no evidence of injury being the cause of claimant's disability at that time.

It appears that on September 17, 1925, Johnson returned to the mine work, as he says, for a period of about twenty-five days. He states his foot pained him so then he had to quit. He went to Dr. Wolcott, of Des Moines, who, as claimant states, told him he had a loose bone in his foot, which needed to be taken out. Operation occurred September 14th. The loose bone was submitted as an exhibit, but could not be identified by claimant. The surgeon and hospital charges were paid by Mr. Johnson.

Claimant went back to the mine January 5, 1926. He worked ten days and was asked what then happened. Said "I don't know as it is nobody's business. I was going to quit and lay off awhile anyway." On insistence of counsel he then recited details of an accident that happened to him January 15th, injuring his leg, but a little later inquiry on this

point was abandoned. Johnson says that since he went to work in January, 1926, his foot has been doing pretty well.

Dr. Wolcott, in deposition, says he operated just prior to November 24, 1925, to remove what is known as a supernumerary bone in the foot. He indicates the belief that injury tended to disability with this bone as a contributing factor.

Dr. Fenton, of Des Moines, examined claimant June 15, 1925, some five weeks after injury. He found arterio sclerosis and pyorrhoea very marked. Didn't think accident cause of disability. Says claimant was "able to do ordinary labor."

Dr. O. J. Fay reports in deposition findings of examination he made in this case October 29, 1925. Could find no relation between injury of May 7, 1925, and disability then alleged.

Foot of Mr. Johnson was X-rayed October 27, 1925, under direction of Dr. Thomas A. Burcham. No evidence of injury or disease disclosed in picture, the doctor says.

On evidence submitted from which quotation is made, it was found in arbitration, May 10, 1926, that in addition to three weeks of compensation at $15.00 a week, already paid, the employer was held in payment of $41.42.

Injury May 7, 1925, is fairly well verified. It was of minor character as the history shows. In accordance with the testimony of Doctors Martin, Fenton, Fay and Burcham, any disability alleged beyond the actual healing period was not due to the accident of May 7th.

The burden of proving the claimant was not able to do ordinary labor at the end of the period covered by arbitration award is by no means discharged in the record, and if it were, it is not then inherently probable that any disability beyond this period arose out of employment.

The arbitration decision is affirmed.

Dated at Des Moines, this 7th day of December, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INJURED CRANKING CAR—WITHOUT SCOPE OF EMPLOYMENT

Lee M. Batesole, Claimant,

vs.

Jones Fruit Company, Employer,
Southern Surety Company, Insurance Carrier, Defendants.
Comfort & Comfort, for Claimant;
P. J. Risher, for Defendants.

In Review

It appears from the record that claimant sustained an injury to his right arm in cranking a car in Des Moines, August 20, 1924, which injury resulted in substantial disability. Obligation on the part of defendants is denied on the ground that "any disability suffered by claimant subsequent to August 20, 1924, was not due to injury arising out of and in course of his employment with the Jones Fruit Company.

In arbitration at the department, July 9, 1926, it was held that the injury and disability alleged as a basis to this compensation claim did

not arise out of and in course of employment by the defendant company.

Lee Batesole was serving the defendant employer as traveling salesman At the arbitration hearing he testified that his territory covered sixteen towns on the North Western Railway. Used his own car in this service, and his weekly payment covered expenses as well as salary. In the week previous to his injury his own automobile went out of commission and he then used the car of Ira Severn, a customer at Nevada. This car, as claimant says, went ailing in his service and on the day of the injury he came from Nevada to Des Moines for repairs for the same. Severn, owner of the car, accompanied him on this trip.

At Des Moines, as claimant recites, he went to the Stewart-Warner Company for his repairs, and on leaving he cranked the car, and in so doing "wrenched his wrist" and this was the source of his disability.

In cross-examination claimant named each town in which he visited in his territory on each day of the week in which his injury occurred, and in this list Des Moines does not appear. Says he made his last business call on Friday at Ames before going to Des Moines for the repairs. In the transcript of evidence on page 22, appears this further testimony:

Q. Now did you have any business in Des Moines other than getting the coil for the speedometer, in the city, for your employer?
A. No, sir.
Q. You have no business for your employer in any of the towns you made south of Ames?
A. I didn't make any towns south of Ames.
Q. Then the only reason that you came to Des Moines on that day was for the reason that you felt that you were morally obligated probably to repair the coil for the speedometer of Mr. Severn's car?
A. Yes, sir.
Q. Were you the cause of the breaking of it?
A. It broke while I was using his car.

R. C. Jones, owner of the defendant Fruit Company on the witness stand in answer to the question "He doesn't call on any customers of yours in the city of Des Moines, does he?" replied, "no sir." Further, said he had no customers in Des Moines.

Ira Severn, the owner of the car in use by Batesole, was asked at the arbitration hearing: "Do you know for what purpose Mr. Batesole came to Des Moines?" The reply was: "To get a coil for my car." Again, "At whose suggestion was this trip made to Des Moines?" Answer: "He told me he was going down there to get a coil fixed. Had to have it fixed, he said." Again, "and he told you he was going to Des Moines to get a coil for this car," answer "yes, sir."

At the review hearing, December 17, 1926, defendant R. C. Jones testified that his company sold goods to Dietz Drug Company.

F. H. Dietz testifies that the Dietz Drug Company of Des Moines bought one bill of goods of defendant through Batesole, and that during the year 1924, the claimant called on him "about every week." Says claimant called for payment for single bill purchased "the week commencing August 18, 1924." "Thought about middle of week."

Claimant testifies at review hearing he "called on Dietz Drug Company on August 20, 1924, to collect for bill referred to by Dietz." Made frequent trips to Des Moines to collect accounts during months of July and August. Says he made sales to the Ames Square Deal Company at

Des Moines in August, 1924. "Sold them every week." "Once or twice a week." Also made trips to Des Moines in August to make collections of these accounts. Declared in cross-examination he made Des Moines frequently before this accident. "Many times. I would say weekly."

Reference is made in the record to exhibits, but at the review hearing no evidence in this form was admitted or even submitted.

Evidence taken at the arbitration and the review hearings submits an entirely different state of facts. At the former, claimant states positively that on the day of the accident he had no business in Des Moines other than getting the car repairs. Also that he didn't make any towns south of Des Moines; that the only reason for coming to Des Moines was the car condition, a purely personal matter.

The witness Severn, owner of the car, who came to Des Moines with claimant the day of the injury, states the only reason for coming on the part of claimant was in connection with the repairs. Defendant Jones swears positively his house had no business at Des Moines.

At the review hearing Batesole testifies to all kinds of business at Des Moines at about this period, with frequent visits for his employer, while Jones swears that he did have Des Moines customers.

Confronted at the review hearing with his absolutely contradictory testimony, in the arbitration record claimant had no explanation to offer satisfactory or otherwise.

In finding that disability sustained by claimant did not arise out of employment, the arbitrators are justified by the arbitration record, and evidence offered in review affords no substantial basis for reversal.

The arbitration decision is affirmed.

Dated at Des Moines, this 4th day of January, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. No further appeal.

LOSS OF EYE—INDEPENDENT EMPLOYMENT NOT ESTABLISHED

Charles Smith, Claimant,

vs.

Marshall Ice Company, Employer,
Employers Mutual Casualty Company, Insurer, Defendants.
Holt & Allbee, for Claimant;
Miller, Kelly, Shuttleworth & McManus, for Defendants.

In Review

Arbitration at Marshalltown resulted in decision filed June 8, 1926, holding claimant to be entitled to compensation payment in the weekly sum of $15.00 for a period of one hundred weeks for total loss of vision in right eye, due to injury sustained in employment on or about January 2, 1925.

The record seems to establish these facts: For several months prior to January 1, 1925, Charles Smith had been in the employ of the defendant Ice Company. His work was chiefly connected with the repairing of one or more ice houses. On or about the 2nd day of January, 1925, while moving a ladder along the side of a building an iron washer several

inches in diameter, weighing about two pounds, fell a distance of eight or ten feet striking claimant in and about his right eye.

While this accident made ugly bruises on the face of claimant near the eye, it was not believed at or near the date of injury that vision had been affected. Smith avers, however, that in the latter part of February, some six or seven weeks later, he became aware that sight was failing and that on the 2nd day of April he "knew there was no more sight in it."

In pleadings of record defendant's chief resistance is based upon the allegation that claimant refused to submit himself to examination by the department eye specialist, Dr. Pearson, as requested. Such refusal subjects claimant to censure for denying a statutory right vested in defendant which might have afforded a serious bar to recovery. However, claimant did submit himself to examination by Dr. Pearson shortly after the arbitration hearing and the report of the specialist in the department files indicates that no prejudice to case of defendant resulted from previous obstinacy of claimant.

In argument counsel contends that as an independent contractor claimant cannot recover, but the record justifies the conclusion that the work of claimant was under a contract of service and therefore the injury is within compensation coverage. Resistance to case history is supported only by hypothetical deduction showing there are so many ways to develop and promote cataract of the eye aside from such injury as alleged in this case.

In support of award is the apparently good faith recital of Charles Smith and his wife. This recital is made inherently probable by the testimony of specialists and the support of medical authority of record.

It is developed through the testimony of Forrest Reed that claimant was paid in accordance with the terms of an accident and health policy for the entire loss of vision of the right eye because of the injury of January, 1925. This incident is at least significant.

In reaching a conclusion in cases of industrial injury, most important of all is the character of the incident upon which claim for recovery is based. It seems safe to assume that Smith at the time and place alleged sustained a stunning blow from a huge chunk of metal over his right eye. This important fact affords substantial basis for statements direct and hypothetical that traumatic cataract resulted, and that vision gradually failed to the point of total extinction as alleged.

Wherefore, the arbitration decision is affirmed.

Dated at Des Moines, this 9th day of November, 1926.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme courts.

TOWNSHIP EMPLOYMENT HELD SUBJECT TO COMPENSATION COVERAGE

Henry Hop, Claimant,

vs.

Henry G. Brink, John Schlessler and L. H. Henrich, Trustees of Sherman Township, Sioux County, Iowa; and Teunis Maassen, Clerk of said Township, Defendants.

Klay & Klay, for Claimant;
Charles Hoeven, for Defendants.

In Review

Under stipulation in the transcript of evidence all fact questions are removed from controversy except as relating to the period of disability sustained by Henry Hop, due to injury admitted.

The defense relies upon these contentions for relief from obligation in this case:

First: That the Iowa Workmen's Compensation Act does not apply to townships. That Section 1421 of the Code of 1924 does not designate or include a township as an employer under the provisions of the Workmen's Compensation Act. That a township is not an employer under the Workmen's Compensation Act.

Second: That it is clearly the law of the state of Iowa that a township is not a municipal corporation or a corporation of any kind, and for that reason is not authorized to sue or be sued; that the words municipal corporation as used in the workmen's compensation statute does not include a township.

Third: That the Industrial Commissioner of the state of Iowa sitting as a Board of Arbitration or as a Court has no jurisdiction to entertain an action against a civil township.

Fourth: That there is no authority or law which would authorize a township to pay a claim for damages under the Workmen's Compensation Act, nor is there any township fund out of which such claim could be paid.

Fifth: That the assessment of damages in this case against the defendants would be against the law of the state of Iowa and contrary to the evidence herein introduced on the part of the plaintiff.

In considering the first paragraph of this contention, attention is called to Section 369 of the Code where it appears:

1. The word "municipality" shall mean the county, city, town, township, school district, road district, drainage ditch, and all other public bodies or corporations that have power to levy a tax or certify a tax or sum of money to be collected by taxation.

Under Section 1362 of the Code, this definition of the term "municipality" would seem definitely to include a township as a municipal corporation, since for this purpose under legal definition the terms municipality and municipal corporation may be considered synonymous. Under definition given above, Sherman Township not only qualifies as a municipality through its township title, but also under further definition of a corporation having "power to levy a tax or certify a tax, or sum of money to be collected by taxation," since this power is authorized and exercised by law and procedure.

If it were to be understood that under the common law and the statute otherwise expressed a civil township may not sue or be sued, the enactment of the compensation statute would seem to afford a new rule under which this political organization may be included as an employer and

compelled to meet its obligation as such to injured workmen. Under this statute the state of Iowa has yielded its sovereignty in the interest of justice and the public welfare. It cannot be sued in any capacity except as an employer in cases made and provided by the compensation statute. It can be sued and collection has been enforced against the state of Iowa by action under this law.

Even if it were admitted that a township may not ordinarily sue or be sued, it would appear that upon the enactment of the compensation statute it became liable for obligations to injured employes or their dependents as are other employers of labor in all cases where statutory exemption is not afforded.

Since there seems ample support for the holding as to the obligation of a township to meet a compensation claim, the contention of defendants' fourth paragraph, that there is no "township fund out of which such claim could be paid," is not justified.

Payments to injured workmen or their dependents under the compensation statute are properly deemed as in lieu of wages, hence it would appear reasonable to assume that any township funds out of which wages could be paid would be subject to draft for any established award. Aside from this theory, however, the Code seems to afford definite provision for meeting required payment. See

Section 373. Emergencies. Each municipality may include in the estimate herein required an estimate for emergency or other expenditure which amount cannot reasonably be foreseen at the time the estimates are made, and such emergency fund shall be used for no other purpose.

This provision appears in close conjunction with the definition quoted which classifies a township as a municipality.

The occupation of Henry Hop at the time of his injury was in employment definitely covered by the statute. All through this statute there is express requirement for payment in case of injury arising out of employment on the part of every employer, without exception of any kind or for any purpose. In section 1363 it is specifically ordered that: "Except as provided in this chapter, it shall be conclusively presumed that every employer has elected to provide, secure and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employe arising out of and in the course of the employment."

The civil township is an employer of labor, not rarely or occasionally, but abundantly and continually under the provisions of law. Exhibit 1 is in evidence as to the exercise of this authority and the performance of distinct obligation. Township trustees are provided with funds for meeting all obligation so created.

How can any employer of labor who has not elected to reject the compensation law escape this definite and comprehensive provision?

Section 1377. *Implied acceptance.* Where the employer and employee have not given notice of an election to reject the terms of this chapter, every contract of hire, express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure, and pay, and on the part of the employee to accept compensation in the manner as by this chapter provided for all personal injuries sustained arising out of and in the course of the employment.

And this mandate is clinched by Section 1378 which provides that: "No contract, rule, regulation, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided."

As to whether or not a township may sue or be sued, the most definite citation in support of contentions of defendants is Township of West Bend, et al., vs. Munch, et al., 52 Iowa, 132. Speaking for the court, Justice Rothrock, in part, says:

"If in the case at bar the plaintiffs should be permitted to proceed with their action and be unsuccessful a judgment against them for costs would be a nullity, because there is no provision of the statute authorizing its payment. The plaintiffs as townships have no funds from which payment can be made, and there is no statute authorizing the levy of a tax for such purpose. The law expressly authorizes counties and school districts to sue, and makes them liable to actions, and provides a method by which judgments against them may be collected. No such provisions are made applicable to townships, and for the reason, as we suppose, it never was intended that they should sue or be sued."

These conclusions were doubtless wise and consistent when announced but they would sound strange, in fact irrelevant and out of joint, in a recent decision. There is now "provision of the statute authorizing payment" of costs of litigation either when suit is brought by or against township trustees. (See Code Sections 5544-5545.) In view of these provisions it may hardly now be said as to townships that "it never was intended that they should sue or be sued." Since this decision was announced, fifty years ago, its premises have been so badly shattered by law and development as to destroy the value of its conclusions.

In this state the civil township constitutes a factor of such importance in government and affairs as to secure definite recognition in more than one hundred sections of the Code of Iowa. In the promotion of the general welfare of the people residing therein its officials are clothed with substantial authority and charged with broad responsibility. Such authority and such responsibility has wonderfully increased with the progress of development. The road program of the later years make township trustees employers of labor on a large scale in the aggregate. In the more than fifteen hundred townships of Iowa thousands of workmen are employed annually in road work alone. Shall it be assumed that these thousands of workmen are to be excluded from the benefits of the compensation statute though called to service by employers authorized to hire, fire, direct, control and pay them? Farming operation is the only employment in the state wholly excluded from compensation coverage. Exclusion under employment casual and clerical is decidedly limited, such exclusion being for causes plain and reasonable. It was never intended that other exclusion should exist where the relations of employer and employe is established.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 12th day of May, 1927.

A. B. FUNK,

Iowa Industrial Commissioner.

Affirmed by district court. Reversed by supreme court.

WORKMAN WHEN INJURED NOT IN EMPLOY OF DEFENDANT

Julia E. Norman, Claimant,

vs.

City of Chariton, Defendant.
George C. Stuart, for Claimant;
J. W. Kridelbaugh, for Defendant.

In Review

In this case award was denied in arbitration decision filed January 11, 1927.

It appears from the record that T. A. Norman, husband of this claimant, lost his life July 7, 1924, while operating a road grader on land owned by the city of Chariton.

The defendant city alleges that at the time of his injury, Norman was not in its employ or under its direction or control.

It is the contention of claimant that, since the deceased workman was at the time of his fatal injury operating a grader belonging to the city on land owned by the city, and that the program of his day's activity July 7th was consistent with continuing engagement, by the city the defendant is held in compensation payment.

The circumstances involved are substantially as follows: For a considerable period prior to July 7, 1924, T. A. Norman had been intermittently in the employ of the city council, working by the hour in such service, other employment occupying a portion of his time.

It appears that in the possession of the city of Chariton is a tract formerly known as the Old Electric Plant Land. It contained a pond and presented generally a very unsightly aspect. In the spring of 1922 the council was prevailed upon by committees of civic organizations to designate this plat as a city park. Later a plan was submitted to the council for the improvement of this forbidding site. The plan adopted by the council for such improvement was originated, developed and submitted by the civic organizations and it was understood that all improvement proposed should be made from public subscription and without expense to the city.

Accordingly improvement proceeded under the direction of the organizations referred to out of money and labor donated by private subscription. In this process it became expedient to call into service a road grader and, at the request of citizens, the city permitted the use of its grader in this service. As an expert in such work, Norman was consulted and the record seems conclusive as to his offer to operate the city grader without charge as his contribution to the citizen's park enterprise.

It appears that on the morning of July 7th Norman used the grader on street work. There is evidence as to his intention to use it in further street service later in the day. Meanwhile he took the machine to the tract in question and in its use there he sustained fatal injury.

In view of these circumstances, there would seem to be no escape from the conclusion that at the time of his injury, the deceased was not in city service. He had agreed to donate the work he was performing to public enterprise in which the city had absolved itself from all financial

responsibility. When the workman took the grader off street work and proceeded to use it without pay in public enterprise under the direction and control of parties wholly removed from official relationship, he left the zone of city employment and the city cannot be held in financial obligation for his untimely death. In granting the request of citizens to improve this property at a time when it evidently had in contemplation no plans for such improvement and under circumstances under which it was careful to involve itself in no financial obligation, the city council was in no sense liable for any result of services not sought for improvement for which it had assumed no responsibility.

Wherefore, the arbitration decision is affirmed.

Dated at Des Moines, this 11th day of August, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district and supreme court.

HERNIA NOT ARISING OUT OF EMPLOYMENT

Karl Johnston, Claimant,

vs.

Glyde Automotive Electric Company, Employer,
Southern Surety Company, Insurance Carrier, Defendants.
Hyman E. Miller, for Claimant;
Risher and Wilson, for Defendants.

In Review

Claimant alleges injury as of February 5, 1927, arising out of employment. Says he was assisting in loading into an automobile a box of armatures weighing about 150 pounds when "the box slipped and slid down the side of the car and struck me in the right side."

The arbitration decision denies award.

Testifying for the defendants at the arbitration hearing, W. O. Koethe says that in a game of basket ball occurring a few days prior to February 5th, in which he was a member of a contesting team, he saw a mix-up in which this claimant, Karl Johnston, as one of the players, was kicked or kneed in the groin; that he saw claimant grab his side as if in pain. At the review hearing, however, an affidavit of Koethe was admitted to the record, as Exhibit 1, in which affiant qualifies his former testimony to make it more favorable to the claimant. Vacillation on the part of this witness as evidenced by the transcript and the quibbling indicated by this affidavit suggests the expediency of ignoring altogether this part of the record as neither sustaining nor opposing the claim of Johnston.

While the testimony of Koethe at the initial hearing was held as important to the defendants, in order to establish this claim it remains to be shown that the claimant has actually sustained the burden of proving compensable injury.

The only affirmative witnesses are Johnston, in his own behalf, and his attending physician, Dr. F. W. Fordyce. Claimant testifies, as already stated, as to lifting the box of armatures. Says he immediately felt a burning sensation. Did not mention the matter to anyone. Worked on the rest of the day. The next day was Sunday. Seemed to have no reminder of the trouble until Monday when he left his bench and went

to the 'phone, as he thinks, when he had "severe pains and cramps." Dr. Fordyce saw the claimant February 17, 1927, when he found him suffering from inguinal hernia. Thinks it "entirely possible" that hernia could have been caused by the accident as alleged. Thinks hernia "might" be so caused. Thinks this hernia had its origin "about that time."

This is the case of the claimant. He does not call the man he says was lifting with him at the time of the accident, nor the employer, R. B. Glyde.

These witnesses are introduced by the defendant insurer. The fellow workman, G. R. Nichols, says he recalls lifting on the box referred to by claimant. Does not know whether the box was being lifted by two or by four men. Could not say whether or not box slipped. Boxes have slipped. Recalls signing statement on February 8th in which he said "four of us were lifting on the box." Admits saying in said statement R. B. Glyde and Paul Hutchinson were the other two.

Glyde testifies he does not recall "taking part in lifting of the box." Verifies signature of statement of February 8th to the effect that four men were lifting on this box. Admits he said at that time Johnston complained of "a strain in his side some days prior to February 5th," the date of the alleged injury. Alleges haste in the statement preceding and suggests "a forced proposition all the way through." Asked if the written statements were not true, Glyde says, "No, I could not say they were not all true; absolutely not."

The reluctance of Glyde and Nichols to testify for the defendants and the desire to modify statements made near the date of the alleged injury is significant.

Weighing all the evidence in this record, the conclusion of the arbitration decision, that the claimant failed to sustain the burden of proving that the hernia for which he seeks recovery arose out of employment by this defendant employer, is clearly justified.

The arbitration decision is affirmed.

Dated at Des Moines this 27th day of August, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INJURY WITHIN SCOPE OF EMPLOYMENT AND DUE TO ACCIDENT

William T. Hurley, Claimant,

vs.

Sac City Canning Company, Employer,
Fidelity and Casualty Company of New York, Insurance Carrier,
Defendants.

Gilchrist and Gilchrist, for Claimant;
B. O. Montgomery, for Defendants.

In Review

The arbitration committee finds "that during the entire period since the injury and as a result thereof the claimant has been totally disabled and that he is now totally disabled as a result of the injury." Upon which finding an award was made of $6.92 a week from July 30, 1925,

to date of arbitration and continuing during the period of disability, together with statutory medical, surgical and hospital charges.

Defendants resist award on the ground that:

1. At the time of his injury claimant was without the scope of his employment, that:

2. The disability of claimant now existing is not due to the injury of July 30, 1925.

The record discloses these circumstances: For some weeks prior to July 30, 1925, W. T. Hurley was in the employ of the Sac City Canning Company at its Storm Lake plant. His particular duty was to work with a machine in the making of packing cases out of fibre material.

On the day of his injury Harry La Hue, a foreman, removed a section of the machine in use by claimant with a view to changing the dimensions of the boxes. It appears that La Hue was away much beyond the period of natural expectation or presumed requirement and after waiting a considerable time, claimant decided to look into the cause of the delay. It further appears that La Hue had gone with the part removed to the husking room or cooking room fifty feet or more away from the boxing machine and in another building. On the way there to investigate the cause of the delay, claimant fell into a cooling vat five feet deep and about six feet wide.

The question arises, do these circumstances show that at the time of his injury claimant was without the zone of his employment and beyond the relief of the compensation service?

Defendants stress the allegation that Hurley was hired to make boxes —merely this and nothing more. They bring to the support of this contention the testimony of Burt Marchant, manager of the plant, who insists this is the fact. It is therefore urged that since the workman was employed to do nothing else but to stand at his machine and turn out cases, he was barred from relief in case of injury in any departure from this simple definite process.

It has been assumed by this department that only machines, without soul, or sense, or sex, or status, could be so "cribbed, cabined and confined" in the general scheme of industrial employment. If this narrow view were established, men must become mere automatons in order to remain within compensation coverage. Suppose this workman had discovered an incipient blaze within his range of vision and within his control, should he have let it run because he was hired simply to make boxes? Assume a sudden shower was flooding rain into the room where he was working alone and he could have, by closing a window, saved from damage property of his employer, should he have kept right on making boxes regardless? Suppose a passing stranger had notified him of impending peril to interest of his employer which he might prevent and he should have stupidly replied "I am hired to make boxes." How unreasonable to allege that any workman may meet the requirement of his employment merely by stolidly avoiding any act or effort suggested by the requirement of intelligent and loyal service, though not immediately connected with his main engagement.

Surely Hurley could not have met the demands of reasonable service merely by making boxes, blind to any contingent development or emer-

gency. Still it was possible for him to take himself beyond the scope of his employment. Did he do so at the time of his injury?

His foreman had removed a portion of the machine he was attending. It is hinted but not clearly shown that claimant might have proceeded in a lame sort of way with his box making. It seems however that the boss left him only with instructions to "clean off the bottom part of the machine", which would indicate that no other service was expected. Then, says the claimant, "I went on and cleaned it off and waited and waited there". Said he understood that the boss would bring back the detached part in a little while, and "he started to see what was keeping him with the machine".

These circumstances seem to suggest on the part of the workman an interest in his work and a desire to serve to the limit of his opportunity. His impulse to investigate the cause of unusual delay is indicative of reasonable concern on the part of a conscientious and intelligent employe, and the proceeding, which resulted so seriously, is justified as reasonable service and his injury must classify as arising out of employment in a statutory sense.

It now becomes necessary carefully to consider the second count of the defense contention. Is the disability existing, and which has existed ever since, due to the injury of July 30, 1925? Defendants seek to show loss of earning capacity on the part of W. T. Hurley in the years closely preceding his injury due to his age, about sixty-eight years, and to alleged evidence of physical decline. He had been selling pianos in this period. The dealer for whom he worked on a commission basis was called to testify to meager earnings. This fact would not seem to be even significant since, because of depressing financial conditions, selling pianos to the farmers of northwest Iowa in those years would naturally be about as lucrative as selling cosmetics to the Eskimos or hard hats to the Quakers. The very significant thing about this testimony is the positive statement of the witness as to the able-bodied condition of claimant. Says "he was very active", "He was right up and coming all the time". There was practically nothing the matter with him. This is valuable because it is necessary to know whether or not failing physical powers on the part of the claimant suggest explanation of the cessation of earning capacity at the time of his injury. All testimony on this point indicates that there was absolutely nothing to suggest a breakdown of the physical structure.

In the comparatively sound condition shown by the record we find this claimant the morning of the day of the injury. He falls into the cooling pit. He is helped out, assisted to a car and then sent to his home. Right soon a light form of traumatic pneumonia develops. Continuing distress is suggestive of injury more serious than that discovered by the attending osteopathic physician. Later examination and X-ray development clearly discloses three fractured ribs on the left side. Some months later examination discloses serious heart trouble and it is not denied that ever since the injury of July 30, 1925, claimant has been totally disabled and doctors are practicallly agreed that this condition is permanent.

Dr. A. G. Gran says he examined claimant some seven months after the accident. Found heart trouble as above stated; also evidence of broken

ribs. Recent examination found heart condition worse. Says it "would be highly speculative positively to assume that the conditions found are due to accident of July 30, 1925". In cross examination said conditions found would indicate that trouble had existed for some time. Replying to hypothetical query based on record disclosure the witness said that "assuming he had cardiac weakness previous, then any undue strain would weaken it. This is a fair assumption". Expressed the opinion that condition existed before the accident.

Dr. J. A. Swallum, testifying for the defense, says he found in recent examination enlarged aorta and leaky heart valves; also bad teeth. As to heart trouble, says symptoms "would indicate that it had been over a long period of time". Does not think existing disability due to injury as alleged. In cross examination says if heart trouble existed before the date of injury, it had not reached the point where it was preventing claimant from laboring. Furthermore that if the trouble pre-existed the injury, development would indicate that the fall "probably aggravated it".

Introduced by claimant, Dr. J. H. Hoveden, replying to the previously submitted hypothetical interrogation based on record disclosure, says "It could be likely that it aggravated it or exaggerated it". Again replying to hypothetical query, the Doctor says he thinks the accident the source of existing disability. Says as to the conclusion that the heart trouble pre-existed the accident, it is not a matter of speculation but "a matter of reasoning".

The doctors seem to disagree, not only with each other but more or less each with himself. They leave much to be desired in the way of definite expression in the nature of support either to affirmative or negative contention. But a careful study of statements in direct and cross examination seems to justify this important interpretation. The enlarged aorta and leaky valves are believed to have existed prior to the date of injury and, if this is true, the circumstances of injury would tend to aggravate, exaggerate, exhilarate, light up and hasten the development of heart trouble. The medical testimony seems to mean just this, and with these points settled, the claimant's case is made.

It must be conceded as quite unusual for fractured ribs to be the source of total permanent disability. It may be exceptional for fractured ribs to figure as a chief factor in the development or exaggeration of ailment described as enlarged aorta and leaky heart valves. After thorough scrutiny of this record, however, what must we conclude?

In the period preceding his injury, we see in W. T. Hurley by the various tests of physical capacity, an able-bodied man. Persistent inquiry and endeavor on the part of defendants failed to disclose in this period any circumstance or incident or condition at all suggestive of the situation following the fall into the cooling pit. It was some months before the discovery that three ribs were fractured in this fall. These fractured ribs are understood to be the sixth, seventh and eighth on the left side, near the heart. Is it reasonable to assume that this serious injury had nothing whatever to do with heart trouble never before in evidence, when immediately and ever afterward total disability existed, manifestly due to a large aorta and leaky heart valves?

While the burden is on the claimant, in order to win his case he is not

required to establish beyond all reasonable doubt his contention as to proximate cause.

Honnold, an authority on workmen's compensation widely accepted, at page 466, says as to the burden of proof: "This burden may be sustained by circumstantial evidence or inference having substantial basis in the evidence. A preponderance of the evidence is sufficient. By a 'preponderance of the evidence' is meant such evidence as, when weighed with that opposed to it, has more convincing force and from which it results that the greater probability is in favor of the party on whom the burden rests."

In this case does it not appear "with more convincing force" that this totally disabling heart trouble is due to injury as alleged rather than that its appearance and disastrous results could be considered merely as coincidental, a casual happening identical in time and in juxtaposition with the injury of July 30, 1925. Does not the exercise of the important rule of greater probability strongly support the contention of claimant?

These conclusions seem the more reasonable because of the fact that diligence on the part of counsel does not enable him to offer in opposition to this claim any suggestion, hint, surmise or conjecture as to anything else that might have caused the disability of Hurley. Otherwise it might be held that the heart trouble and breakdown of this claimant just happened to come along concurrently with this rib smashing, changing Hurley from an able-bodied man to a human wreck. This tribunal finds no difficulty in deciding that as between the only theories possible to develop, this claim is supported by the important rule of greater probability.

Counsel submit many decisions in support of contention. The weight of authority cited and otherwise indicates that the circumstances attending this injury and the conditions later prevailing tend to bring this case within the coverage of our statute.

It is, therefore, held that:

1. The injury sustained by W. T. Hurley July 30, 1925, arose out of and in the course of employment; that:

2. Disability from which he suffers is due to said injury.

The arbitration decision is affirmed.

Signed at Des Moines, Iowa, this 24th day of October, 1927.

A. B. FUNK,

Iowa Industrial Commissioner.

Affirmed by district court. Settled.

INJURY WITHOUT STATUTORY NOTICE OR KNOWLEDGE

O. D. Denham, Claimant,

vs.

American Lithographing and Printing Company, Employer,
Southern Surety Company, Insurance Carrier, Defendants.
I. H. Tomlinson, for Claimant;
Paul G. Risher, for Defendants.

In Review

In arbitration September 2, 1927, it was held that claimant failed to

discharge the burden of proving that disability for which he seeks recovery resulted from injury arising out of employment.

Before the Deputy Industrial Commissioner, O. D. Denham testifies that during the afternoon of October 20, 1925, while lifting bundles of paper in the process of cutting "something snapped" in his shoulder; that since that time he has not been able to do heavy lifting and he has been considerably impaired in working capacity.

Defendants resist this claim on the ground that claimant submits no circumstances of injury justifying demand for compensation payment; further that no notice or knowledge of any injury whatever on October 20, 1925, was given to or obtained by the employer within a period of ninety days subsequent to this date.

Claimant Denham says at the time of his injury he informed a fellow workman named Henderson of the fact. Mr. Henderson makes no contribution to this record. Claimant states further that he was treated for his alleged injury by Dr. Isler, who has moved to Lincoln, and does not testify; that on the afternoon of October 20, 1925, he made complaint to A. W. Peterson, Vice President of the defendant company, Mr. Peterson testifies that no such conference occurred within his recollection and that he had no notice or knowledge of any injury as alleged until in May, 1927, when petition for arbitration was filed. Remembers of Mr. Denham complaining of his shoulder but not in connection with any alleged injury.

Floyd Burgess and Henry J. Ford, then and now occupying positions of importance with the employer, testify they never heard of any inquiry until this action was brought.

Evidently claimant knew the way of compensation procedure. Exhibits 1 and 2 of record constitute files of the defendant insurer in two cases of compensable injury sustained by claimant in February and in May, 1925, in which the insurer made payment of physicians' charges. In one case the report of injury was made out and signed by Denham himself. In case of his alleged injury of October 20th, 1925, claimant paid his own doctor bill and does not claim he made any request for such service to the employer.

The testimony of the claimant as to specific injury is unsupported by evidence direct or circumstantial. It lacks the important element of inherent probability. His claim as to statutory knowledge or notice on the part of the employer is also devoid of support or probability. It is, therefore, held that:

1. Claimant, O. C. Denham, in this record fails to give credible history as to injury on October 20, 1925, that:

2. No notice was given or knowledge obtained by the defendant employer of any injury to claimant on October 20, 1925, within the period of ninety days of this date.

WHEREFORE the arbitration decision as to failure to sustain burden of proof is affirmed.

Dated at Des Moines, Iowa, this 9th day of December, 1927.

A. B. FUNK,

Iowa Industrial Commissioner.

No appeal.

DEATH NOT DUE TO INDUSTRIAL INJURY

Mrs. Anna Anderson, Claimant,

vs.

John Morrell & Company, Employer,
London Guarantee and Accident Company, Ltd., Insurance Carrier,
Defendants.

R. R. Ramsell, F. C. Huebner, for Claimant;
Chandler Woodbridge, for Defendants.

In Review

In arbitration award was denied.

On the part of claimant it is alleged that on January 15, 1926, her husband, J. M. C. Anderson, sustained injuries in employment resulting in his death seventeen days later.

Defendants deny relationship between this death and any injury arising out of employment on January 15, 1926.

The record discloses that on January 15, 1926, a vat of several barrel capacity, which the deceased was rolling with his hands, collided with a truck propelled by a fellow employee named Harold Walker.

Walker testifies (transcript p. 17) "I guess the vat hit the truck but I do not know—that is all I know about it". "Mr. Anderson ran into the truck—I don't know whether it hit him or not." (tr. 19) "The vat swung around and hit him."

Says deceased did not put his hands to his side as if hurt.

In cross examination this testimony appears, (tr. 24).

"Q. You did not see the vat strike him—you don't know whether the vat struck him—you don't know whether your own eyes saw that vat strike the body of Mr. Anderson or simply swung around?
A. All I saw was that it swung around.
Q. Whether it actually struck the body or not you don't know?
A. No, sir."

Quoting from re-direct (tr. 25-6.)

"Q. Did you, Harold, or did you not see whether the vat hit him and, if so, where?
A. The vat kind of swung around.
Q. Did it hit his body?
A. I could not say.
Q. What did you mean when you said it struck him in his left side?
A. The vat swung around on the left.
Q. Did you see it strike him?
A. I think it did.
Q. What part of the body did it hit?
A. I cannot say where."

Later "It struck him on the left side".

Re-cross. "The vat struck him".

Walker was the only eye witness to the collision.

Mrs. Rebecca Howard qualifies as nurse in the service of the defendant employer. She says the deceased reported to her about four o'clock in the afternoon that he had injured his left side. "It seemed that a vat had struck him or he had been bumped by a vat."

Five days after the injuries alleged a physician was called in the person of Dr. Evan Walker. He testifies that Anderson informed him that he "was rolling an empty vat which was struck by the handle of a loaded truck, whirling vat around and wrenched my left side. He was unable to say whether struck or not. That is his statement. That is all in regard to the accident that is recorded". (tr. 51)

Members of the family testify to statements of the deceased to the effect that he had been run into with a truck which hurt him on the left side.

This is all the history as to what occurred at the time of the alleged injury disclosed by the record. It is now necessary to consider developments tending to show relationship between the alleged injury and death of Mr. Anderson.

Testimony of the members of the family is to the effect that the deceased went to bed immediately upon his arrival the evening of January 15th. That he was continually bedridden until the date of his death, all the time in intense pain. In the testimony of Mrs. Howard it is stated that when she called there a day or two later (tr. 5) "he was up and about and apparently was feeling some better".

There was no medical attendance for five days. At the end of this period Dr. Walker was called. Says he found Anderson with pain in his left side and up to the corner of the shoulder blade beyond, and could not well turn over in bed. On January 25th the Doctor's notes show deceased to have been "better in every way". Thought then the case indicated traumatic pneumonia. A few days previously he had "thought he had the grippe." (tr. 52.) Did not see him again until February 3rd. Later testifies: "I tried to hang it on to something and called him as probable traumatic pneumonia." (tr. 53) Dismissed case January 23rd, saying: "Now you do not need me to see you so I will not see you. You will get along well." February 3rd "And then I kind —I thought we had a case of the bronchial type pneumonia". (tr. 53)

Dr. Walker asked for a post mortem examination which was authorized by the defendant insurer with the consent of the family. Dr. Walker says that at the time of the autopsy he "did not know for certain that he had received that blow"; did not know that he had been "struck that way" when he made out the death certificate.

Autopsy was performed by Dr. F. A. Hecker, who classifies in the record as clinical pathologist at an Ottumwa Hospital. On pages 37 and 38 of the transcript he gives a detailed account of post-mortem finding, from which is quoted:

"A. * * * Dr. Walker states that he (deceased), was injured on January 15, 1926, while holding on to a vat which was turned around and in some manner gave him a twist, which he states caused pain in the left side of the chest. Nothing actually struck the patient in any form, that is, there was no physical blow of any kind against the chest. This point brought out very clearly by Walker at the post-mortem and was repeated two or three times so there would be no question afterwards of his receiving a blow. Dr. Walker did not call until January 20, five days after the accident. At this time he had a history of a cold at the time of the injury. The respiration 40, pulse 84, and some temperature. Later he had bronus sputen streaked with blood. Also had cast in the urine, some hylium and other kinds. No albumen. This on the face of it would indicate a chronic condition, his condition was below par. Dr. McElderry was present and stated that at the physical examination for John Morrell & Company he had rated him in Class 'C'. Now this is where I come in

with the description of the body. The description of the inspection of the body made by Dr. F. A. Hecker at the time of the autopsy. Dissection of the left side below the rib, seventh to ninth rib, area. On dissection no connection to injury. A small lipos was found, no connection. Stated he complained of pain over the ninth rib. Posterior to axillary line. On dissection some rough surface of the periostium of the 8th rib on the left side, no callus of rib.

Q. Was this rough surface on the inside or outside of the rib?

A. On the undersurface leading sort of behind, running down sort of like that in behind, wasn't on top. There was a roughening on the lower margin and surface of the rib. Opened left chest severed colon bacillus. About two or three pints of foul grayish-white fluid in the left chest cavity. The left lung almost in a complete collapse. The lung was in a partial condition of necrosis due to septic or pyemic infection. Small tumor mass dissected from left lung. No possible connection. The heart was bound down firmly by pericardial adhesions to posterior surface and also to left lung. Adhesions so firm that heart could not be lifted up. Abdomen: Spleen enlarged, liver enlarged, marked hepatitis. Line obliterated. Left kidney soft, dark, looks like it has consistency of liver tissue, polycystic in character. This last point I had brought out very definite before all present because we all know that a polycystic condition is of long standing and could not be due to any recent condition. Summing this whole case up, death would be due to pyemia of the left lung, polycystic kidney, marked hepatitis and myocarditis with adhesions."

Dr. Donald McElderry witnessed the autopsy. He gives more or less of detail in regard to developments herein and in repeated questioning, hypothetical and otherwise, this witness goes no further than to say that connection between alleged injury and death is "within the range of possibilities".

Dr. F. L. Nelson also was present at the autopsy. Remembers "there was history of the man having sprained himself, was turned around while pushing a cart. So the question came up in reference to any injury." (tr. 40). "There was no evidence of a blow in this case" (tr. 42). Pressed to answer hypothetical query, after insisting there was no evidence of a blow, the Doctor says that assuming there was a blow and that Anderson sustained a severe injury to his chest, relationship between the incident of January 15th and death might be established.

In cross examination,

"Q. Now state whether or not from this autopsy and the history you got of the case, you found any reason to diagnose the cause of death as other than what is commonly known as natural causes?

A. No evidence at all at the autopsy. (tr. 49.)

Q. If the man did receive some blow or contact with the vat did you find any evidence that it was of sufficient as to enter into this case, as the contributive cause of his death?

A. We did not." (tr. 50.)

At the review hearing, Dr. D. J. Glomsett, of Des Moines, testified for claimant. (tr. 3.) The hypothetical query submitted by counsel, outlining his theories and contentions as to the relation between the death of Anderson and assumed injury of January 15, 1926, was answered in a manner most satisfactory to the interlocutor.

Cross examination by defense counsel is as follows: (tr. 14)

Dr. Glomset could I put in one little nut shell the question?

Q. What you want to testify to is this. If this man received a blow on January 15, 1926, that was severe enough to cause traumatic pneumonia then its reasonable to assume that in this case it would cause it and if he did not receive such a blow then it is reasonable that pneumonia was not traumatic isn't it?

A. Absolutely.

The burden is upon the claimant. While it is not incumbent upon the defendant to establish any theory as to why compensable injury could not have occurred as alleged, substantial contention as to causes other than that of injury as contributing factor is to be given due weight in reaching conclusion. Such contention is submitted in this case by the defendants.

In October, 1925, some three months prior to the date of alleged injury, Mr. Anderson was given physical examination for the employer by Dr. Donald McElderry, a witness herein. The Doctor testifies that this examination developed a physical condition so much impaired that in classes marked "A" to "D" he was marked in the "D" grade "the lowest possible rate and yet allow them to work" (tr. 28). At and prior to January 15, 1926, the deceased gave evidence of having a cold. This is always a condition precedent to pneumonia. As a matter of common experience, it is not necessary that this cold shall have assumed intensive character in order to be followed fairly closely by pleura pneumonia, from which Anderson would seem to have suffered and died. This would be particularly true in case of physical impairment to such an extent as to suggest lowered resistance, inviting the ravages of infection. Claimant emphasizes this lowered resistance in support of the theory that death was due to injuries alleged. It is just as consistent to assume that lowered resistance acted in connection with the cold, admitted and recorded in evidence, as from the blow or twist or wrench of which there is so little definite evidence, even if such injury actually occurred.

The testimony of the only eye witness to the alleged injury is so vacillating and self contradictory as to afford no basis of support as to what actually occurred. All the witnesses at the arbitration hearing were called by claimant. The medical evidence of Drs. McElderry, Heckle, and Nelson tends to weaken rather than support the case of claimant. The testimony of Dr. Walker, the attending physician, is very indefinite and contradictory. He insists that at no time the deceased had advised him of anything in the nature of a blow, a factor relied upon by claimant. He speaks of a wrench or twist which, if considered seriously must be taken as entirely changing the theory upon which this case substantially rests as to death being due to a blow on the left side. A credible witness is Mrs. Rebecca Howard who says that several hours after the time of the alleged injury, the deceased reported to her that a vat had struck him or he had been bumped by a vat. Evidently this is not the story told to Dr. Walker by the deceased. However contradictory this doctor's evidence may be, it is evidently intended to be friendly and helpful to the claimant.

Counsel assumes to explain the vaccillating and contradictory testimony of Harold Walker, the only eye witness to the alleged accident, by saying that he was fearful of losing his job, if he testified favorably to the claimant. It is a matter of common knowledge that the state contains no more benevolent and kindly employer than the Morrell Company. After putting in even a few days in the genial atmosphere of this in-

dulgent employment, no workman could entertain fear of dismissal for any endeavor to aid in arbitration a fellow workman or his dependents. Therefore it is impossible to give weight to this plea.

The testimony of members of the family in arbitration and in review hearings is not reassuring in support of claimant's contention. They uniformly testify to evidence of incessant and intense pain on the part of the deceased from the time he came home on January 15th until his death. This seems grossly inconsistent with the fact that the Doctor was not called until after five days of this agony. They are all sure as to physical evidence of a blow to the left side, all of which disappears before the Doctor is called. It seems rather improbable that swelling and discoloration, described as at first so prominent, could utterly disappear in five days. They all had it from the deceased that he received a blow or bump on January 15th while Dr. Walker, who made many calls and conversed freely with him as to case history, insists he told nothing as to any blow or bump but that it was a wrench, twist or strain that occurred. One member of the household insists that no cold was involved, while there is abundant evidence to the contrary.

The burden must be sustained by a preponderance of the evidence "from which" as said by Honnold "it results that the greater probability is in favor of the party on whom the burden rests". As Honnold further says (p. 471.) "The claimant fails if an inference favorable to him can only be arrived at by a guess; likewise when two or more conflicting inferences equally consistent with the facts arise from them".

In this connection there is recalled the case of *Sparks vs. Consolidated Indiana Coal* (190 N. W. 593). Sparks had been working on his knees at a hand drill in a coal mine. He was found lifeless on his back on a pile of coal. On his nose and at his temple appeared bleeding abrasion. It appeared these wounds were due to falling chunks from the roof of the mine room. No other explanation of death could be suggested. In reversing the Commissioner and the District Court, speaking for the Supreme Court, Justice Faville said: "We are assuming that there was no evidence of physical injury to the employe from which it might be inferred that the same resulted in his death".

Furthermore:

"Holding as we do that there is no sufficient proof to establish the fact that the injury to the workman resulted in his death, it is unnecessary for us to speculate upon the question as to how the injury may have been inflicted."

Summing up it may be said:

1. All important in compensation cases are facts and circumstances upon which conclusion must be based. This case is weak at its very inception. Testimony as to "evidence of physical injury to the employe from which it might be inferred that same resulted in his death", as Justice Faville says, is by no means reassuring.

2. On the basis of actual case history, the weight of medical evidence is against award. In order to modify this view, it would be necessary to base conclusion upon replies to hypothetical queries inconsistent with the record.

3. Even more consistent is the inference that the deceased came to his death with a cold as the inciting cause than that injury as alleged was the cause thereof.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 10th day of January, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Pending in supreme court.

EYE TROUBLE NOT DUE TO INJURY AS ALLEGED

Karl Larson, Claimant,

vs.

Arthur H. Neumann and Company, Employer,
Aetna Casualty and Surety Company, Insurance Carrier, Defendants.
Chester J. Eller, for Claimant;
Carr, Cox, Evans and Riley, John Inghram appearing, for Defendants.

In Review

Arbitration hearing October 5, 1927, resulted in denial of award.

It is the contention of claimant that while doing carpenter work on a heavy pine door May 21, 1926, the character of his work caused the bursting of a blood vessel and a rupture of the retina in his right eye, resulting in substantial loss of earnings and in definite partial permanent disability.

Karl Larson testifies that at the time of his injury he was refitting a heavy pine door some 38 inches in width, 7 feet high and about 2½ inches thick. Thinks it weighed two hundred pounds. Asked to tell just what occurred at the time of injury, he says:

"A. Well I laid the door down and planed off the edges and when I picked it up, that is when it happened. I felt sick all over and kind of a blind spell. I turned around and said to Jensen, 'Something happened to my eye, but I don't know what it is,' on account the sun was shining in the afternoon and everything went dim.

Q. About what time of day did this occur?

A. Well it was around three thirty.

Q. In the afternoon. Now which eye, or was there any difference in the eye or one eye, or did you notice?

A. No, I couldn't tell, it affected both eyes at the time.

Q. How soon after that did you notice it in either eye?

A. Well I sat down a few minutes and kind of got together and then I finished up the job, and that eye still remained bad.

Q. Which eye, you say that eye?

A. The right one.

Q. And couldn't you see out of it?

A. I just saw a big red spot when I closed the left eye.

Q. When you closed the left eye, then you would see a big red spot in the right one?

A. Yes."

Claimant further says: "it was close to quitting time, I picked up my tools on Saturday forenoon and worked." This was the day following the alleged injury. In the afternoon he consulted a specialist.

Christian Jensen, working near Larson, in reply to a question as to Larson mentioning injury in direct examination states: "Yes, I seen him. I think he was sitting down, and I asked him what the trouble was, and he told me he hurt himself. I believe I asked him if he wanted

me to help him." Didn't see him lifting the door. Says he was talking about his eye. Said something was wrong with his eye.

In cross examination this witness says:

"Q. You don't know Mr. Jensen, of any injury Mr. Larsen received to his eye while on the work at that time?
A. Well, I could not tell.
Q. He simply spoke to you one day, as I understand it, that he was having trouble with his eye.
A. Well, that was the time he claimed that he got hurt out there.
Q. Oh, it was the same day, was it?
A. Yes it was the same day, I was working in the same room.
Q. You didn't see him receive any injury did you?
A. No.
Q. Do you know what he was doing at the time he claimed he was injured?
A. He was working on a big door.
Q. What did he state to you at that time, Mr. Jensen?
A. Well, so far as I remember I turned around and I seen him sit down, and I think that is what it was, I don't remember for sure, but he said to me—made some kind of a remark about his eye, and I think I asked him if he wanted me to help. I don't remember.
Q. Did he tell you what caused the condition to his eye?
A. I don't remember now.
Q. Well, would you say he did or did not?
A. I could not remember.
Q. All he said to you was that he was having trouble with his eye, is that correct?
A. Yes.
Q. You told him you didn't know what was the matter with him?
A. No, I couldn't tell.
Q. And that is all that was said?
A. There may have been more, but I don't remember."

Witness verifies his signed statement appearing in the record as defendant's Exhibit 1. Further testifies there was nothing to indicate Larson had had any accident immediately prior to the time he talked to the witness about his eye.

W. H. Miller, who qualifies as superintendent of work at the building in which occurred the alleged injury, recalls in direct examination that claimant came back to work after he had been away a few days. Forgets the date. Thought at this time he told him blood vessel had bursted in his eye. Witness says he thinks this lifting and heavy work had caused the injury to his eye. In cross examination this testimony of Miller appears:

"Q. He didn't make any claim did he that he received an injury while on the work itself?
A. No, he didn't. That is, I didn't take his claim at that time, and if I had I would have turned in a report. We generally turn in a report on accident claim that has been reported, and at that time I didn't understand it as an accident on the job, or an accident to turn in a report on.
Q. He didn't tell you it was an accident received on the job?
A. No, only that he said he had went to work too soon, and that it had caused this blood vessel to burst.
Q. He said because he had gone to work he had something go wrong with him again, is that the idea?
A. Well, I don't remember exactly what the words—that is quite a while back."

D. D. Jones, as office manager of the Neumann Construction Company,

in direct examination says Larson talked to him about this injury two weeks after it happened, May 21, 1926. Said he had "blowed his eye". In cross examination he says: "He didn't state about working on the job, and relate any facts, his characteristic remark, he said he blowed his eye". Didn't make any claim for compensation. No report was made to the insurance company. Testifying further:

"Q. He talked to you as though this injury was simply the outcome of his sickness, that he had had before, is that the understanding you had?
A. Well, he was kind of puzzled about it, because before he went back to work with the doctor's O. K., and this time he wanted to wait, and he didn't know just exactly what to think about it. He didn't know exactly what was the matter with the eye, and as I say, he always said he blowed his eye."

The testimony of Drs. Tait and Post, Eye Specialists, tends to support this claim, assuming that the injury occurred in connection with strenuous exertion.

Dr. Lynch is of the opinion that there could be no connection between the hemorrhage and any circumstances of employment to which claimant testifies.

The record would appear to substantially support the conclusion reached in arbitration, that the claimant has failed to discharge the burden of proving that disability for which he seeks recovery resulted from injury as arising out of and in the course of employment by the defendant employer within the meaning of the compensation law.

There is very indefinite statement as to any incident of injury or of strain as a source of claimant's eye trouble. A workman of his character and intelligence would certainly have reported such injury and made a compensation claim within a short time after the alleged incident of May 21st, had the incident of heavy lifting and exceedingly painful eye trouble immediately following, occurred as stated. It was months before he seemed to have any idea of calling for compensation benefits. The testimony of the fellow workman, Christian Jensen, is so hazy, so contradictory and so inconsistent as to afford no support to this claim Superintendent Miller and Office Manager Jones, in direct examination, offered sympathetic suggestion but in cross examination any favorable testimony they may have given is utterly destroyed.

Larson testifies that he was so sick as to be unable to work from the 8th of December until March, immediately preceding the alleged accident. Going to work in March, he says he took cold and went back home again, remaining until the latter part of April.

The testimony of Miller, (tr. pp. 89) and of Jones (tr. pp. 107) indicates that early in his eye trouble claimant was disposed to feel it was involved in his recent sickness.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 10th day of February, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Appeal abandoned.

EYE INJURY NOT PROXIMATE CAUSE OF DEATH

Mrs. Helen Stuart, Claimant,

vs.

C. W. Schlatter, Employer,
The Fidelity and Casualty Company, Insurance Carrier, Defendants.
Livingston and Eicher, E. C. Eicher appearing for Claimant;
B. O. Montgomery, for Defendants.

In Review

Case history of record is substantially as follows: In garage service for this employer at Wayland, December 12, 1925, a piece of steel entered the right eye of Homer Stuart, husband of this claimant. He was unable to work for a period of some twelve weeks or until March 3, 1926. He then worked a half day only. Again resuming labor March 7th, he worked for a half day over a full week. He laid off all the rest of the week, except that on Saturday he worked an hour and a half. He did not again work until April 12th when he continued until May 12th. Death ensued May 28th.

Dr. E. C. Allen testifies that he treated the deceased for his eye trouble two or three days after the injury. Found "a little scar or incision and the eye was red and kind of cloudy to the pupil."

Dr. E. E. Stutsman, eye specialist, testifies he treated Stuart in December, 1925. "He had a foreign body penetrate the cornea clear into the lens of his eye." Exhibit "6" of this record is report of Dr. Stutsman, showing that he gave him seventeen treatments in December of 1925 and fifteen treatments in 1926 at his office in Washington, Iowa.

Between March 17th and March 29th Stuart consulted an eye specialist at the State University Hospital.

The issue to be decided is as to whether or not the death of Homer Stuart May 28, 1926, was due to the eye injury of December 12, 1925, as a contributing factor or otherwise.

Without stating the exact date, Dr. Allen, the family physician, testifies that about a week previous to his death Homer Stuart came to his office. At that time he was running a fever "I think along 102 or 103°. Saturday night he "was carrying a temperature of 104°." He seemed to have septic infection. "He had a very sore throat, but did not seem to have tonsilitis—seemed more like an infection." Final diagnosis the Doctor gives as septicemia.

Dr. Allen states that he noticed distinct changes in the general physical condition of Stuart, as existed prior to December 12, 1925 and thereafter. The general conclusion of Dr. Allen would seem to be that because of reduced vitality resulting from the eye injury the deceased became more susceptible to the influence of infection and with lowered powers of resistance the strong probability is that the eye injury of December 12th was at least a contributing factor to the death of Homer Stuart May 28, 1926.

Dr. McKirahan, of Wayland, was called by claimant. He was the first physician seen by Stuart after the accident of December 12th. Describes "an incision in the eye ball, and you could see it in the covering of the eye ball". Was complaining of pain. Gave him only one treatment.

Owing to the absence of the family physician, Dr. Allen, Dr. McKirahan took over this case before it resulted fatally. Diagnosed the same as "septicemia, and contributing cause influenza". Has not since changed his opinion. Dr. McKirahan had known the deceased for a period of about two years. Saw him often during the winter and spring of 1926-7. Testifies that "he was in poorer physical condition to resist the infection than if he had not had the accident and following treatment." States "I did not believe there was any connection between his eye injury and his septicemia" "except as a general knowledge that anything which lowers the resistance of a patient makes him more susceptible to anything".

Dr. C. W. McLaughlin, of Wayland, was called in consultation during the last illness of Homer Stuart. "Prognosis was bad". In response to hypothetical question relative to injury and subsequent experience and condition of deceased, the Doctor testified: "These conditions were really responsible for his death, in my judgment."

Dr. E. T. Wickham, of Washington, in response to the same hypothetical query, states: "I think there is no doubt that contributed very largely to his death".

C. W. Schlatter, C. C. Wenger, Rev. J. B. Pritchard, M. M. Sinclair, Homer Davies, Ralph Stuart, Mrs. Helen Stuart, Mrs. C. O. Stuart and Mrs. Edith Yount all testified as to the physical condition of Homer Stuart. It seems to be a common conclusion of these witnesses that the deceased was a man in usual good health prior to December 12, 1925, with the exception of brief temporary illnesses. That between this date and the date of his death, May 28, 1926, his general health was substantially different. He was nervous, irritable, despondent, complaining of pain and generally reduced in vitality all through this intervening period.

Homer Stuart was under treatment by Dr. W. W. Pearson, eye specialist of Des Moines, in March and also in April, of 1926. Endeavor to remove the foreign body by magnet was unsuccessful. In deposition of record the doctor strongly resists the theory of connection between the injury and death. He declares that the injury "certainly did not develop into septicemia from that eye condition as I saw it. Unqualifiedly." Furthermore, "I can conceive of no connection between his injury and his chance infection in another part of the body that has led up to these complications". Says he told the deceased he was ready for duty March 8th.

Dr. Stutsman, of Washington, who had the case in charge for a number of weeks in December, 1925, and January, 1926, would seem carefully to avoid contribution of anything definite in the way of support of this claim.

Exhibit "3" is a letter from Homer Stuart to B. O. Montgomery, the representative of the defendant insurer, dated May 1, 1926, four weeks prior to his death, in which he says: "My eye is fine. I don't have any pain at all."

The record shows that Homer Stuart for two and a half days just previous to his coming down with his last sickness was driving a tractor and hauling a street drag on the streets of his home town and it appears

of evidence that this was a rather unusually strenuous job, indicating no serious debilitated condition on the part of the deceased at that time.

It appears of record that along in the summer of 1925 Homer Stuart was prostrated with quinsy or tonsilitis. It further appears that about the first of December, 1925, he came down with similar infection which disabled him until December 12th. He went back to work for only a few hours when he sustained the eye injury which figures as the basis of this claim. The ailment in May following, shortly before the death of claimant would seem to have been of the same general character as to throat infection as the illnesses in the summer of 1925 and December of the same year. In this intervening period he was considerably afflicted with boils.

It is the contention of the defendants that these recurring attacks of tonsilitis afford substantial suggestion as to the most important contributing factor to the death of Homer Stuart May 28, 1926.

In order to accept this contention as established, it is necessary to exercise surmise and conjecture. It must be remembered, however, that the defense is not charged with the burden of proof. The fact that it would require the exercise of surmise and conjecture to accept this contention is not material to ultimate decision.

The contention of claimant that the death of Homer Stuart May 28, 1926, was due to the eye injury of December 12, 1925, is a strain upon credulity. The evidence in support of this contention is appealing and more or less plausible but it would be impossible to hold with this theory without the exercise of a measure of surmise, conjecture and speculation not permitted in such cases. It, therefore, becomes necessary to hold that the claimant has not discharged the burden of proving her contention.

The arbitration decision denying award is hereby affirmed.

Dated at Des Moines, Iowa, this 2nd day of April, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

MEASURE OF DISABILITY—COMMUTATION BY AWARD

C. M. Zahller, Claimant,

vs.

H. C. Matthias & Company, Employer,
American Employers' Insurance Company, Insurance Carrier, Defendants.
Pike, Sias, Zimmerman & Frank, Mr. Frank appearing, for Claimant;
Miller, Kelly, Shuttleworth & McManus, Mr. Frederic M. Miller appearing, for Defendants.

In Review

In this case appeal is taken from the arbitration decision which provides for award.

On July 6, 1927, this claimant sustained injury in automobile collision on his way from the office of his employer to his home.

Defendants contend that the said injury did not arise out of employment as it occurred while claimant was on his way home after completing his day's work. It is the contention of claimant that at the time of his injury he had not completed his day's work and hence injury arose out of and in the course of his employment.

For some three years prior to this accident, C. M. Zahller had been in the employ of Matthias & Company as driver of a motor truck. During all this period this truck had been stored, when out of service, at the home of claimant. It is in evidence that this arrangement was due to the fact that storage capacity was wanting at the plants of the employers and that it was made for the convenience of the employers. It is further in evidence that the employers did not consider the day's work complete until the truck in question had reached its stall in the garage of claimant.

The defendant insurer sees in this arrangement mutual accommodation due to the fact that the claimant is father-in-law of the junior member of the firm of Matthias & Company.

It appears from the evidence that the defendant employer maintained in the city of Waterloo dual headquarters wherein were conducted two branches of firm business. H. C. Matthias, E. H. Matthias and Mrs. Zahller, wife of the claimant, all testify that on the evening of July 6th C. M. Zahller was given a letter or letters or papers by H. C. Matthias with orders to deliver the same to the other firm plant managed by the junior partner, some two miles distant. It so happened that at the second plant the wife of claimant was substituting for her daughter, Mrs. E. H. Matthias, a regular employe temporarily absent, and that on the delivery in question Mrs. Zahller entered the truck with her husband and on the way home the accident occurred.

There is plausibility in the contention of the defendant insurer that arrangement as to the storage of the truck and the proceeding on the evening of the injury wherein claimant calls for wife and takes her home is substantially due to family relationship and mutual accommodation rather than to a strictly business and practical situation. However this must be regarded as conjecture since all evidence in the record, though it is to an extent self serving, is definitely to the effect that the truck was kept at the home of the claimant for business reasons and that the carrying home of Mrs. Zahller was merely incidental to the day's work ending at the garage of claimant, and hence coverage must be assumed.

The record as to the physical condition of claimant is somewhat obscure and perplexing. Dr. Edward L. Rohlf was called to the Presbyterian Hospital the evening of July 6th to care for Mr. Zahller. He testifies that he found him in an unconscious condition and that he was more or less delirious for several days. Examination developed an injured shoulder and more or less of bruising and cutting about face and head. Some six weeks later, hernial development appeared and it was assumed that this was due to the accident in question. The Doctor says the injury to the shoulder resulted in bursitis, which he holds to be the source of the disabled condition of the arm at this time. The Doctor also testifies to some derangement of the hearing though there is no statement as to any definite measure of such loss.

Dr. F. H. Reuling, an eye, ear, nose and throat specialist, upon examination of claimant, testifies in deposition of record that he found "he had a neuritis of the acoustic nerve, both ears, which was much

more marked in the right ear". He further says "there was no impairment of hearing in either ear as to the low tones". He also testifies that this condition does not interfere particularly with ordinary every day conversation. Is not able to say whether or not the ear condition is due to the injury of July 6, 1927.

Dr. G. G. Bickley, in the practice of medicine and surgery at Waterloo, after examination says in part: "I found his complaining of pain in his right shoulder, I found that he had a hernia, inguian hernia, right inguian hernia, I found he had some impairment of his right and left ear, I don't remember which was the worse." Also that claimant "complained of pain, there was no sign of any swelling or discoloration." Further that it was pretty hard to figure out the percentage of disability in the arm and "we said fifty per cent.". Also

"Q. What is your opinion, if Mr. Zahller would exercise his shoulder, whether or not the loss of function that he now has could be materially reduced?

A. I believe in six months' time, with probably passive movements there, they might have to be taken by force, that that shoulder could be absolutely cured.

Q. Could his hernia be repaired by an operation, Doctor?

A. Yes."

Dr. Bickley does not believe the workman suffering from chronic bursitis.

In re-cross examination appears the following:

"Q. I will ask you to state, Doctor, if in your opinion, based upon your examination of Zahller, whether Zahller is a malingerer or not?

A. I think he is a sub-conscious malingerer.

Q. What do you mean by that?

A. I believe there are two kinds, the conscious kind and the sub-conscious kind, the conscious kind, of course, is when they absolutely know they are malinging, and they don't believe it themselves, but the sub-conscious is where they actually believe that they have all of these ailments.

Q. And in your opinion then Zahller is absolutely honest in his belief that he is afflicted with the ailments he described to you?

A. I think he is a sub-conscious malingerer.

Q. You believe he is conscious in his belief in the existence of the ailments?

A. I believe he was conscious of injury in the first place and it has gone on so long it has become sub-conscious."

This evidence was based upon the testimony of claimant wherein he complained of frequent headaches, defective hearing, some measure of lameness in one of his legs, together with his general insistence that his condition was such as to render him totally incapable of earning.

Dr. Rohlf, whose testimony has been referred to, says that while the claimant would not be "able to do a full day's work, that is compared with any other able-bodied man", he could do some work. This evidence appears in direct examination by counsel who called this doctor and whose skillful examination failed to get the consent of the witness to the contention that Zahller is wholly incapacitated.

In this record claimant's Exhibit A is found which shows that after first aid July 6th, Dr. Rohlf, who had the case entirely in charge, made only five visits for which he charged the sum of $18.00.

Claimant's Exhibit B is a statement of account with him by the Synodical Presbyterian Hospital, of Waterloo, in which it appears that claimant was confined to the hospital only eight days. These exhibits do not tend to indicate the serious condition alleged by claimant and counsel since there is no account of any other surgical, medical or hospital requirement.

In arbitration it is held that at the time of his injury claimant became totally disabled and that he is so disabled at this time as a result of his injury and the defendants shall pay to claimant the sum of $10.82 a week from date of injury and to continue such payment during the period claimant is totally disabled.

Dr. Rohlf, a very friendly witness, has said, as shown herein, that claimant is able to work though not an able-bodied man. Incapacity necessarily existing is in the right arm. The only statement as to measure of same is in the evidence of Dr. Bickley, who says it may now be fifty per cent and it is subject through treatment to a return to practically normal function. Account of ear difficulty is too vague for consideration. To the hernia existing is evidently due the lameness to which claimant testifies. This hernia should have been operated and such treatment should not be longer delayed.

It would be most unfortunate for this workman to neglect this hernia and to nurse his symptoms, evidently more or less delusive. Without assuming to hint at malingering, it may be consistently assumed from the record that Mr. Zahller is suffering from neurosis of which many honest workmen, after more or less serious injury, are frequently the victims. What he seems most to need is lump sum settlement on a statutory basis for his actual injuries and the resumption of labor to the extent of his physical capacity.

It is, therefore, ordered that the defendant insurer pay to this claimant the sum of $1,215.25 as fifty per cent loss of function in his right arm and the further sum of $200.00, which will provide surgical and hospital service for hernia operation, together with liberal allowance for confinement occasioned thereby under department rule; also medical and hospital charges already incurred and all costs of litigation herein. Payments due claimant to be in lump sum under statutory provision for commuted settlement.

As so modified, the arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 24th day of July, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Award accepted.

BLACK DAMP NOT PROXIMATE CAUSE OF DISABILITY

Stanko Susick, Claimant,

vs.

Norwood-White Coal Company, Employer,
Standard Accident Insurance Company, Insurance Carrier, Defendants.
Frank A. Dapolonia, and Oscar Strauss, for Claimant;
H. L. Bump, for Defendants.

In Review

This action is brought to establish a compensation claim based upon injury alleged to have occurred in a mine of the defendant employer, January 25, 1927.

In arbitration Stanko Susick was held to have been permanently disabled to the extent of 12½ per cent as a result of injury as alleged and award was accordingly made.

Claimant entered the employ of the Norwood-White Coal Company in 1919, and has since served in various capacities. He had been in service as pump man for about two months prior to the date of the alleged injury. In his testimony appears the following: (p. 8.)

"Q. When you first started to work as pump man, did you notice any difference in your health when you first started to work there at the beginning, did it affect you different than it did when you were digging coal?

A. I didn't notice nothing until that time it caught me.

Q. What time of the day was that you sustained the injury?

A. It was around ten o'clock when I noticed, when I started to go up, blowed up.

Q. Ten o'clock?

A. Yes around ten o'clock.

Q. You say you notice it blowed you up, what do you mean?

A. Blew me up that way, my belly, stomach."

Claimant says he went back to the mine February 14th and worked nine days.

"Q. Then what happened to you?

A. Then the same thing, it smother me down there, so I got to bed again, got worse."

Further along in his testimony:

"Q. Where were you working the day you were injured?

A. I have been coming over there to start the pumps, came through here near that pump.

Q. Which pump were you starting when taken sick?

A. Right here, I was, when I noticed that blew me up.

Q. Where?

A. Seven west."

In testifying claimant referred to a rough plat he had made himself.

Susick says he went at once from the mine to the office of Dr. Channing G. Smith at Granger. The Doctor testifies to a visit on or about the 25th day of January, 1927. Says claimant complained he had breathed bad air. Says: "I diagnosed that case as acute respiratory infection." In his opinion it was caused by bad air. Says "bad air can cause such a condition as he had."

In cross examination Dr. Smith says he based his diagnosis upon the assumption that claimant had been exposed to bad air. (p. 70.)

"Q. Assuming the fact is he did not get any bad air, and that his lamp did not go out, can you account for his symptoms upon any other—

A. Yes, I have had other patients.

Q. On any other grounds, any other reasons?

A. Yes sir.

Q. Might have occurred by reason of catching cold on a sudden change of temperature from below to up above?

A. Have to have other things added to that.

Q. What other things added to it?

A. Sudden chilling of the body with some infection in the upper respiratory tract would get the same symptoms.

Q. So you can account for his trouble on other grounds if the fact is that he did not get any bad air?

A. Yes sir.

Q. And so far as the bad air is concerned, all you know about it is what he told you?

A. Yes sir.

A point vital to the establishment of a compensation claim relates to the fact of actual injury, that is to say a showing that at a particular time and place and in a definite manner some circumstance of employment was the source of disability producing incapacity for earning.

The case of claimant seems to be weak at this point. He alleges that about a certain hour, January 25th, his lamp went out and he "blew up" as he terms it. He does not state just where he was or what he was doing at that particular time. The pump of which he was in charge would seem to have been a few feet, perhaps four or five, off the entry. The pump could be started by a button outside the room. It was sometimes necessary to enter the room for some purpose of repair or readjustment. If any such service was necessary at that time, the record does not show it.

Claimant does not testify that he notified any fellow workmen in the mine at the time of his alleged injury. There is absolutely no corroboration whatever from inside sources as to any accidental injury having occurred at the time and in the manner indicated.

The record would seem to indicate that as a matter of common knowledge among the miners, there had been evidence of black damp in some abandoned mine rooms near the pump in charge of Susick. Louis Martin testifies that after three years of service at the pump in question he was succeeded by Susick. He says that a number of times he came upon black damp in that vicinity. Had his lamp go out a number of times. Had occasional headaches. Never was disabled nor consulted a doctor, merely went from the room into the entry for fresh air.

Charles Bauttani, says he has for some time past been pump man, a position he had previously occupied more or less. His testimony is broken from evident lack of understanding of the language and difficulty of expression but he would seem to have suffered no inconvenience from poisonous gases.

Nothing is submitted to show that any man in the mine had ever suffered from black damp.

Susick testifies that he had been taking care of this pump for "a little over two months, maybe three." Says that previous to the 25th of January "I didn't notice nothing."

By a singular coincidence this mine was under examination by Edward Sweeney, for twenty-six years state mine inspector, on January 25, 1927, apparently at the very hour when Susick claims to have sustained his gas poisoning. His evidence at the arbitration hearing is to the effect that in accordance with his usual custom he carried an oil lamp on his trip about the mine, as oil is more sensitive to bad air than the carbide light in common use by miners. He would seem to have been along the entries of the mine, even the very entry and near the point where Susick was performing his pump work. Asked if he detected any black damp, his reply was "Not sufficient to notice it, pay any attention to it." He

was accompanied by a mine foreman. At the room opening where damp was alleged to exist he asked: "What have you got here?" The foreman said: "A pump." Sweeney says "I stepped in there a few steps and walked out to the bottom and came home." He says the ventilation in the intake and outtake in the airway supplying that quarter of the mine "Was entirely satisfactory. That was mentioned in the report." Further "I will say this, I know along that entry there was not sufficient black damp to hurt anybody." Later: "might be sufficient to gas him if he goes back in thirty or forty feet." Nothing in the record would indicate any need on the part of the pump man to enter the mine room to which this evidence seems to apply, more than a very few feet if indeed entry were at all necessary.

Close scrutiny proves it to be exceedingly difficult to understand exact locations and situations involved in the alleged injury. The claimant testifies from a plat of his own making. Exhibit "D 1" is a plat submitted by the defense. Each seems of little value in elucidating details of evidence. It is clear, however, that the record in relation to situations, conditions and circumstances does not adequately support the history given by claimant as to the source of his existing disability.

It has been made to appear that Dr. Channing Smith diagnosed the case of Susick when he called upon him on or about the 25th of January, 1927, as infection produced by black damp. As has also been shown, this diagnosis was based wholly upon the report of claimant that he had just suffered such exposure. The Doctor frankly states that without such assumption as to exposure the condition might have been easily accounted for on other grounds.

A number of other doctors testify. None of these go further than to state that the condition of Susick *might possibly* be due to black damp. Query on the part of counsel for claimant would seem to indicate that he assumed such evidence to be a substantial element of support. Of course, in discharging the burden of proof, it is not only necessary to show that disability might possibly be due to a certain cause but that it actually is due to the same.

We are not permitted to surmise, conjecture or speculate in reaching a conclusion in such cases of alleged personal injury. A preponderance of evidence is necessary to establish the claim of the workman and such preponderance is not shown in this record.

The arbitration decision is reversed.

Signed at Des Moines, Iowa, this 4th day of April, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Pending in supreme court.

ELECTROCUTION—DISOBEDIENCE OF ORDER NOT ESTABLISHED

Mrs. Frances Sokol, Claimant,

vs.

W. G. Block Company, Employer,
Federal Surety Company, Insurer, Defendants.
Lane and Waterman (James J. Lamb appearing), for Claimant;
A. R. Kroppach, for Defendants.

In Review

Joseph Sokol, deceased husband of this claimant, lost his life by electrocution in the employ of the defendant company February 4, 1928. Arbitration decision filed April 30, 1928, carries an award to this dependent widow in the sum of $14.02 a week for a period of 300 weeks, together with statutory burial benefits and the costs of litigation.

At the time of this accidental death, the defendant W. G. Block Company was dealing in gravel, sand and coal. The accident occurred at its yard No. 2, located at City Island in Davenport. Sokol lost his life in an endeavor to turn on electric power used for the purpose of loading products handled from big piles in the yard to trucks of the Block Company.

It is the contention of the defendants that in the process of handling this electric switch, the deceased workman was outside the zone of his employment, wherefore the accidental death did not arise out of his employment by the defendant employer. In support of this contention, it is alleged that Sokol had been employed under definite instructions to avoid use of the electric switch, that he had not hitherto used the same, and that it was understood the switch was to be handled by designated employes and none other.

It is the contention of the claimant that no hard and fast rule had been laid down in which Sokol was under orders not to turn the switch.

In taking the witness stand, Herman W. Besser qualifies as superintendent of yards for the W. G. Block Company. He says he employed Joseph Sokol Saturday morning, January 21st, with the understanding that he should begin work the following Monday, as he actually did. Asked "Now what did Joseph Sokol do at Yard No. 2 as a laborer?", the reply was "Well, everything that is in lines of shoveling coal, sand, gravel, handling cement—"; later saying "in fact, anything that needed to be done it was up to Sokol to help do." Continuing:

"Q. Now I will ask you to state whether or not you know the custom which obtained at Yard No. 2 with respect to turning on the switch on the sand loader?

A. It has been the custom of anyone to turn it on. As a rule outsiders come in there but Fisher was supposed to when he was around and to handle that part.

Q. But if Fisher was not there it was the custom not to hold up operations until somebody found Fisher?

A. Yes, sir.

Q. I will ask you to state whether or not you told Joseph Sokol or instructed him not to turn on any switch at Yard No. 2 at the time you employed him.

A. I instructed him; I warned him to be careful not to monkey with switches until he had orders or got acquainted.

Q. Now that was the extent of your conversation with him with reference to switches?

A. In reference to switches and danger of dump cars, etc."

Martin Fisher, yard foreman, testifies that it was understood that Sokol was to do "any work that was to be done in the line of shoveling coal, sand or gravel or whatever he was asked to do." In his evidence appears the following:

"Q. I will ask you to state, if you know what the general custom was at Block yard No. 2 on City Island in Davenport, Scott County, Iowa, with reference to turning on the switch which operated that loader.

A. Well, the man that generally worked around there and myself or any of the yardmen that worked around there would turn the loader on and generally the drivers when they got off on that side turned it on.

Q. Then it was the custom for the man who worked around there that had anything to do with the loader to turn the switch on or off?

A. Yes, sir."

It is well established that employment orders may serve to deprive a workman of compensation coverage in case of gross disobedience. It is definitely understood, however, that in order to penalize a workman for such disobedience, the rule in question must be well enforced. A rule announced and quite commonly violated cannot serve to affect the relations of workmen to compensation in case of injury occurring in connection with disobedience.

In arbitration defendants interrogate Superintendent Besser upon statements in an affidavit he had previously made, tending to show stronger instructions against using the fatal switch than was admitted from the witness stand. Nothing appears in the record, however, indicating that if imperative orders had ever been given for anyone not to use the switch, it was commonly used by those who happened to be in its vicinity at the time power was needed.

This record plainly shows that it was usually assumed to be the duty of Fisher to turn this switch. It plainly appears, however, that in his absence the switch was turned by others in the employ even including the truck men backing up for a load from the conveyor.

It is alleged that since this workman had been in the employ of the Block Company for a period of only two weeks and that he had had no definite instructions as to the use of switch, it was therefore assumed he was violating a rule in the use of the switch. It appears, however, that no provisions were made for the instruction of any of the numerous persons, including teamsters and truck men who commonly used the switch in case of need. It is not to be assumed that these teamsters and truck men could more safely manipulate the switch than a workman who had been constantly in more or less intimate contact with the same during every working day for a period of two weeks. It was a rainy day and the fatal accident was evidently due to the fact that the gloves of Sokol were wet at the time of contact with the switch and not because of his carelessness or ignorance.

The record fails to show:

1. That the deceased workman had been forbidden to turn the switch.

2. That the use of the switch was confined to anybody in particular.

3. That no existing rule of employment denied the right to turn the switch to anybody engaged at the Yard No. 2.

4. That under the facts disclosed nothing in connection with this untimely death tends to exclude the wife of Joseph Sokol from compensation benefits provided by statute.

Wherefore, the arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 31st day of May, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

COMMUTED SETTLEMENT HELD ABSOLUTE BAR TO READJUSTMENT OF COMPENSATION CLAIM

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 Reopening 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 had 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.

No appeal.

AGRICULTURAL EMPLOYMENT—NO JURISDICTION

Edna L. Hagen, Claimant,

vs.

H. G. Hagen, et al., Trustees of Farmers and Merchants Bank, Employers, The Fidelity and Casualty Company of New York, Insurer, Defendants.

Wm. S. Hart, H. Haehlen, for Claimant;
Carl F. Jordan, for Defendants.

In Review

The arbitration decision, dated May 14, 1927, holds: "That at the time of the fatal injury suffered by Arthur N. Hagen, he was engaged in an 'agricultural pursuit' within the meaning of the compensation law."

The deceased, Arthur N. Hagen, at the time of his fatal injury was under contract with the Trustees of the Farmers and Merchants Bank of Waterville, Iowa, for the operation of a threshing machine owned by said trustees and to be employed in threshing grain for many farmers in the vicinity of Makee Township, Allamakee County. August 7, 1926, while starting the engine supplying power to this threshing machine, Hagen sustained injuries which caused his death August 20, 1926.

It would appear from the record that in July of 1926 a policy of insurance was issued by this defendant insurer to the aforesaid board of trustees specifically covering the employment in which the husband of this claimant lost his life. It furthermore appears that this policy was issued with the distinct understanding, on the part of the assured, at least, that they would be protected against any injuries arising out of this employment.

It is the contention of counsel that this contract of insurance is binding upon The Fidelity and Casualty Company, any exceptions or exemptions in the compensation law of the state of Iowa to the contrary notwithstanding.

While this proposition would seem to be morally sound, it is utterly without support in the statute. Under the holding of the supreme court of the state of Iowa, there would seem to be no ground for the consideration of any qualification whatever of the statutory provision placing agricultural pursuits in the class of employments exempted from compensation coverage. It is so held distinctly in

Slycord vs. Horn, 162 N. W. 253

Also in

Oliphant vs. Hawkinson, 183 N. W. 805.

Hillman vs. Eighmy, et al., 208 N. W. 928, is submitted in support of claimant's contention. Sub-section 3 of section 102.05 of the Wisconsin statute provides:

"3. Any employer who shall enter into a contract for the insurance of the compensation provided for in sections 102.03 to 102.35, inclusive, or against liability therefor, shall be deemed thereby to have elected to accept the provisions of sections 102.03 to 102.35, and such election shall include farm laborers and domestic servants if such intent is clearly shown by the terms of the policy."

This statutory provision makes the Wisconsin decision cited wholly consistent, in fact absolutely necessary, but the said decision is of no value whatever in this case because the Iowa statute contains no such provision as that quoted or any provision whatever upon which such holding could be based.

It therefore becomes necessary to hold that, since the fatal injury of the deceased Hagen occurred in employment excluded from compensation coverage, no further consideration can be given this claim by the Iowa Industrial Commissioner.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 20th day of December, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Pending in district court.

DEATH DUE TO INJURY NOT TO NATURAL CAUSES

Mrs. Florence Carey, Surviving Spouse of John C. Carey, Deceased, Claimant,

vs.

Rutledge Coal Company, Defendant.
John T. Clarkson, and R. U. Woodcock, for Claimant;
Heindel and Hunt, W. A. Hunt appearing, for Defendant.

In Review

In arbitration at Ottumwa December 7, 1927, award was made in the sum of $15.00 a week for a period of 300 weeks.

May 16, 1927, John C. Carey, husband of Florence Carey, was found dead in the coal mine of this defendant. Its manager, John Howard, testifies that he saw the deceased at his work as usual about 11:30 o'clock on the day of his death. About an hour later he ran across his body in the mine room quite dead under a chunk of slate that had fallen from the roof of the mine. He thinks the mass of slate was about four feet long, two feet wide and a foot thick at the biggest part of it. Says "it would weigh in the neighborhood of three or four or five hundred."

It is the contention of the defense that the claimant has failed to prove by preponderance of the testimony that this death was due to or in any way grew out of an injury in the course of employment; that the facts are just as consistent that Carey "died of heart disease or acute indigestion or apoplexy"; that "the slate fell upon him after his death."

There can be no dispute as to circumstances as stated in the testimony of John Howard. He speaks as manager of the Rutledge Coal Company, the sole defendant in this case. Hence it is conclusively shown that at 11:30 on the day of his death John C. Carey was at his usual work as miner and that at 12:30 his dead body was found under a mass of slate weighing from three to five hundred pounds which had fallen from a height of some six feet.

These facts make for the claimant a prima facie case. The record is searched in vain for evidence in rebuttal tending to disturb this status.

The defendant further contends that the award of $15.00 a week to this claimant, Mrs. Florence Carey, is not justified by the record. Most of the time during this working engagement, the deceased did not work alone. Howard testified that "Mr. Carey and his son, Alf, worked as partners, practically all the time he worked for me." It was the practice to divide equally the joint earnings of this father and son. It is not denied that one-half of these joint earnings afford basis for maximum compensation. Defendant contends, however, that because of his age the labor contribution of the father did not justify such division; that it was due to generosity on the part of the junior partner.

The deceased was sixty-eight years old. There is little evidence as to failing powers and diminishing earning capacity. The son, Alf Carey, says the father did his full share of the work. The necessary work to perform was drilling, timbering, disposing of slate, shoveling coal toward the car and shoveling into the car. It is admitted that shoveling into the car is the heaviest of the work; that the son did most, although not all of it. The father, besides handling the slate and doing the lighter

shoveling, did the drilling and timbering, in which performance he was especially expert because of his long mine experience. It appears that for many years in the division of work, drilling and timbering had been his especial job. On the whole it would seem that John C. Carey earned, with strength and skill, the share of joint earnings he received.

It is, therefore, held that:

1. Facts and circumstances of record relative to the death of John C. Carey bring the case of claimant definitely within the coverage of the compensation statute.

2. The earnings of John C. Carey prior to his death in this employment justify the maximum compensation payment of $15.00 a week.

The arbitration decision is affirmed.

Signed at Des Moines, Iowa, this 27th day of January, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. Pending in supreme court.

HEART TROUBLE HELD DUE TO HEAVY LIFTING

Daniel F. Lanning, Claimant,

vs.

Iowa Dairy Separator Co., Employer,
The Fidelity & Casualty Company of New York, Insurer, Defendants.
Mears, Lovejoy, Jenson & Gwynne (Mr. Lovejoy, appearing), for Claimant;
Carl F. Jordan, for Defendants.

In Review

Arbitration hearing at Waterloo November 7, 1927, resulted in the decision that claimant had failed to discharge the burden of proving that existing disability arose out of and in the course of his employment by the defendant.

This claim is based upon the contention of Daniel F. Lanning that heavy lifting under the direction of his employer on or about June 8, 1927, is the source of disability developing a few days later which deprived him of earning capacity.

It is the contention of the defendant insurer that existing disability on the part of the claimant cannot be shown to have arisen out of his employment by the Iowa Dairy Separator Company. Evidence is introduced, tending to show that heart trouble and other infirmities involved in this disability cannot be due to any incident of employment as alleged by claimant.

Circumstances in this connection are substantially as follows:

At the time of his injury Lanning had been in the employ of the Iowa Dairy Separator Company for a period of about sixteen years on the same identical drill press. On this day he was requested to assist in moving a machine being introduced into the plant. He says it weighed "close to two tons." With the aid of one of the workmen he was endeavoring to lift one end of this great weight. The first attempt failed to budge it. The second lift had the same result as to movement and at this time, as stated by claimant, he "felt an awful feeling right in there" (evidently indicating the chest area). This was about eleven o'clock A. M. He

worked until noon at his machine, going home, a distance of five blocks, to lunch. The workman and his wife both testify that he complained at home of considerable distress and stated "I believe I strained my heart." He worked in the afternoon, also on Friday and Saturday next succeeding. The doctor was called Monday morning. For some days doubt was entertained as to the cause of distress and disability but it soon became evident that heart and kidney trouble was involved.

At the arbitration hearing Dr. W. E. Wolcott, of Des Moines, was examined at length and his evidence tends to support denial of obligation on the part of the defendant. He says the history of the case is "the story of a heart that is worn out; that has broken compensation" and is of the opinion that existing disability is not due to the injury as alleged by claimant.

Dr. W. H. Bickley, of Waterloo, testifies he made examination of claimant the one time he had seen him. Says "He was suffering at that time from an incompetent heart; a weak, failing heart." The existing condition he "had every reason to believe was the result of a long standing chronic condition—chronic heart condition, chronic Bright's disease, or whatever you may call it, with symptoms that come on gradually over a period of time." Admits that "all kinds of men of his age with weak and inefficient heart go along the road to being worn out are able to go on with their work and would be able to go on for some time to come."

Dr. E. T. Alford, of Waterloo, examined the claimant on or about the 14th of July, 1927. He says "We decided that he was suffering from a broken compensated heart. That is, the heart had undergone a break in its compensation; it couldn't carry on its compensation and had simply worn out and quit." Does not think that the lifting referred to had anything to do with existing physical conditions.

Dr. Rohlf had been family physician in the Lanning family for many years. He was called to the Lanning home on the Monday following the alleged injury and has been in charge of this case ever since. He at first found it difficult to arrive at a conclusion as to the exact character of physical ailment. His early impression was that some liver trouble existed. About a week later he discovered the existing heart impairment. Dr. Rohlf said the man "had been perfectly well and working every day until about the 8th or 9th of June" the date of the heavy lifting. Thinks the heart was injured by this strain and believes existing disability to have had its origin in this source. Is of the opinion the workman might have had pre-existing heart trouble and rather expected he had, though it had not been apparent even to the man himself.

Dr. C. W. Ellyson, of Waterloo, examined Lanning about August 3rd. He thinks present condition of claimant is due to the incident of lifting as alleged. The doctor is of the opinion that "a man who had a worn out heart or even a man who suffered from Bright's disease, that condition might run on for some time, and he be able to work as a machinist for some time having those ailments." Furthermore a man "can have a weakening heart that does not go all at once. It does not enlarge all at once."

The review hearing at the Department May 21st developed substantial

support in medical evidence to this claim. Dr. W. L. Bierring, of Des Moines, a physician and diagnostician of wide reputation, was called by claimant. The record shows that at a hospital clinic held at Waterloo January 5, 1928, Daniel F. Lanning was thoroughly examined by Dr. Bierring as the basis of a lecture to assembled physicians. In this connection he also acquired a history of the case. In his testimony appears the following: "One can properly assume that when this extra exertion or strain was carried out, some damage was done to the heart. One can further assume that this damage was something disturbing the circulation of the heart itself; * * * The first signs of heart failure followed soon after this onset of stomach trouble and, therefore, I would be of the opinion that that increased physical strain led to a sudden disturbance in the heart muscles which gradually increased so that the heart may have become dilated so that it was unable to properly propel the blood and in consequence the man gradually showed the signs of a retarded, disturbed circulation."

Questioned as to conditions following acute dilatation of the heart, the doctor stated "Again I say we are speaking about two conditions. An acute dilatation, as you started out to talk about, is a general spreading out of the heart and if we are referring it to this particular case in point, I do not think that is what happened." It is the opinion of this witness that the fact that claimant continued his work for two or three days, going back and forth to his home, does not tend to disturb the contention that this disability grew out of the lifting strain as alleged. The witness makes it clear that in his opinion no inconsistency is shown in the assumption that disability existing since is in all human probability due to the lifting incident of June 8th or 9th, 1927.

Dr. M. M. Myers was called by the defense. The doctor has made a specalty of practice in cases of heart affection of every kind. He is now president of what is known as the Iowa Heart Association. In direct examination he states "I do not believe that the fact that the man made no unusual complaint in the period following this strain would rule out the possibility of the strain having had immediate bearing on the condition. As I have listened to the testimony here of Dr. Bierring, never having examined the patient myself, I am inclined to feel that the exertion which the man underwent was probably a factor which brought about the acuteness of his heart symptoms. My feeling is that this man probably had chronic arterial changes in the heart, possibly some previous high blood pressure, possibly a certain amount of kidney disease for some months or years before this strain that is mentioned and that the exertion of the strain was probably the thing that brought on the acute symptoms."

The witness says further: "It was probably a progressive disease and, as I have said, one that had been developing over a period of years no doubt."

"Q. Doctor, could a physician, an expert, determine from the examination of a man in the condition in which this claimant was in in January, 1928, accurately determine as to whether or not a piece of unusual lifting in the June before was the cause of the man's injury and condition?

A. I do not believe any physician would want to say positively that that would be the case but after an analysis of the history, I think he

would be free to assume that that was probably the cause of it. I do not think any physician would want to say positively."

Testifying for the defense, Dr. Wolcott makes no scientific or professional contribution. He asserts the opinion, suggested nowhere else in the record, that "this fellow" as he termed claimant, is trying to put something over.

During the sixteen years of his engagement with this employer, working at an identical machine, Lanning had been in steady service practically uninterrupted by physical conditions. This must be assumed, as it is definitely alleged and in no sense denied. With this record continuing to June 8th, he was at this time asked to assist in lifting a heavy machine. It weighed, he says, some two tons, and with the assistance of a single fellow workman he was trying to lift one end of this enormous weight. If any of these statements are untrue, it is easily within the knowledge of the employer and since no denial is made, these allegations of claimant must be accepted as true. Counsel does not assume to state that this heavy lifting did not occur, in fact he frequently gives evidence of confidence in the story of claimant as to case history in this connection. He relies on the contention that claimant fails to establish this lifting as the source of this existing disability.

All through this record is manifest a determination on the part of counsel to treat the heart condition disclosed as a case of "acute dilatation." There would seem to be no substantial basis for such assumption. It appears that all the doctors agree that in such cases break-down is immediate and serious consequences are of early development. There is a mass of medical testimony, nearly, if not quite, all doctors agreeing that this is a case of manifest heart failure of more or less gradual development, that while dilatation occurred, it did not classify as "acute." At least one medical witness, testifying for the defendants, says it shows the history is of a "worn out heart." All medical evidence tends to show that in all probability the heart and perhaps the kidneys had been affected more or less for a considerable period. This evidence is stressed by the defendants as a substantial element of defense. The well established rule is, however, that regardless of pre-existing conditions, tending to promote disability sometime in the future, disability immediately resulting from some specific incident of employment which so aggravates, exaggerates or develops these conditions as to terminate earning and but for which earning would continue indefinitely, statutory obligation is imposed upon the employer.

The record justifies these conclusions:

Up to the 8th or 9th of June, 1927, this workman was in possession of full earning capacity. At this time, as arising out of his employment, he endured a very serious physical strain. The preponderance of medical evidence supports the contention that this strain tended so to increase and develop this incipient heart trouble as to destroy industrial usefulness of the workman. Such evidence strongly supports the contention that but for this heavy physical strain of lifting, earning capacity on the part of claimant would have continued indefinitely.

The defense relies substantially upon the fact that during the several days intervening as between the lifting incident and the collapse of

Lanning, he registered no complaint among his fellow workmen. This fact might be regarded as significant though by no means controlling. It cannot overthrow a case having so much affirmative support and explanation is not required in justification of award. If it were, these suggestions are uppermost in the judicial mind. It is a matter of common knowledge that many workmen feel it to be unmanly, if not cowardly, to complain of physical ills and particularly if conditions are more or less obscure as in this case in its early stages. Furthermore: This man was sixty-seven years of age. In common industrial experience he was doubtless apprehensive of separation from his steady job. He was mindful of the fact that at this age the workman is usually under the watchful eye of industrial expedience and self interest. He hoped to pull through this trouble and was loth to expose himself to suspicions of failing powers while there was a possibility that he might continue in regular employment.

On the entire record it must be held that existing disability on the part of Daniel F. Lanning arose out of his employment by the Iowa Dairy Separator Company and, accordingly, the arbitration decision is reversed.

The record shows the average weekly pay check to Lanning to have been $20.40. Since his injury he has had no earning capacity whatever. It is, therefore, ordered that the defendants pay to the claimant the sum of $12.24 weekly from the date of injury to the present time, such payments to continue while claimant shall be totally disabled from earning. Defendants are further charged with statutory medical obligation, together with all the costs of this action.

Dated at Des Moines, Iowa, this 28th day of May, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Settled.

DEATH FROM HEART TROUBLE HELD DUE TO INJURY

Theresa Davis, Widow, Claimant,

vs.

The Pelletier Company, Employer,
American Mutual Liability Insurance Company, Insurance Carrier,
Defendants.

Jepson, Struble, Anderson and Sifford, for Claimant;
Snyder, Gleysteen, Purdy and Harper, for Defendants.

In Review

On the 10th day of April, 1925, D. F. Davis, husband of the claimant herein, sustained serious head injury in an automobile accident. Compensation obligation on the part of the defendant insurer was denied but in arbitration decision filed March 29, 1926, payment was ordered on the basis of $15.00 a week from date of injury to continue indefinitely.

February 15, 1928, the death of D. F. Davis occurred. Payments had been made without interruption until this date but the insurer refused further payment to the widow of the deceased on the ground that the death of her husband was not due to the accident of April 10, 1925.

Arbitration of issues involved occurred April 13, 1928, wherein it was held that the deceased came to his death on account of injury as aforesaid.

It would appear from the evidence that injuries resulting from the accidental collision April 10, 1925, were unusually serious. Medical and hospital bills aggregated more than $900.00. Previous to said accident the workman had a record of long continued service in the employ of The Pelletier Company, practically uninterrupted by physical ailment. After the said accident he never resumed physical labor of any kind and weekly payment of compensation without protest for a period of a year and a half is proof of total incapacity for earning on the part of the deceased.

The transcript of evidence taken at the previous arbitration hearing was by stipulation made a part of this record.

At the previous hearing D. F. Davis testified that he had a working record practically without a break of thirty-four years.

Testifying for claimant Dr. Runyon says he examined Davis some six months prior to the accident upon which this claim is based. He says that, barring a local trouble in no way contributing to subsequent disability, at this time "he was for a man of his age in excellent health." Dr. Runyon attended Mr. Davis as his physician practically from the date of the accident until the time of his death, seeing him much of the time upon an average of once in every two weeks at least. This witness testifies positively to the belief that the injury sustained in the automobile accident April 10, 1925, was the cause of death. The death certificate made by this doctor gave cerebral embolism as the immediate cause. In cross examination he says he had treated him for "a decompensated heart." Asked if Mr. Davis would probably have died just as soon as he did if he had never had an accident, the doctor replied, "No, absolutely not, no."

Dr. G. W. Koch testifies on behalf of the defendants. He had examined the deceased "July 27, 1925, and August 20, 1926, and there was one, I think the date was March 25, 1926." Says Mr. Davis was suffering from "Arteriosclerosis, general arteriosclerosis, broken heart compensation,". Asked if deceased "would have lived any longer than until February 15, 1928, if he had not been in this automobile accident," the reply was "I don't think it would make any difference at all."

In cross examination appears this testimony:

"Q. You won't say that the automobile accident that he had wouldn't be a contributing factor would you, Doctor?

A. I would say this about it, I would say that the automobile accident contributed to his breakdown in the beginning, but I wouldn't say that it contributed to his death, because be lived longer than we had expected him to live at any time, he made a partial recovery, his heart compensated partially, never perfectly, after the automobile accident."

There appears in the record the deposition of Dr. Arch F. O'Donoghue on behalf of defendants taken April 14, 1928. The doctor had examined the deceased June 10, 1927, and found him suffering from "a very severe cardiorenal disease, high blood pressure, and decompensated heart, partial spastic paralysis on the right from a stroke of apoplexy which he had sustained about eighteen months prior to my examination." The deceased, he says, gave a history of the automobile accident hereinbefore referred to. Witness does not think said accident "had anything whatever to do with his death on February 15, 1928." He testifies that he believes Davis would have died before he did but for the accident in that this gave him "absolute rest from the date of the accident prolonged his life."

From the record it must be assumed that, prior to the accident of April 10, 1925, D. F. Davis performed the service and gave substantial evidence of full working capacity. The undisputed evidence of Dr. Runyon, in intimate connection with this case from the beginning, affords substantial support to this conclusion.

In saying that the accident in question did not contribute to the death of Davis and that he "lived longer than we had expected him to live at any time," Dr. Koch tends to strengthen rather than to weaken the case of claimant.

The theory of Dr. O'Donoghue that the accident to claimant merely afforded him a rest and some measure of prolonged existence cannot be considered as affording any adverse weight.

The conclusion is irresistible that in the accident of April 10, 1925, is definitely lodged the cause of death of D. F. Davis February 15, 1928.

Wherefore, the arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 30th day of July, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HEART TROUBLE—AWARD—NEUROTIC INVOLVEMENT

M. O. Clemmons, Claimant,

vs.

Tama County, Employer,
The Fidelity & Casualty Company of New York, Insurance Carrier,
Defendants.

James H. Willett, of Tama, for Claimant;
Carl F. Jordan, of Cedar Rapids, for Defendants.

In Review

While assisting in the work of transferring I-beams in the employment of Tama County, on or about July 31, 1926, this claimant sustained disabling injury.

Dr. H. C. Woods was called into the case August 2nd and was in attendance for five days. Called by defendants, he testifies that Clemmons gave him history as stated herein. There was evidence of weakened heart condition and some general soreness of the chest and shoulder. Thought injury of the sort sustained might cause a temporary heart irregularity, but seemed positive as to the improbability of permanent disability from this source.

Dr. M. L. Allen was called August 7th. Testifying for claimant he says he found the patient "in a state of extreme prostration." He was "very tender of the extension of the pectoralis minor muscle and had an acute dilation of the right heart with considerable tri-cuspid leakage."

Ordered patient kept in bed and perfectly quiet. Two nurses were put on the case. To the question whether he "could attribute his condition to an accident or injury on or about that time or just prior thereto," the answer was: "That was my idea after the examination." In cross-examination, however, the doctor said: "In considering all of these facts that have come to light since, and reviewing his condition at the time, I will have to say that it could have been caused from conditions other than the injury, though the injury might have been a factor in bringing it about." By August 30th the claimant was able to walk around by being careful. Discharged case October 11th.

As Defendant's Exhibit No. 10 is identified in the record a report of Dr. J. W. Martin, dated December 9, 1926, which concludes:

"From the physical examination I am unable to connect up this man's condition with his alleged injury. The rapid heart and slight increase of the metabolic rate with hypertension is indicative of some disturbance in the thyroid. The increased dullness of the liver could be due to passive congestion or an underlying gall-bladder trouble. It seems to me his present trouble is out of proportion to the injury received."

Claimant's Exhibit No. 9 is an examination report of Dr. O. J. Fay under date of January 6, 1927, in which appears this conclusion:

"It is not possible categorically to affirm or deny relationship between the accident and the symptoms now complained of. It seems to me, however, that the symptoms complained of, are out of all proportion to the severity of the injury, and for this reason believe that they do not bear the relationship of cause and effect."

Careful analysis of all medical testimony gives little, if any, support to contention of claimant that the disability alleged to be due to the accident of July 31st continued far beyond the date of injury. The statements of claimant are grossly inconsistent as to injury and physical impairment antedating January 31, 1926. He gives evidence of exaggerating the measure of his disability either from neurotic tendency or otherwise. The date at which he seems to have felt able to resume work appears to be coincident with the season of preparation of hotbeds, which had engaged him for a number of springs last past, and the inference is suggested that in the absence of desirable employment he was able to perform remunerative labor at a date much earlier.

In arbitration it was held that claimant was entitled to compensation at the rate of $12.00 a week from July 31, 1926, to March 1, 1927, together with statutory medical, surgical and hospital benefits.

In review this decision is modified by fixing the date of recovery from disability occasioned by the accident of July 31, 1926, at December 1, 1926, instead of March 1, 1927, reducing the sum of compensation due from $363.43 to $204.00, statutory medical, surgical and hospital benefits to terminate October 11, 1926, the date at which Dr. Allen discharged the patient. As so modified the arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 14th day of June, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Settled.

EMPLOYMENT RELATIONSHIP ESTABLISHED

Mrs. Lucille Franklin, Claimant,

vs.

C. M. Bell, Defendant.
Drake and Wilson, for Claimant;
Matthew Westrate and C. J. Rosenberger, for Defendant.

In Review

On the 29th day of December, 1926, Robert Franklin, husband of claimant, was riding in an automobile owned and driven by the defendant when an accident occurred, resulting fatally to Franklin.

C. M. Bell denies that at the time of this accident the relation of employer and employe existed between the deceased and himself, and hence he contends that he is not held in obligation under the compensation statute.

In arbitration at Muscatine November 17, 1927, award was made on statutory basis as appears of record.

The defendant is a cement vault manufacturer. Robert Franklin entered his employ in July, of 1926, first on a per diem basis, and a little later at a weekly wage of $20.00. It is contended by Bell that at the time of this death a new deal was in effect whereby Franklin was to make vaults at piece work, receiving a specified sum for each completed structure, material to be furnished by defendant.

Claimant admits that such a deal had been agreed to but that it was not yet in effect, in fact that it would not have been operative until along in the spring following. Moreover she testifies positively that after the death of her husband Bell stated to her he did not carry compensation insurance and specifically admitted personal compensation obligation.

Richard Lawson, brother of the claimant, testifies that while living in her home awhile after the death of Franklin, he heard conversation between Mrs. Franklin and Bell in which the latter admitted his obligation under the compensation statute.

James T. Sissel, assistant superintendent of the Prudential Insurance Company, testifies for claimant. He says that in a conversation with him a short time after the death of Robert Franklin, Bell admitted that the deceased was working on a salary basis but that "he expected to go on a commission basis soon". Says defendant admitted he did not carry compensation insurance.

Called by claimant, B. H. Ballew testifies that in conversation with Franklin on the 24th day of December, 1926, the deceased informed him that he "aimed at making vaults on contract or by piece work in the spring".

All statements of witnesses for claimant material to this case are denied by the employer.

Frank Ditto, who is and has for some time been in the employ of Bell, testifies in support of the defense.

It is a rule well settled that in order to establish a claim for compensation it is necessary in an involved situation to submit evidence more consistently in support than is submitted in opposition to an award; that a preponderance of the evidence means merely that "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 close scrutiny of the record in this case this rule is held to support the case of claimant.

The evidence of claimant herself bears evidence of good faith. From the record it seems inconceivable that she is guilty of constructing a case out of mere fabrication. Her contention is substantially supported by at least two witnesses evidently without interest or bias. The testimony of the defendant is contradictory, inconsistent and inconvincing. His contention that the contract changing his relations with the deceased took effect on December 6, 1926, is weakly supported by his own evidence and conduct. He continued to pay the deceased on the basis of the old wage schedule. He says that in dealings under the alleged contract the deceased owed him more than $30.00 but he sends the widow the regular weekly wage after the death of Franklin. This may merely mean kindness, but it would seem to mean something quite otherwise in practical analysis of the whole range of circumstances.

The contention that at the time of his death Franklin was in the employ of the defendant at a weekly wage of $20.00 is far more consistent, more inherently probable, than that he had entered upon a new contract, tending to suspend weekly payment and place earnings on a commission basis.

At the time of this fatal accident the defendant and the deceased were returning from the cemetery where they had been engaged jointly in installing a burial vault. The defendant alleges that in connection with the alleged contract, the parties were to help each other in some features of vault installation by an exchange of labor. He states that just before this fatal trip at his request Franklin had gone with him to the cemetery to aid him in some work there incumbent upon defendant to perform.

Counsel for defendant evidently admits this incident as the introduction of a new factor of employment relationship. He devotes a good share of his argument and his brief to defense against any claim arising from this particular circumstance. While denying any obligation on the part of Bell in this connection, he says that if any liability might seem to exist due to this situation it is to be entirely dismissed from consideration for the reason that the employment was of a casual nature.

Counsel submits as his chief reliance in support of this contention the decision of the Supreme Court, in definition of casual employment, in the case of *Herbig vs. Walton Auto Co.*, 182 N. W. 204. The conclusion of the Supreme Court was, of course, entirely sound and necessarily final, based upon the statute then in effect, but since that time the language of the statute quoted by the court as applying to casual employment has been radically changed.

Under the law since the new Code went into effect, in October, 1924, there is no such thing known to compensation jurisdiction as casual employment, where the workman was engaged in any activity "for the purpose of the employer's trade or business". An employer is now as firmly bound to a workman injured in his service where he has been working an hour and had only another hour to work, as where he was under unlimited contract for service, providing the work at which he was engaged at the time of injury was for the purpose of the employer's trade or business. There is no doubt in this case but the work at the cemetery on the day of this death was in connection with the trade or business of C. M. Bell.

Finally it is held that:

1. For some time previous and at the date of his accidental death Robert Franklin was regularly in the employ of C. M. Bell.

2. If the record may be made to show this conclusion to be unjustified, the particular circumstances of employment of December 29, 1926, closely related with this accidental death, show C. M. Bell and Robert Franklin to have sustained the relationship of employer and employe at that particular time.

The arbitration decision is affirmed.

Signed at Des Moines, Iowa, this 16th day of February, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

KILLED RETURNING FROM WORK—AWARD DENIED

Elizabeth Holub, Claimant,

vs.

Edwards Brothers, Employer,
Maryland Casualty Company, Insurance Carrier, Defendants.
L. E. Corlett, for Claimant;
Davis, McLaughlin & Hise, James C. Davis, Jr. appearing for Defendants.

In Review

In this review action Elizabeth Holub appeals from an arbitration decision denying award.

The transcript of evidence discloses these circumstances:

In the course of his employment by these defendant mine operators, February 9, 1926, Joseph Holub, husband of this claimant, lost his life under the wheels of a motor truck. The question arises as to whether or not this death in a statutory sense arose out of employment.

The mine of the employers is located several miles distant from the city of Oskaloosa, the home of the Edwards Brothers, and of the deceased, at the time of his accidental death.

At the time of this accident two motor trucks were regularly in the service of these employers carrying coal to Oskaloosa and other convenient points within trade limits. It was the custom for one or both of these trucks to leave the mine about quitting time in the evening loaded with coal for delivery in Oskaloosa, and also for the special convenience of the proprietors who would seem to have had no other conveyance for their trip home. It was also arranged to use these trucks for reaching the mine in the morning. Coming and going, the proprietors were frequently accompanied by several of their employes.

The record fails to show that in the contract of employment this matter of transportation of employes cut any figure whatever. It would appear that the employers assumed no responsibility as to the carrying of these employes to their work; that their presence on the trucks on

these trips were merely by permission and accommodation, and not by any measure of obligation, actual or implied, on the part of the employers. This conclusion is definitely justified by the testimony of both employers and several employes in evidence.

On the part of this claimant it is alleged that in the fall of 1925, it was the custom of the deceased to reach the mines and to return from the same in his own automobile driven by his son. It would appear that along in December, Holub called up one of the employers and asked that he be permitted to ride out on the truck the morning following. Permission was given. Occasionally, thereafter, this privilege was exercised by the deceased, usually after asking permission, which was always granted. On the other hand, the record does not indicate that Holub felt justified in depending on this method of transportation, though it was well adapted to his needs of employment. This is manifest by the fact that during the period of about two months between the first ride and the fatal trip, this privilege was exercised but comparatively few times. The son testifies that his father used the truck "ten or fifteen times" in the course of about two months, but this estimate is much more liberal than that of all other witnesses testifying on this point. It is difficult to understand where counsel find support for his statement in argument that Holub asked permission to ride "and he did ride the trucks continuously thereafter." His further statement that "the truck was the only means furnished by defendants as a means of conveyance of Holub to and from the mine" is wholly gratuitous since there was no agreement, express or implied, that such conveyance should be furnished. The chief reliance for these trips was his own automobile. This fact does not support the contention of claimant that but for this truck service the work must have been abandoned, and hence, the employer assumed obligation for transportation. It does not appear that the employers were so much concerned as to the engagement of any of their workmen that they offered any inducement in the way of carrying service.

Defendants deny any obligation whatever for the reason that the deceased workman in riding in the truck was merely serving his own convenience as a concession from the employers, involving no liability in any degree.

It is well understood that when a workman leaves the premises of his employer he abandons compensation coverage, unless some incident of employment shall extend protection. In this jurisdiction it is held that in cases where it is established the employer has obligated himself to carry a workman to and from his work as part of the contract of employment, the said employer is held in payment for disability or death reasonably due to transportation hazard. In this case it must be held that the record does not impose any such obligation.

The defendants further contend that the circumstances immediately attending the death of Joseph Holub clearly removes him from compensation coverage, even if contract obligation as to transportation had existed between employer and employe. This contention directs attention to such circumstances.

The deceased at the time of the accident was riding with other workmen on the loaded end of the truck. Coming in the opposite direction

was his son driving the family automobile. As the son was seen to pass the truck he occupied, Joseph Holub proceeded to jump from the truck, going at full speed, and in so doing fell to his death beneath a rear wheel. All related testimony affirms this fact. One of the employers riding the other truck says: "I seen him jump off the truck and stumble and fall under it." The driver of the truck says the first he knew of anything unusual was: "Well, it was just like a chunk of coal or something on the track, and it just give an awful bounce." This was when the wheel ran over the body of Holub. In the record appears no support for the statement of counsel that the workman "fell off the truck and stumbled and fell under the truck." Had the employer been held in obligation for the usual perils of transportation to the workmen, he would have been released from all liability by this rash plunge, wholly unrelated to all possible obligation as a carrier. While negligence as the term is used in the common law has no place in our vocabulary, the workman may not expose himself to extreme physical peril and his employer to financial loss within the scope of his compensation coverage. In *Christensen vs. Hauff Brothers*, 193 Iowa, 1084, our supreme court has made this clear.

In the employ of the defendants as hardware and implement salesman at another point, Christensen had come to the headquarters of the employers for conference. He planned to go home on a way freight. Running to the train, after it was under way, instead of trying to enter the caboose he threw himself onto a flat car and fell under the wheels, losing his life in the rash adventure. In affirming the department denial of award, the court said: "Is there anything peculiar to the hardware and implement business suggesting the rash venture which sacrificed Christensen's life" * * * "Upon what reasonable basis may it be assumed that this workman as a requirement of his occupation was in any degree justified in attempting to board the train as he did, instead of going into the caboose?" * * * "Attempting to jump on to the flat car, he was not at a place he might reasonably be, doing what a man so employed might reasonably do." Consequently, it was held that Christensen was without the scope of his employment; that the injury did not arise out of his employment. The reasoning and the conclusions of the court in this case snugly fits the situation submitted in the case at bar.

Many decisions submitted by counsel do not apply here because of circumstances substantially different. While the rare opinion might be construed to favor this claim, the great weight of court conclusion available supports the arbitration award.

Summing up, these findings are justified by the record:

1. In his occasional riding of the coal trucks to and from the mine of Edwards Brothers, Joseph Holub was merely serving his own convenience by permission of his employers, and such riding was not under obligation, express or implied, on the part of the employers.
2. Could this contract be construed as involving such obligation, Joseph Holub, in his rash plunge unrelated to employment, was without the

scope of his employment, hence, his widow could not recover in compensation award.

The arbitration decision is affirmed.

Dated at Des Moines, this 14th day of March, 1927.

Final brief filed March 11, 1927.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed by district court. No further appeal.

LOSS OF SECOND ARM DOES NOT IN ITSELF CONSTITUTE PERMANENT TOTAL DISABILITY

(Inadvertently Omitted from 1926 Report)

George Pappas, Claimant,

vs.

North Iowa Brick & Tile Company, Employer,
The Fidelity & Casualty Company of New York, Insurer.
Senneff, Bliss, Witwer & Senneff, for Claimant;
B. O. Montgomery, for Defendants.

In Review

Under the following stipulation this case came on for hearing at the department, December 30, 1924:

WHEREAS the parties have failed to reach an agreement in regard to the length of time that claimant is entitled to receive compensation, and

WHEREAS the claimant has made application asking for arbitration; and the parties defendant have filed answer thereto; and

WHEREAS the governing facts are undisputed by the parties;

NOW, THEREFORE, it is hereby agreed and stipulated by and between the parties that hearing of this matter and cause by arbitrators is hereby waived; that the said matter and cause shall be heard and the proceedings had before and shall be determined by the Iowa Industrial Commissioner at Des Moines, Iowa, upon the facts agreed upon and hereinafter set out; that said hearing shall have all the force and effect of due hearing and proceedings upon Review, and from the orders and decisions of the said Industrial Commissioner either party may appeal to the District and Supreme Courts as provided by law.

The following are agreed upon as the facts, to-wit:

The North Iowa Brick and Tile Company is a corporation located in Cerro Gordo County, Iowa, engaged in the manufacture of clay products; that the Fidelity & Casualty Company of New York was the Workmen's Compensation Insurance Carrier for the said North Iowa Brick and Tile Company on November 15th, 1922; that on the 11th day of March, 1919, the claimant herein, George Pappas, sustained accidental injuries while employed by the North Iowa Brick and Tile Company, which resulted in the entire loss by amputation of the right arm, for which he was paid Workmen's Compensation Indemnity by the Iowa Mutual Liability Insurance Company for and on behalf of said employer to the extent of two hundred (200) weeks at the weekly rate of Ten Dollars and Nine Cents ($10.09), which compensation was duly commuted and fully paid.

That on November 15, 1922, George Pappas, age 25 years, sustained accidental injuries arising out of and in the course of his employment with the North Iowa Brick and Tile Company at Mason City, Iowa, which resulted in amputation of the left arm at a point where the lower third of the upper arm or humerus joins the middle third of the upper arm or humerus; that the wages earned by George Pappas, while employed by the North Iowa Brick and Tile Company on November 15, 1922, were

such that his weekly compensation rate for said accident is Ten Dollars and Sixty-three Cents ($10.63).

Dated this 19th day of December, A. D. 1924.

Senneff, Bliss, Witwer & Senneff,
Attorneys for Claimant.
B. O. Montgomery,
Attorney for Defendants.

The only question involved in controversy is as to the extent of compensation due George Pappas for the loss of his second arm, November 15, 1922.

It is the contention of claimant that the loss of this second arm constitutes permanent total disability within the meaning of the statute, entitling this claimant to four hundred weeks of compensation, regardless of the settlement with and payment made claimant for the loss of his right arm in an accident occurring March 11, 1919.

The defendants aver that at all times since the second accident they have been willing to pay, and made repeated tenders of compensation, at the weekly rate stipulated for a period of two hundred weeks, and they contend the law contemplates no further obligation on their part as to compensation payment.

In support of his contention claimant relies upon the decision in *Knoxville Knitting Mills Company vs. M. L. Gaylon*, Volume 30, A. L. R., beginning on page 976, and cases therein cited. All these citations have been carefully considered, and the conclusion is definitely reached that none of them afford support to claimant because of a vital difference between the laws upon which they are based and the statutes of the state of Iowa, which especially apply to the case at bar.

In its original form our compensation statute provides that:

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

Under the statute in this form was adjudicated the case of *Jennings vs. Mason City Sewer Pipe Company*, 174 N. W. 785. The claim of the workman was based upon the loss of his only remaining eye. The Industrial Commissioner held that this loss, together with previous loss of the other eye constituted permanent total disability, and that claimant was entitled to the full compensation provided by law for such disability, after deducting one hundred weeks as the schedule value of a single eye. The Supreme Court overruled the contention of defendant that compensation was due only to the extent of one hundred weeks of payment and affirmed the decision of the Commissioner, regardless of the fact that in the meantime the legislature had provided by amendment that the value of the second eye should be fixed at two hundred weeks of compensation. The reasoning in this case is decidedly significant as to the tendency of the court to strictly comply with the provisions of the compensation schedule in cases of permanent total disability, and such compliance is even more definitely set out in *Moses vs. National Union Coal Mining Company*, et al., 184 N. W. 746. The Thirty-seventh General Assembly amended the compensation schedule as to permanent total disability to read as follows:

"The loss of both arms, or both hands, or both feet, or both legs, or

both eyes, or of any two thereof, *caused by a single accident*, shall equal permanent total disability, to be compensated as such."

This is now the law as it appears in the new code, as paragraph 19, section 1396, and exactly as it existed at the time of the second injury to George Pappas. No such provision is found in the statute of any state in which was developed any case cited by counsel for claimant, and it is the controlling factor in this controversy.

The insertion of these words "caused by a single accident" effectually bars this case from consideration on the basis of permanent total disability. It furthermore leaves to the Commissioner no choice as to the classification of the injury under consideration.

There is no escape from the conclusion, taking this language in its only possible meaning, that in order to constitute permanent total disability the loss of the members stated as comprising such disability must occur in a single accident. In case of a second accident where an arm, a hand, a foot, a leg, or an eye is lost subsequent to the loss of one of these members recourse must be had to the schedule to ascertain the compensation due for such second loss.

For the loss of an arm severed at the point indicated in the stipulation, the schedule recovery is two hundred weeks, and no other provision of law can be applied to the adjustment of claimant's second loss. It happens that the payment due under the statute for his two members, lost in separate accidents, comprises the recovery for permanent total disability, but this is mere coincidence. Had he lost an eye instead of an arm the award must have been for one hundred weeks, or in case of the loss of a hand, one hundred and fifty weeks. We are not permitted to consider any injustice that may be involved in this provision. The law itself must be its own justification.

It is therefore ordered that the insurer shall pay to George Pappas the sum of Ten Dollars and 63/100 ($10.63) per week for a period of two hundred weeks in full compensation due for the loss of his second arm by accident November 15, 1922.

Dated at Des Moines, this 7th day of January, 1924.

A. B. FUNK,
Iowa Industrial Commissioner.

Modified and affirmed by district court. Commissioner fully affirmed by supreme court.

ELECTRICAL PERIL HELD TO BE CAUSE OF DEATH

Mrs. Martha Bushing, Claimant,

vs.

Iowa Railway and Light Company, Defendant.
Ray P. Scott, for Claimant;
E. N. Farber, for Defendant.

In Review

In arbitration at Marshalltown June 20, 1918, finding was for the defendant.

June 24, 1918, petition for review was filed. Failure to produce the transcript of evidence taken in arbitration delayed review hearing until August 9, 1928.

The defendant denies obligation on the ground that the death of August Bushing did not in a statutory sense arise out of the employment by the Iowa Railway and Light Company.

The record discloses facts and circumstances substantially as follows:

For some time prior to his death the deceased workman had been in the employ of the defendant as stationary fireman. Aside from the firing of a boiler he was required to handle ashes and shovel coal in the yard outside. His working hours were from two to eleven o'clock P. M. He went to work as usual on the afternoon of December 8, 1917. He was last seen alive some two hours later. His disappearance was not accounted for until the following morning when his body was discovered on a balcony some twenty feet above the floor level of the boiler room.

Dr. H. H. Nichols, who had in charge the process of autopsy, testifies as follows:

"We found a comparatively young man in unusually good physical condition—good, as far as the examination of the body was concerned. A muscular man, looked as though he had always been strong and well. There were no external signs of any cause of death and no external signs of injury whatever, except burns on the fingers—burns on the left hand, as I remember it the index finger and the thumb and the palm of the hand were burned. There was a hole burned in the palm of the hand—looked as though it must have come in contact with something pretty hot and for a short period of time.

"Aside from this, there was so far as I could see, from a simple inspection, there was nothing wrong with the body."

Dr. Nichols, Dr. A. R. Lynn and Dr. A. B. Conaway all testify definitely and distinctly to the belief that the death of Bushing was due to electrocution.

The record contains a mass of detail relative to wiring and other electrical construction and conditions in the vicinity of the point at which the body was found. It also gives evidence of theory, surmise and conjecture as to what might, could or would have caused this death. A careful reading of this record, however, leads inevitably to the conclusion reached by the three doctors who agree that the death was due to high voltage electrical current. This theory is consistent with the exposure afforded near the point of death by wires carrying 2,200 volts of electricity.

The defendant contends that at the time of his death August Bushing was at a point on the premises of his employer where he had no duty to perform and where he was not required to be in the discharge of any obligation of service.

It has been frequently held by courts and commissions that the finding of a dead body of a workman on the premises of the employer within the period of working hours affords basis for strong presumption as to the decease having arisen out of the employment. Just why this workman was on the balcony where his body was found is not shown by the record and is evidently beyond human knowledge. There was an open window near the point of the accident and the claimant contends that in all probability it was to close this window that the workman mounted the balcony, it being a cold day and the purpose being to shut off a draught

of air from that quarter. The defendant contends that Bushing must have had in mind some other purpose. It is even suggested that he went up to take a nap. It is hardly to be supposed, however, that on a cold day at the hour of four o'clock in the afternoon when he had been at work only two hours a workman would have been possessed of a sense of drowsiness.

In any event here was a workman with a distinct record of able-bodied character and service found dead on the premises of his employer. It is not to be presumed that he had any personal mission on the balcony where his body was found. It may be logical to assume that his purpose was in some manner and in some degree to serve the interests of his employer. It is not necessary that the service upon which he was bent must be apparent to one who cannot know the impulse to serve on the part of the workman. It is not necessary to show that service at that particular time and place was required of him, if it may reasonably appear that the workman was in good faith proceeding with the work of the hour whatever that may have been as developed by circumstances of the hour.

Counsel insists that "in the instant case no one knew what the decedent was doing or trying to do but it is clear that whatever he did just preceding his death was something that had no relation to the work he was hired to do". This is in the nature of assumption and the record does not disclose substantial support for the same. It is shown that no orders existed forbidding Bushing to go to the balcony or anywhere else about his working quarters.

In *Pace vs. Appanoose County*, 168 NW 916, our supreme court, speaking through Justice Ladd, makes this statement:

"The decisions of the courts and commissions are uniform in holding that if an employe has reached an employer's premises on his way to work or is still on his premises on his way home and meets with an accident, usually it will be adjudged to have arisen out of the employment."

Reid vs. Automatic Electric Washer Company, 179 NW 323.

In this case an approaching storm caused the superintendent of works to give an alarm which called on all employes to leave the building in promotion of personal safety. There was a general rush by workmen on the second floor of the plant for the main stairway leading to the ground floor. George Reid, however, dashed in another direction. It was alleged by the defense that he did this because of the congestion at the main exit in order to seek quicker means of egress by another stairway. Claimant contended that Reid went as he did in order to close an open window. An affidavit was submitted in support of the latter theory. The Commissioner held this theory as not established and untenable but the supreme court issued opinion in reversal giving dependents of the deceased workman the benefit of the doubt. In our later experience this is the quite common policy of courts and commissions where injury or death occurs on the premises of the employer during the hours of service involving doubt as to definite facts to which such misfortune is due.

Rish vs. Iowa Portland Cement Company, 170 NW 532.

In this case a workman proceeded to his bench at the morning hour of beginning service. Before taking up his regular duties he proceeded to light a cigarette. In this process in some manner and from some cause undisclosed in the record, a dynamite cap was exploded which resulted in substantial injury to the hand of Rish. In the opinion of Justice Stevens appear statements pertinent to the instant case. Quoting:

"As will be observed from a careful reading of the cases cited, the tendency of the courts in all jurisdictions, where similar acts are in force, is to give a broad and liberal construction to the provisions thereof. Injuries received while the workman was engaged in ministering to himself, such as warming himself, seeking shelter, quenching his thirst, taking refreshment, food, fresh air, or resting in the shade, have been held compensable."

"The causal connection between the employment and the injury complained of is shown by the use of dynamite caps upon the premises, and the presence thereof in the room where plaintiff was regularly employed and required, by the terms of his employment, to work."

The court was evidently impressed with the fact that service was required of this workman at a place where peril was more or less imminent because of the use of dynamite in connection with the business of the employer. As arising out of this condition the workman was exposed to injury on account of a dynamite cap such as was commonly used about the establishment though not assumed to be permitted in the building where the accident occurred.

Workmen engaged in plants where electrical peril exists are subject to personal risk more imminent than was Rish at his regular engagement. To this peril was obviously due the death of August Bushing and but for which he might have proceeded indefinitely in the discharge of the duties of workmanship and in the support of his family.

It should be said in this connection that since the arbitration decision was filed in this case, more than ten years ago, the experience of this service and the decisions of the courts have tended substantially to broaden the coverage of workmen's compensation in cases of this character, facts that tend to make the decision of the arbitration committee seem reasonable at the time it was made.

The decision of the arbitration committee is reversed.

The record shows that at the time of his death August Bushing was receiving wages at the rate of $3.00 per day. It is, therefore, ordered that said defendant pay to this dependent widow the sum of $2,595.00 as compensation accrued at the rate of $8.65 per week for a period of 300 weeks, together with $100.00 as burial allowance and the costs of litigation involved.

It should be remembered that at the time of this fatal injury statutory compensation payment was on the basis of 50 per cent of earnings, also that burial allowance was by law fixed at $100.00.

Dated at Des Moines, Iowa, this 28th day of August, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Appealed.

AWARD FOR INJURY AT EMPLOYES CLUB HOUSE

Walter McKinley, Claimant,

vs.

Sanitary Dairy, Employer,
Aetna Life Insurance Company, Insurer, Defendants.
McCoy and Beecher, for Claimant;
Clark and Clark, for Defendants.

In Review

From this record it appears the Sanitary Dairy, defendant herein, maintains a club house devoted to entertainment and recreational purposes in the interest of its employes. Once or twice a month parties or entertainments are given by the employer open to all employes and their families.

Walter McKinley, claimant herein, was for several years employed as foreman of the Sanitary Dairy. The evening of December 31, 1927, while engaged in the work of preparing the club house for entertainment use that same evening, his right leg was broken as he was assisting in the removal of a piano.

It is contended by defendants that injury sustained by claimant was foreign to his occupation and hence without compensation coverage.

Called by defendants, N. P. Sorensen, president of the corporation, testifies that early in the afternoon of December 31, 1927, he called Foreman McKinley and asked if he could go to the club house and help him get the premises in shape for the entertainment that evening. The foreman said he was too busy at the plant at that time and suggested that the employer have the assistance of his brother. Later in the afternoon Sorensen told claimant they, the brother of McKinley and himself, did not get through at the club house and it was then understood that McKinley should show up at six o'clock to help finish the work of preparation. He came at six-thirty.

Among the things to do was the removal of the club house piano and in this proceeding, in which the employer and claimant were mutually engaged, the instrument fell on the right leg of claimant causing "the fracture of both bones, the fibula just about the ankle, and the tibia about two-thirds of the way down from the knee," according to the testimony of the attending surgeon.

Employer Sorensen in evidence testifies that the club house "was built for our men because they work seven days a week, they work three hundred sixty-five days a year, see, and don't have much time off, they work nights, and they can go down there both in the summer time, go down and bathe and sit around, lay around, if they feel like it."

Sorensen further testifies that this cleaning up work was "just about all done on company's time, see, we didn't work any straight hours, you know. We have, in fact the Dairy business is twenty-four hours, we start at eleven o'clock at night and get through in our office at six-thirty."

Reading this record leads inevitably to the conclusion that the company club house was built and maintained for the promotion of corporation business. Of its workmen was required a degree of application beyond ordinary employment and the club house was evidently provided as a contribution to working harmony and efficiency. It appears plainly that Sorensen furnished the premises all arranged for entertainment, that he provided at corporation expense the provisions served at tables. It was no picnic affair supported by contributions of the attendants.

It further appears that McKinley at the time of his injury was engaged as an employe under the direction of his employer. He was there after usual working hours in order that he might serve his employer better by appearing then than by taking time from the plant earlier in the day.

The award of the arbitration committee of $15.00 per week during the period claimant remains totally disabled as a result of the injury, together with statutory medical, surgical and hospital benefits is hereby affirmed.

Dated at Des Moines, Iowa,this 12th day of September, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

RE-OPENING AND REVIEW OF SETTLEMENT

NEUROTIC COMPLICATION—DEFINITE PAYING PERIOD FIXED

Ed. C. Andrews, Claimant,

vs.

Hawkeye Foundry Co., Employer,
Employers Mutual Casualty Co., Insurer, Defendants.

Re-opening

On May 4, 1926, this claimant was hit over the head and back of the neck by a falling hoist chain. The accident arose out of and in the course of his employment by defendant employer. Under tentative settlement agreement approved by the Commissioner, weekly payments were made by defendant insurer at the rate of eleven dollars and forty-two cents. The installments were withheld after twenty-four weeks. Hearing on petition for reopening filed by the claimant in which he alleged continued disability was had March 10, 1927.

In the injury, the claimant suffered no fractures. For two hours following the accident, he was unconscious, and for four days, confined to the hospital. He has since been up and down but has never resumed work. His complaints are multiple. He stoops and with leaning to one side and seemingly has much difficulty in getting about. In physical examination, the doctors are unable to find basis for disability. The doctors testifying for the claimant explain the case as psycho-neurosis resulting from shock of injury and subsequent mental depression. The medical witnesses called by the defendants suggest malingering.

As conclusion in this proceeding, it is held that this claimant is totally disabled and that he has been so disabled at all times since the injury and as a result thereof. It is further held upon the record that the present disability arises largely from mental suggestion and is not due to actual physical handicap, and as deemed advisable in such cases and conducive to best results, the allowance for convalescence shall be limited.

The defendants are ordered to pay compensation to date at the rate of eleven dollars and forty-two cents a week and to continue such payments to July 1, 1927. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 4th day of April, 1927.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

Affirmed by district court—settled.

FAILED TO MAKE CASE FOR ADDITIONAL COMPENSATION

Fred Tate, Claimant,

vs.

E. C. Cushing, Employer,
Southern Surety Company, Insurer, Defendants.

Re-opening

In arbitration decision in this case filed December 31, 1925, it was held that in accident occurring May 8, 1925, this claimant suffered injuries to his back and right side, the nature and extent of which entitled him to a compensation of $15.00 a week for four weeks and $7.50 a week for thirty-six weeks, the payments to run consecutively. Neurosis was thought to be involved, for which reason it was further held that the compensable disability resulting from the injuries shall have terminated February 12, 1926. No appeal was taken and the award was paid out in full by the defendant insurer.

In re-opening proceeding had at Des Moines November 5th, 1926, petitioned for by the claimant, the claimant failed to establish right to additional compensation. His complaints are more or less indefinite and such ailments as may exist, if any, have explanation in conditions and circumstances disassociated with the injuries. Further recovery is hereby denied and the costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 6th day of November, 1926.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

LEG INJURY—PERMANENT DISABILITY ALLOWANCE INCREASED

Johannes Spenkelink, Claimant,

vs.

William Juffer, Employer,
The Fidelity & Casualty Company of New York Insurance Carrier,
Defendants.

Re-opening

Upon the record in reopening hearing in this case, July 19, 1926, it is held that the claimant has a fifty per cent permanent disability of the right leg, as a result of injuries sustained by him November 12, 1924, arising out of his employment by defendant employer.

WHEREFORE, the defendants are hereby ordered to pay the claimant additional compensation in the amount of $12.12 a week for a period of twenty-nine weeks, payments starting as of date March 24, 1926. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, this 20th day of July, 1926.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

ADDITIONAL ALLOWANCE FOR TEMPORARY DISABILITY

Thomas Pulkrab, Claimant,

vs.

Builders Material Company, Employer,
Royal Indemnity Insurance Company, Insurer, Defendants.

Re-opening

On June 15, 1925, in accident arising out of and in the course of his employment by defendant employer, this claimant suffered a compound fracture of his left leg between the knee and the ankle. Under settlement agreement executed by the parties, compensation payments were made at $14.02 per week. This indemnity was terminated by defendant insurer March 1, 1926.

Alleging continuing disability, the claimant petitioned for re-opening and review of settlement, hearing upon which was had at Cedar Rapids October 14, 1926.

Upon the record it is held that, as a result of his injuries, the claimant was totally disabled up to May 31st, 1926, and that subsequently and until August 16, 1926, the disability measured 50%. It is further held, upon the record, that the compensable disability terminated on this latter date.

Wherefore defendants are ordered to pay the claimant 13 weeks compensation at $14.02 a week and 11 weeks compensation at $7.01 a week or a total of $259.37. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 18th day of October, 1926.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

FOOT INJURY—ADDITIONAL ALLOWANCE FOR RECURRING TEMPORARY DISABILITY

E. W. Pierce, Claimant,

vs.

Consolidation Coal Company, Defendant.

Re-opening

In accident occurring March 2, 1925, and arising out of and in the course of his employment by the defendant, this claimant suffered a crushing injury to his right foot. Payments under tentative settlement agreement entered into by the parties were discontinued after 12 weeks and the pending proceeding is upon petition for re-opening and review filed by the claimant.

Upon the record submitted, award is made of additional compensation in the amount of $435.00, representing $15.00 a week for an additional temporary total disability of five weeks' duration and $7.50 a week for

50% disability of 48 weeks' duration. The defendant is ordered to make payment accordingly and to pay the costs of the hearing.

Dated at Des Moines, Iowa, this 7th day of January, 1927.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

Appeal abandoned.

LEG INJURY—INCREASE OVER SETTLEMENT AMOUNT DENIED

Peter J. Goetzinger, Claimant,

vs.

Rockford Co-operative Dairy Association of Rockford, Iowa, Employer,
Employers Liability Assurance Corporation, Ltd., Insurance Carrier,
Defendants.

Amended and Substituted Decision in Re-opening

On May 16, 1925, this claimant suffered a fracture of the right patella in accident arising out of and in the course of his employment by defendant employer. Payments under memorandum of agreement entered into by the parties were discontinued after a period of 43 weeks. Hearing was had at Mason City October 20, 1926, upon petition filed by claimant.

Upon the record, it is held the claimant's right leg has been rendered 20% permanently disabled as a result of the injuries to the knee and, since the amount already paid by the defendant exceeds the statutory compensation for such measure of disability, further recovery is denied and the costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 8th day of January, 1927.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

CONTINUING DISABILITY SHOWN—WEEKLY PAYMENTS ORDERED

L. A. Miller, Claimant,

vs.

Morris-Jones-Brown Mfg. Co., Employer,
London Guarantee and Accident Company, Insurer, Defendants.

Re-opening

Under settlement agreement entered into by the parties, the claimant in this case has received from defendant insurer compensation payments of $15.00 a week for a period of 190 weeks on account of injuries suffered by him May 11, 1923, arising out of and in the course of his employment by defendant employer. The case is now in re-opening proceeding to have determined what additional compensation, if any, is due the claimant.

Upon the record it is held that at all times since the injuries and as a result thereof this claimant has been totally disabled and that he is now totally disabled as a result of the injuries.

WHEREFORE the defendants are ordered to make up back payments

at the rate of $15.00 a week and to continue such payments within statutory limit so long as the claimant remains totally disabled as a result of the injuries. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines this 6th day of June, 1927.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

SETTLEMENT ADEQUATE—ADDITIONAL COMPENSATION DENIED

H. Frisby, Claimant,

vs.

John Deere Tractor Company, Employer.

Re-opening

Re-opening hearing was had in this case February 22, 1928 upon petition filed by the claimant to have determined whether or not he was entitled to compensation in addition to the three hundred thirty-seven dollars and seventy-three cents paid to him by the defendant under settlement agreement entered into by the parties for injuries suffered by him June 8, 1926 arising out of and in the course of his employment by the defendant.

Upon the record, it is held that the claimant suffered no temporary disability on account of his injuries subsequent to November 13, 1926, the date he resumed work. It is also held upon the record that the claimant has suffered no compensable degree of permanent disability as a result of his injuries. WHEREFORE, additional compensation is denied and the costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 25th day of February, 1928.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

LEG INJURY—INCREASE DENIED

George L. Smith, Claimant,

vs.

Condon and Cole, Employer,
Travelers Insurance Company, Insurance Carrier, Defendants.

Re-opening

This claimant suffered an injury to his left foot November 9, 1925, arising out of and in the course of his employment by defendant employer. Under settlement agreement entered into by the parties in June of 1926 and approved by the Industrial Commissioner, the claimant received a total compensation of four hundred and fifteen dollars from the defendant insurer which paid him for a permanent disability to the foot of approximately twenty-two per cent.

Hearing in the case was had at Council Bluffs, Iowa, May 16, 1928, upon re-opening petition filed by the claimant in which he alleged a greater disability to the foot than for which he had been paid and demanding

additional compensation. Upon the record made in such proceeding, it is held that the claimant has failed to discharge the burden of proving that there was error in the original settlement or that the condition of the foot has subsequently changed. It is, therefore, necessary to deny additional recovery and additional recovery is hereby denied and the costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 18th day of May, 1928.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

Appeal pending.

LARGER MEASURE OF PERMANENT INJURY ESTABLISHED

Neal Crook, Claimant,

vs.

Shuler Coal Co., Employer,
Bituminous Casualty Exchange, Insurance Carrier, Defendants.

Re-opening

In this case, the claimant suffered injuries to his back in accident occurring in defendant's mine October 31, 1923. Compensation payments at the rate of fifteen dollars, under settlement agreement entered into by the parties, were discontinued after sixty weeks. The matter is now submitted in re-opening proceeding to have the disability period definitely fixed.

Upon the record it is held that as a result of the injuries in question this claimant has been rendered permanently disabled to the extent of twenty-five per cent. Accordingly, the defendants are hereby ordered to pay the claimant forty weeks additional compensation at the rate of fifteen dollars. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 15th day of April, 1927.

RALPH YOUNG,
Deputy Iowa Industrial Commissioner.

No appeal.

DEPARTMENT RULINGS

CLAIMANT'S PETITION DISMISSED—NO TRANSCRIPT FILED

Arthur Sisson, Claimant,

vs.

Iowa Walnut Company, Employer,
United States Fidelity and Guaranty Company, Insurer, Defendants.

Ruling on Motion to Dismiss Claimant's Petition for Review

This case was arbitrated at Council Bluffs October 21, 1927. Award was denied.

Notice of appeal on the part of claimant was filed October 31, 1927. Accordingly due and timely notice was given to parties concerned that review hearing would be held at the Department December 28, 1927, at 9 o'clock A. M. At this hearing claimant failed to put in an appearance.

The transcript of arbitration evidence required in review proceeding had not been filed. Subsequently C. R. Metcalfe, counsel for claimant, submitted an alleged abstract of evidence made from notes taken by said counsel at the arbitration hearing. January 4, 1928, Counsel Metcalfe was informed that review decision could not be based upon the record of evidence submitted and that, if the transcript of evidence taken at the arbitration hearing was not forthcoming within a reasonable time, defendants' motion to dismiss would be sustained. Nothing in the way of response to this notice has been received.

WHEREFORE, it is ordered that the defendants' motion to dismiss be sustained and that this case be now closed against any further proceeding herein.

Dated at Des Moines, Iowa, this 12th day of January, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

DISTRICT COURT ACTION NO BAR TO FURTHER RECOVERY

W. E. Swim, Claimant,

vs.

Central Iowa Fuel Company, Employer,
United States Fidelity and Guaranty Company, Insurance Carrier,
Defendants.
John T. Clarkson, for Claimant.
Comfort and Comfort, for Defendants.

Ruling on Demurrer

In this case the Supreme Court had affirmed an award of the District Court for the loss of an eye.

December 21, 1927, application for re-opening was filed by claimant on the ground that since this case was submitted to this department there has developed out of the injury for which award was made a much greater measure of disability than the loss of the eye.

To this proceeding the defendant insurer filed demurrer January 6, 1928. In this pleading it is contended that:

1. The Industrial Commissioner is without further jurisdiction in this case for the reason that any cause of action or any claim on the part of W. E. Swim has been settled and fully determined by the Supreme Court.

2. If the claimant now has any claim whatever against the defendant, it is in the nature of a new action and such action is barred by the statute of limitations.

Defendants insist that the decision of the Supreme Court is of the same force and effect as to its finality as a lump sum settlement between the parties litigant.

Commutation is instituted by statute as a distinct, unique and formal process. It cannot become operative without the sanction of the Industrial Commissioner. It cannot occur without showing to the court that such commutation is for the best interest of the client and that it does not involve undue hardship to the employer. Definite statutory terms clearly indicate that this process cannot automatically attach to a court award.

Under the provisions of section 1457 of the Code, it has been uniformly and consistently held by the Industrial Commissioner that without the intervention of the actual process of commutation no settlement which does not fully meet all statutory obligation imposed upon the employer can be final. No payment of compensation by agreement or through litigation can bar an action for re-opening where it appears that statutory obligation due to any specific injury has not been fully met by the employer. Any other conclusion on the part of the Commissioner or Court would be in definite subversion of evident legislative intent and violent to the spirit and purpose of the compensation system.

In hypothetical statement defendants assume that had Swim been given an award for 400 weeks payment and had he died before the award was affirmed by the supreme court, the Commissioner would refuse to make final settlement conform to statutory death benefit. The assumption is not well founded. If the court had or had not affirmed an order for total permanent disability when the statutory liability had changed from disability to death, the Commissioner would be in duty bound so to readjust the settlement as to require payment on a basis consistent with changed conditions under the statutory injunction of section 1457 to end, diminish or increase payment previously awarded or agreed upon. And under the provisions of section 1466 the court would readily have cooperated in this proceeding.

It is, therefore, held that claimant's application to re-open is definitely authorized by the terms of section 1457 of the Code, and hence the demurrer of defendants is overruled.

Dated at Des Moines, Iowa, this 12th day of February, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

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