State of Iowa

1930

NINTH BIENNIAL REPORT OF THE

Workmen's Compensation Service

For the Period Ending June 30, 1930

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 20, 1930.

Hon. John Hammill, Governor of Iowa.

Sir: In compliance with law, I have the honor to transmit to you the ninth biennial report of this department with my recommendations for changes in the law as required.

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
Margaret English ..... File Clerk
Viola Gustafson ..... Settlement Clerk
Wilda Marquis ..... Report Clerk

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

GENERAL REVIEW

The situation appears to justify a report of progress and achievement in the Iowa field of workmen's compensation. The work of administration proceeds with greater efficiency from the benefit of experience in one of the newer branches of the public service. While entire satisfaction as to all details of legal provisions and department activity does not and could not be expected to exist, one who now asserts opposition to the general principles of the workmen's compensation system is a rare individual. On the part of labor and of employment there is general satisfaction as to its purpose and performance. Evidently this relationship tends to promote harmony and co-operation in dealing with industrial tragedy more or less serious. It seems consistent to say that all interests involved realize that in a general way there is mutual advantage.

It seems consistent to say that most individuals and interests in this jurisdiction are disposed to sincerity of conduct and loyalty to obligation. The pressure of misfortune rarely inclines a workman or dependent to practice fraud or deception. As a general thing, beyond the importance of self-protection, the employer wants his workmen to have a fair deal in case of misfortune. Most insurers feel it to be the part of business prudence as well as of moral purpose squarely to meet all developing obligations, reserving, of course, the right of investigation where circumstances of injury and extent of disability may reasonably be considered more or less in doubt. Most of those concerned seem more and more disposed to lay the cards on the table and gracefully to accept the result of candid disclosure. In this situation it is the purpose of the department to have influence much in excess of authority. The confidence of each and all is invited, and the extent to which counsel not fortified by prerogative is availing, the department offers its full capacity.

The general assembly has been rather conservative in dealing with our proposals. It is not the part of duty or discretion to exercise impatience. It rather becomes us carefully to consider the progress made in legislative provision and to await with equanimity developments of the future. No amendment is proposed which has not received careful department consideration as to its general equity and its practical effect.

Two important changes were made by the 43rd general assembly.

Increase of medical, surgical and hospital allowance from $200.00 to $300.00 tends to better service for the injured workman and relief to deserving doctors and hospitals. The department is making good on its pledge to prevent excessive charge because of more liberal provision. The amendment which carries reopening hearings to the workman instead of requiring him to come here with his evidence is of very substantial value.

The misfortune of exclusion on the part of township employment has been almost wholly removed by change in the statute which places most of such employees under county control and coverage.

GRATIFYING CO-OPERATION

The extent to which practical working relations are maintained between employers and insurers and this department as to details of proceeding and the adjustment of claims is important to all and most gratifying to us. Our compensation statute does not and cannot be made to cover all phases, conditions and circumstances developing in administration. In many situations there is no legal provision or court interpretation that will serve definitely to decide what to do or how to do it. To illustrate, what shall be required in cases following:

The loss of a portion of the distal finger phalange.

The measure of vision restored with the use of glasses.

Rules governing compensable hernia.

Treatment of compensable hernia in cases where operation is not expedient or desirable.

Relief to be afforded for the loss of teeth as arising out of employment.

Definition of the term "original proceeding" appearing in section 1386.

Rules relating to occupational disease.

Relief required in cases of partial temporary disability.

The relation of school teachers to compensation coverage.

As to date of filing memorandum of settlement.

As to limits of agricultural, domestic, casual and clerical employment.

Rules in definition of independent employment, and the consideration to be given to the statutory term "for the purpose of the employer's trade or business."

In these and many other situations no statute or court interpretation points the way save, perhaps, by analogy or inference. If

administration is to proceed, order is to exist, and uniformity and equity is to prevail, the department must announce and apply definite rules which seem to be authorized in section 1431 of the code, where it is provided that

It shall be the duty of the commissioner:

1. To establish and enforce all necessary rules and regulations not in conflict with the provisions of this chapter and chapters 70 and 72 for carrying out the purpose thereof.
5. In general to do all things not inconsistent with law in carrying out said provisions according to their true intent and purpose.

While this instruction seems to clear the way to ample and orderly proceeding, the commissioner is given no power to enforce any rule or order except through litigation initiated by parties to existing controversy. In effect this means if an employer or insurer chooses to challenge a department rule and the workman or dependent, because of expense, fear of losing his job or otherwise, does not initiate litigation, the rule fails of its purpose, regardless of its bearing upon uniformity of requirement or any measure of equity involved.

Such things do happen, but it is important to all concerned in good administration and fair dealing all around that they are of rare occurrence and it is hoped and believed never to the enduring advantages of the employer or insurer who refuses to play the game consistently.

This section of our report is written, however, not in the first instance to chide a rare offender but chiefly in grateful acknowledgment of the very large measure of amicable co-operation on the part of employers and insurers with the department in complying with rules carefully considered and cautiously issued.

MISINFORMATION AS TO CASUAL EMPLOYMENT

In section 1421 of the code, it is provided that casual employment is excluded from coverage only when it is "not for the purpose of the employer's trade or business." This provision practically affords coverage to casual employment in all occupations not otherwise by statute excluded.

In section 1361 it is provided without qualification that the compensation statute shall not apply to "persons whose employment is of a casual nature." This provision not only exists in the law as surplusage but it is so misleading and mischievous as to deserve prompt elimination. It is frequently urged upon the department for consideration and it is necessary absolutely to ignore such appeal, though based upon definite statutory declaration.

SETTLEMENT METHODS

It is gratifying to be able to state that most insurers and employers (self-insured) meet liability in excellent spirit. They do not split hairs in dealing with unfortunate workmen or their bereaved dependents. They give to evident good-faith the benefit of reasonable doubt. They do not find it necessary to resist appeals for sympathetic dealing in meeting the requirement to protect the insurer against imposition and in reasonable regard for actual obligation. They co-operate efficiently with the department in perplexing situations and aid substantially in promoting harmony and in serving the hands of justice and equity.

There are other insurers and employers (self-insured), however, who are not so easy to work with. They are not so much concerned as to what they ought to pay as to what they have to pay. They drive close bargains with claimants. They take advantage of technical defenses. They plead the letter of the law in violation of its commendable spirit. They cut corners with workmen and with doctors and hospitals. They would confine relations with the department to the limit of absolute legal requirement.

Employers and insurers are not expected to keep open purse to all demands upon them. For them to adjust so loosely and lavishly as to reward dishonesty and invite imposition would be embarrassing to administration and unjust to society which ultimately pays the bill.

On the other hand it is best for all concerned to make settlement with justice, leaning toward expedient generosity in situations of absolute good faith rather than to forget that claimants are human beings deserving of especial consideration in the shadow of industrial tragedy.

It is gratifying to observe that insurers and employers pursuing the more intelligent, liberal and sympathetic policy are the more successful and substantial among those of their class as they grow in public confidence and practical efficiency.

EMPLOYMENT COVERAGE

It is deplorable that many Iowa workmen injured in compensable relationship find relief beyond their reach when injury occurs. The self-insurer and the insurance carrier realize their obligation to the workman in traumatic distress. They are aware of risks involved and they provide for all obligation contingencies. With rare and honorable exception, the non-insuring employer is a

bad actor. He bets with fate that there will be no accident and when he loses he flunks his wager. Often he is judgment proof and impudently defies the law. If he is not wholly immune from financial recovery he is apt to be willing to spend more in litigation than would be required in settlement.

Among the smaller coal operators this situation is especially acute. In this field it is urged in excuse that the insurance rate is so high as to be practically prohibitive. It is nearly double that charged the larger operators. While insurers do not refuse coverage at the higher rate they do not solicit these risks because of experience that shows such business to be very doubtful as to remunerative results.

The bonding provision injected into section 1477 of the code at the late session of the legislature is found practically unavailing in the way of insurance relief. It does, however, provide means for compelling employers either to insure or to stop sending men into hazardous employment without provision for relief in case of injury. The situation is so serious in its peril to workmen as to impel this department in the performance of duty imposed by statute to bring employers face to face with this important decision.

HERNIA AND COMPENSATION

It is a matter of rather common knowledge that congenital physical conditions tend to make many if not most men easily subject to hernial development. The inguinal rings are frequently so formed as fairly to invite protusion of the intestine. A slight jolt or strain may be the inciting cause. A cough or a sneeze has been known to do the business. While in such cases years of toil may fail to cause hernia it may appear when least expected and from comparatively trivial circumstance.

In compensation jurisdiction everywhere hernia has been the most perplexing of all industrial ailments. In earlier experience doctors were practically united in the opinion that it could not be considered as injury arising out of employment except in the rare instances when its development is due to a blow to the body in the vicinity of the outbreak. Compensation authorities were not generally disposed to accept this view, but the making of rules for dealing with hernia has been a constant source of embarrassment. Hardly any two states are agreed as to rules relating to compensable hernia.

After much experience the Iowa Industrial Commissioner

reached a conclusion which has for years been in very successful and widely satisfactory operation. It is held in Iowa that where hernial development is due to some specific accident or incident of employment occurring at a particular time and place and in a definite manner, and but for which the workman would have been able to continue in earning, the employer is held in obligation for all consequent disability.

In many cases, usually for reasons of his own, the workman prefers to wear a truss rather than submit to operation. In such cases the commissioner has announced a rule that settlement on a commuted basis may be made by paying to the workman a sum representing compensation payment for six weeks as healing period, and also the sums usually allowed for operation and hospital charge. There is no specific statutory provision for either of these rules or any other rules covering such situations. It becomes necessary, however, to develop plans and provisions required for workable administration.

Under these rules it may be confidently asserted that in hernia cases Iowa pays out more money to workmen than any other state in accordance with the number employed and with less of resistence and contention. To abandon them would be to produce the confusion and contention so common elsewhere, increasing litigation and making more uncertain the payment of compensation benefits.

AGRICULTURAL EMPLOYMENT

In most states agricultural employment is exempt from the compulsory application of workmen's compensation. There has been no serious criticism of this course and there should be none. It does seem advisable, however, to extend the coverage of the compensation system to such employment where farmers or owners of farms on their own initiative choose to come within its provision. The use of power machinery becomes more and more common on the farm increasing the peril of farm work. The farmer has no protection against the operation of the drastic law of damage and in some cases it would be regarded as a privilege to take chances under compensation. In Minnesota, Wisconsin and in some other states at their own option farmers may take out compensation insurance and there would seem to be no reasonable objection to urge against this policy.

None of the abounding reasons for exempting farmers from compulsory liability afford any support whatever to the inclusion

of farms owned and operated by the state. The state, governing boards and this department are frequently embarrassed by the legal requirement to deny to workmen on state farms the relief given to employees in other employment by the same institutions. It seems fairly cowardly for the state to take care of a workman injured on one side of its fence while refusing help to one injured on the other side of the same fence. Properly understood it is not believed that a single legislator would endorse such discrimination and injustice, but a bill to remedy this situation submitted by this department to the latest assembly was refused consideration. This must have been due wholly to inadvertence and it is hoped that the matter will soon receive the attention it deserves.

UNSEEMLY HASTE IN SECURING PROOF

In cases of serious injury or of death insurers sometimes insist upon interviewing the victim or his dependents relative to circumstances affecting insurance liability as soon as an adjuster can cover the intervening distance. This practice is always more or less reprehensible. A workman suffering from the early effects of a deplorable accident is in no condition for grilling interview and in the shadow of industrial tragedy relatives are in no state of mind to submit to inquisitorial torture.

There must have been legislative purpose in the statutory provision that any compensation settlement made within twelve days of any injury sustained shall be presumed as fraudulent. Surely it was not in the legislative mind that settlement in this connection means merely signing on the dotted line. It is inconceivable that under this measure of legal restraint the carrier may within a few hours of injury or death ruthlessly proceed to shape up its case in defense. Within the rules of reasonable administration this practice is intolerable.

INSURANCE PRECAUTION

At every opportunity it seems worth while to advise employers to exercise care in the placing of their compensation insurance. There are plenty of good companies well known in Iowa which afford safety and good service. They have adjusters at convenient points within the state. They are easily reached when necessary. When for any reason they are derelict they may be advised by the department, whereupon they usually afford prompt service and desirable co-operation.

In view of these important considerations why should employers deal with insurers little known who do not maintain adjustment agencies within the state and who are apt to be unsatisfactory in long range and dilatory adjustment.

DEALING WITH EXCESSIVE ACCIDENT EXPERIENCE

The awful waste of human energy and the immeasurable extent of human distress due to injury in employment should make more effective appeal for mitigation. There is ground for the apprehension that in the state of Iowa there is especial need for increase of interest in this deplorable situation.

Self-insurers are doubtless least subject to criticism in this connection among the several classes of employers. They are usually better situated than most other employers for organized safety promotion and they more distinctly sense the gain or loss of employment experience. While many of these are reducing to a minimum through safety provision the loss of life and of energy and consequent distress, some plants of this group do not make model record in such endeavor.

It would appear that death or injury is unusually frequent in the Iowa mining industry. If there is organized endeavor to reduce this loss and distress as is said to exist, it has been of little value in effecting relief. Three insurance companies doing business in Iowa have been forced into liquidation because of losses in carrying mining hazard, due it may be readily assumed, in part at least, to losses on Iowa risks while rates have gone up and up until they are a serious burden to industry. This field is now occupied almost wholly by a single company because the business is not commonly deemed desirable. It would seem reasonable to assume that better organization and more practical cooperation between operators and miners such as exist in some other coal fields would tend substantially to serve a deplorable situation.

Experience shows that injury is much more frequent in the smaller than the larger employments in proportion to the number of men and the necessary hazard involved. On the part of some of these employers there seems to be a tendency to neglect safety provisions and to let the workman and the insurer take the serious consequences. This is very bad business policy and absolutely reprehensible in a moral sense.

The fact that statistics show that in the United States twenty-two persons are injured every minute in working hours and that

eight out of one hundred persons are certain to have their earning power impaired either partially or totally as result of accident consitutes powerful appeal for the exercise of every possible provision for reducing this terrible total.

It is evident that all employers are not to blame for the excessive number of injuries occurring. The Engineering World makes this important statement:

"A notable example of the savings in both life and money which can be brought about by consistent safety effort in industrial plants has been furnished by the accident prevention contest among metal manufacturers which has just been completed by the Merchants' Association of New York City.

"It is stated that 1,183 lives were lost in New York City's industries during 1928—the period of the Merchants' Association's contest. Yet among the 9,275 employees of the 93 manufacturers participating in this contest not a single life was lost. There were but 269 lost-time accidents. Thirty-six plants went through the contest without a lost-time accident. Only 43 of the 269 accidents which did cause lost time carried partial-permanent disability.

"The winner of the contest was Frank J. Quigan, Inc., whose employees worked a total of 643,466 hours with no lost-time accidents. The Metropolitan Iron Foundry was second with a total of 205,849 man-hours without a lost-time accident. The experience of the Quigan firm is of especial interest because of the demonstration it has provided of financial savings brought about by organized safety work. In 1923 Frank J. Quigan, Inc., paid $3.08 per $100 of pay-roll for compensation insurance. In 1924 it paid $3.25 per $100 of pay-roll. In 1926 the company began its organized safety work. The insurance costs for 1927 were reduced to $1.66 per $100 of pay-roll. In 1928 there was a still further reduction to $1.21. The concern states that in dollars and cents it has effected a savings of approximately $7,000 a year through organized safety work."

Attention has previously been called to the excellent work being done by the Lehigh Portland Cement Company in accident prevention. Fourteen large plants are in operation. In a number of these plants there was no lost time on the part of any of the large number employed in the year 1929. At the Mason City plant of this company 277 men are in service and the record of injuries of all kinds is very creditable. Some other large employers of the state are doing excellent work in lowering injury records but we are not advised as to details in such experience.

The record of W. J. Rainey, Inc., commercial coal operators of Pennsylvania, is most remarkable, as reported by the United States Bureau of Mines. One of these mines employing more than 250 men operated without fatality or accident entailing temporary or permanent or partial disability from January 1, 1921, to February 20, 1928. Other details of experience announced show marvelous achievement in life and labor saving.

The packing plant of Jacob E. Decker & Sons at Mason City put on a safety campaign a year or so ago with results fairly

astounding. Accident losses have gone tumbling with all the saving in grief and money involved. A substantial reduction in insurance rate is noted. June, 1930, as a no-accident month, inspires this jubilant note from the safety engineer to all foremen of the Mason City plant. "It can be done. It has been done in June, 1930. Eight hundred thirty-nine men worked 21,045 days in a packing plant, without a lost time accident, and you foremen are responsible for this wonderful record. It can be done. Now let us keep it up and make and keep the Decker Plant a safe place to work. Thank you. Thank you."

None of these commendable records are made without first, unusual interest on the part of the employer in working conditions and, furthermore, intelligent and prevailing co-operation between workmen and employers. Such provision is found to pay very large dividends to both labor and employment aside from securing important sympathetic and sentimental consideration.

All this discussion is aside from the duties of this department as prescribed by statute but we are so continually in the presence of industrial tragedy and so much impressed with the waste and woe of industrial misfortune as to enlist our deep sympathy and abiding interest in the situation.

Much more might be done on the part of the state to reduce injury and disability arising out of employment. The department of labor functions well and efficiently in this field but its measure of usefulness is limited by appropriation wholly inadequate to full inspection service.

It remains, however, for employers and workmen to organize and co-operate to the limit of practical possibility in order to effect the largest measure of life and labor saving in industrial employment.

INJURY REPORTS

The law specifically requires employers within forty-eight hours after injury to a workman to make report of such injury to the department in all cases resulting in incapacity for a period longer than one day. Many employers neglect this important duty and such neglect is seriously embarrassing in administration and grossly unfair to all concerned. A penalty of $50.00 is imposed by statute for violation of the reporting provision. The indifferent employer should heed this warning while all others should be more promptly responsive in the performance of this important duty. In at least one state the law provides that the statute of

limitations shall not run against a claim if the injury upon which it is based has not been reported as by statute required.

PHYSICIAN'S REPORTS

These are vital because they form the basis for settlement except in cases of permanent schedule injury. When serious temporary disability occurs workmen are returned to service on a professional statement as to recovery of working capacity. In many cases of partial permanent disability it is necessary to reach conclusions as to measure of recovery due from such reports. In all cases and especially when an obscure situation exists, it is very important to have a careful and clear report that may be relied upon by all concerned. In "The Clinic," a Quarterly Journal of Industrial Surgery and Hygiene issued in October of 1929, appears this paragraph which is quoted with full official approval:

"One of the best beginnings toward getting the confidence of an injured workman is to make a thorough physical examination. Nothing inspires the average layman's confidence so much as thoroughness on the part of his physician and often a cursory examination with a curt assurance that 'nothing much is the matter with you', plants deep seeds for discontent and a prolonged claim. Probably one of the chief differences which exist between the specialist and the general practitioner is that the former is thorough in his examination and the latter is apt to pay little attention to the apparently irrelevant aspects of the case. By being thorough in physical examination therefore, not only does the surgeon impress the patient with his skill and knowledge, but he frequently picks up data which will enable him to take into consideration in his treatment many factors of importance."

SETTLEMENT INFORMATION

It is important to good service at the department that a memorandum of agreement be sent in immediately upon the acceptance of obligation. Insurers are sometimes disposed to await developments tending definitely to establish extent of liability. Claimants sometimes are shy about signing up. All should understand that these agreements are tentative and not binding upon either party as to extent of obligation. This repeated assurance on our part has recently been underwritten by the supreme court. It is to the advantage of all concerned to help us keep the record of adjustment up to date and helpful co-operation in this important matter is earnestly desired.

THE SEVEN-DAY WORKER

Appeal must again be made for justice to this class of workmen. The available rule in finding the basis of compensation payment is in subsection (3) of Section 1397, which says:

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

Accordingly, we multiply the daily wage by three hundred and divide this result by fifty-two in order to find the weekly wage. When we apply this rule to the seven-day worker he is given as compensation a sum less than that due the six-day worker.

It is embarrassing to look an injured workman in the face and tell him that the state of Iowa inflicts penalty upon him for unremitting toil. There is no use in trying to show him any sane reason for discrimination against him because his job requires him to serve every day in the week. In order to correct this grievous situation it is recommended that the statute be so amended that in cases of seven-day work the multiple employed shall be three hundred and thirty-five instead of three hundred.

COVERING SUB-CONTRACTOR LIABILITY

Construction work is frequently sublet to employers who do not carry compensation insurance and who are not financially responsible. Under such circumstances many workmen or dependents in case of injury or of death find themselves without the relief intended by statute. Many states have met this situation by providing that the principal employer or contractor shall be liable to employees of a sub-contractor where obligation arises. It is urgently recommended that our general assembly shall make this important provision.

COVERAGE FOR VOLUNTEER FIREMEN

Under the ordinary application of the compensation service it is necessary to hold that our law does not afford coverage to volunteer firemen in case of injury in service. The fundamental contract of employment is wanting and there is no showing of earnings upon which to base weekly payment. Grievous sacrifice on the part of public spirited citizens who sustain injury or who meet with death in lending their service to the reduction of community fire losses strongly appeals for recognition and relief at the hands of the general assembly.

It is therefore recommended that specific provision be made to extend compensation coverage to volunteer firemen in case of injury or to their dependents when death shall occur. Payment should be in the maximum legal amount of $15.00 a week, such payment to be met by the municipality or its insurance carrier.

AMENDMENT POLICY

Under proper caption amendments to the compensation law are specifically submitted. Recommendation in previous reports not accepted or included in this list are omitted not because of change of opinion as to their merit but for the reason that urging now will serve only to make less likely the adoption of other necessary amendments.

The conviction persists that Iowa should join other states in providing coverage for occupational disease; and temporary with permanent disability complete coverage for clerical employment and that our waiting period should be reduced. Also that in the interest of the just distribution of compensation benefits the statute as to dependency should be revised.

AMENDMENTS RECOMMENDED

I. Coverage for volunteer firemen.

II. Optional agricultural coverage.

III. Justice for the seven-day worker.

IV. Relief for state farm employees.

V. Protection for employees of sub-contractors.

STATISTICAL COMMENT

Sums expended for all purposes in department support during the biennium aggregate $18,126.15. There has been no material increase in such expenditure the past six years. Estimates for the coming two years submitted to the director of budget suggest only a slight increase.

As to injuries reported the number is enlarged by 203. Fatalities are increased by nine and compensation payments by a little more than $41,000.00.

The cost of medical, surgical and hospital service is in the biennium about $8,000.00 higher than in the period immediately preceding. In view of the statutory raise from $200.00 to $300.00 this increase of much less than seven per cent in outlay is not at all significant of imposition apprehended when the limit was boosted by statute.

In the matter of litigation the showing is not unfavorable. While the number of arbitration applications was increased from 210 in the biennium next preceding to 258 in the last biennium, the number of arbitrations was decreased from 100 to 92. The settlement of all possible cases without litigation is our studied purpose. A smaller number of arbitrations was appealed in review and the number of cases carried to the courts was reduced.

DEPARTMENTAL ACTIVITIES

EXPENDITURES FOR DEPARTMENT SUPPORT, BY YEARS

	1926-7	1927-8	1928-9	1929-30
Salaries	$15,860.08	$16,500.00	$16,458.08	$16,650.00
Travel expense	791.60	928.98	973.12	820.36
Medical advice	685.00	540.00	477.50	567.80
Library and miscellaneous	86.75	100.25	104.50	88.00
Total administration	$17,423.43	$18,070.23	$18,013.20	$18,126.16

REPORTS OF ACCIDENTS AND SETTLEMENTS APPROVED

July 1, 1928 to June 30, 1929

Accidents Reported	11,350
Fatal Cases	143
Settlements Reported	4,902
Compensation Paid in Reported Settlements	$671,356.43
Reported Paid for Medical, Surgical and Hospital	123,688.75

July 1, 1929 to June 30, 1930

Accidents Reported	11,553
Fatal Cases	152
Settlements Reported	4,888
Compensation Paid in Reported Settlements	$712,395.87
Reported Paid for Medical, Surgical and Hospital	131,779.01

ARBITRATIONS, REVIEWS AND APPEALS

	July 1, 1928 to July 30, 1929	July 1, 1929 to July 30, 1930
Total number of applications filed	210	258
Total number of cases arbitrated	100	92
Total number of cases settled without hearing	70	97
Total number of cases dismissed	31	20
Total number of cases reopened	11	11
Total number of cases decided on review by Commissioner	27	24
Total number of cases appealed to courts	20	16

CASES ARBITRATED DURING BIENNIUM
First Year, 1928-1929

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
McKinley vs. Sanitary Dairy Co.	T. T.	Out of emp.	$ 560.00	Affirmed	Com. affirmed	No appeal
Farr vs. Waterloo, Cedar Falls & N. Ry.	P. P.	Ext. of injury	465.00 (Reopening)		No appeal	
Way vs. Union Construction Co.	Fatal	Dependency	1,500.00	No appeal		
Pendley vs. Cook & Stucker	P. P.	Ext. of injury	Disallowed	Affirmed	Pending	
Robinson vs. Hocking Coal Co.	P. P.	Out of emp.	$ 225.00	No appeal		
Baker vs. Morrell & Co.	T. T.	Ext. of injury	Disallowed (Reopening)		No appeal	
Collingwood vs. Morrell & Co.	T. T.	Hernia	Disallowed	Affirmed	No appeal	
Ernsdorff vs. Otis Lumber Co.	T. T.	Coverage	Disallowed	No appeal		
Arthur vs. Marble Rock School Dist.	Fatal	Coverage	$1,800.00	Affirmed	Com. affirmed	Com. Reversed
Rowles vs. Cobb	T. T.	Out of emp.	240.00	No appeal		
Strandberg vs. Zwack, Inc.	Fatal	Dependency	908.92	No appeal		
Hansen vs. Damon Electric Co.	P. P.	Ext. of injury	750.00	No appeal		
Boyd vs. Dain Mfg. Co.	T. T.	Ext. of injury	Disallowed	No appeal		
Wheatley vs. Sharp	T. T.	Out of emp.	Disallowed	Pending		
Gee vs. Crabb	Fatal	Out of emp.	$1,950.00	Affirmed	Pending	
Bunn vs. Western Elec. Tel. System	T. T.	Ext. of injury	Disallowed (Reopening)		No appeal	
Coats vs. Urelius	T. T.	Out of emp.	Disallowed	No appeal		
Banas vs. Iowa Public Service Co.	P. P.	Ext. of injury	$ 325.00 (Reopening)		No appeal	
Johnson vs. Lytle Construction Co.	T. T.	Hernia	189.80	Affirmed	No appeal	
Frankenberg vs. Getz Produce Co.	T. T.	Coverage	Disallowed	No appeal		
Kettels vs. Neumann & Co.	T. T.	Coverage	Disallowed	Pending		
Glassco vs. Des Moines Still College	P. P.	Out of emp.	$ 436.18	No appeal		
Jones vs. Sinton Transfer Co.	T. T.	Out of emp.	Disallowed	No appeal		
Rihard vs. Des Moines Wood Product Co.	P. P.	Out of emp.	Disallowed	Pending		
Pringle vs. Central Engin. Co.	Fatal	Dependency	$2,031.00	No appeal		
Kelso vs. Miller Hotel Co.	T. T.	Hernia	Disallowed	No appeal		
Phelps vs. French & Hecht	T. T.	Hernia	Disallowed	No appeal		
Kurtz vs. Sieg Company	P. P.	Out of emp.	Disallowed (Reopening)		No appeal	
Reimers vs. Moden	P. P.	Limitations	Disallowed	No appeal		
O'Day vs. U. S. Button Co.	P. P.	Out of emp.	$ 900.00	Affirmed	No appeal	
Kresin vs. Central Steel Prod. Co.	P. P.	Ext. of injury	900.00 (Reopening)		No appeal	
Rodgers vs. Iowa Railway & Light Co.	Fatal	Cause of death	4,500.00	Affirmed	No appeal	
Carothers vs. Durand	T. T.	Coverage	Disallowed	Affirmed	Pending	
McDevitt vs. Crescent Macaroni & C. Co.	P. P.	Out of emp.	$ 540.00	No appeal		
McQuaid vs. Becker Asphalt Paving Co.	T. T.	Out of emp.	42.84	No appeal		
Cone vs. Pelletier Company	T. T.	Hernia	197.00	No appeal		
Prieksaetic vs. Consumers Ice Co.	P. P.	Ext. of injury	86.50	No appeal		
Pratt vs. Concord Ind. School District	T. T.	Extent of injury	512.50	No appeal		
Stoner vs. Swift Co.	T. T.	Extent of injury	156.48 (Reopening)		No appeal	
Dawson vs. Pratt Mallory Co.	Fatal	Coverage	Disallowed	Affirmed	Pending	
Jones vs. Eppley Hotel Co.	Fatal	Cause of death	$3,057.00	Affirmed	Com. affirmed	Com. affirmed
Johnson vs. Kohrs Packing Co.	Fatal	Dependency	3,633.00	No appeal		
Sebern vs. Lagomarcino Grupe Co.	T. T.	Out of emp.	Disallowed	No appeal		
Hale vs. Gardner	T. T.	Out of emp.	$ 254.00	No appeal		
Vaverka vs. Castoge Products Co.	Fatal	Coverage	Disallowed	Affirmed	No appeal	
Baines vs. State University of Iowa	T. T.	Ext. of injury	$ 138.40	No appeal		
Crawford vs. Sheridan	P. P.	Out of emp.	Disallowed	No appeal		
Barrows vs. Quaker Oats Co.	Fatal	Dependency	Disallowed			
Yates vs. Quaker Oats Co.	Fatal	Dependency	Disallowed	No appeal		
Estell vs. Wilson Floral Co.	P. P.	Notice	Disallowed	No appeal		
Bye vs. Nevada Poultry Co.	Fatal	Cause of death	Disallowed	Reversed	Com. affirmed	No appeal
Bremson vs. Ottosen Creamery Co.	T. T.	Ext. of injury	$ 999.00	No appeal		
Wilson vs. Pershing Coal Co.	Fatal	Cause of death	4,500.00	Reversed	Pending	
Jones vs. Savery Hotel	T. T.	Out of emp.	100.00	No appeal		
Pettit vs. Tusant & Sons Co.	P. P.	Out of emp.	Disallowed	No appeal		
O'Dea vs. Norwood-White Coal Co.	T. T.	Out of emp.	$ 80.00	No appeal		
Cross vs. Economy Coal Co.	T. T.	Out of emp.	125.00	Affirmed	Pending	
Zachar vs. Economy Coal Co.	P. P.	Ext. of injury	345.00 (Reopening)		No appeal	
Vignorali vs. Norwood-White Coal Co.	Fatal	Dependency	600.00	Modified	No appeal	
Mendina vs. Scandia Coal Co.	Fatal	Dependency	300.00	Reversed	Pending	
Riley vs. Dallas Products Co.	Fatal	Dependency	900.00	Reversed	Pending	
Turk vs. Adelphi Coal Co.	T. T.	Out of emp.	Disallowed	Affirmed	Pending	
Hoffman vs. Hanson Plmb. & Htg. Co.	Fatal	Out of emp.	$4,500.00	No appeal		
Short vs. Morrell Co.	Fatal	Dependency	4,095.00	No appeal		
Penniwell vs. Sodin & Bacino	T. T.	Hernia	64.64	Affirmed	No appeal	
Selix vs. Morrell & Co.	T. T.	Hernia	Disallowed	No appeal		
Parfenow vs. Harrison Eng. & Const. Co.	P. P.	Out of emp.	$3,510.00	Reversed	No appeal	
Gregory vs. Sinclair Refining Co.	P. P.	Hernia	Disallowed (Reopening)		No appeal	
Taylor vs. C. N. W. R. R. Co.	P. P.	Ext. of injury	$1,711.75 (Reopening)		No appeal	
Beckner vs. City of Council Bluffs	T. T.	Ext. of injury	69.29	No appeal		
Welch vs. Saltzman & Son	T. T.	Ext. of injury	55.36	No appeal		
Loncar vs. Underwood Candy Co.	P. P.	Ext. of injury	750.00	No appeal		
Schraeder vs. Woodward & Co.	T. T.	Out of emp.	52.00	No appeal		
Peterson vs. Franklin County	Fatal	Coverage	Disallowed	No appeal		
Waddle vs. Rath Packing Co.	T. T.	Out of emp.	$ 180.00	No appeal		
Bittner vs. Iowa Railway & Light Co.	Fatal	Dependency	3,738.00	Affirmed	Com. affirmed	No appeal
Porter vs. Town of Afton	Fatal	Dependency	Disallowed	Affirmed	Pending	
Walton vs. Smith & Robinson	P. P.	Coverage	Disallowed	Affirmed	Com. affirmed	No appeal
Smith vs. Henry County Hospital	T. T.	Hernia	Disallowed	Affirmed	Com. reversed	Com. affirmed
Newman vs. Jones	T. T.	Out of emp.	Disallowed	No appeal		
Ryan vs. Penick & Ford	Fatal	Out of emp.	Disallowed	No appeal		
Jenzen vs. C. N. W. Railway Co.	Fatal	Coverage	Disallowed	No appeal		
Kurth vs. Eclipse Lumber Co.	T. T.	Ext. of injury	$ 575.00 (Reopening)		No appeal	
Bowes vs. Cudahy Packing Co.	P. P.	Ext. of injury	173.40	No appeal		
Pereira vs. I. Chesen Co.	T. T.	Coverage	Disallowed	No appeal		

CASES ARBITRATED DURING BIENNIUM

First Year—Continued

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
McGraw vs. K. P. White Const. Co.	P. P.	Ext. of injury	$ 337.50	No appeal		
Toros vs. Harper Wall Paper & Paint Co.	T. T.	Hernia	62.50	No appeal		
Carver vs. Pratt-Mallory Co.	T. T.	Out of emp.	13.20 weekly	Pending		
Hemphill vs. Craven	T. T.	Coverage	Disallowed	No appeal		
Bennett vs. Central Service Co.	Fatal.	Cause of death	Disallowed	No appeal		
Brinegar vs. McConville Coal Co.	T. T.	Out of emp.	Disallowed	No appeal		
Wright vs. McConville Coal Co.	P. P.	Out of emp.	$ 278.20	No appeal		
Samson vs. Empire Coal Co.	P. P.	Ext. of injury	1,612.50	No appeal		
Saner vs. Empire Coal Co.	T. T.	Ext. of injury	24.22	No appeal		
Gilbert vs. Rand-Remington Co.	P. P.	Coverage	101.25	No appeal		
Rooney vs. Coffeen	T. T.	Out of emp.	Disallowed	No appeal		
Stiles vs. Boy Scouts of America	T. T.	Out of emp.	$ 63.00	Affirmed	Com. affirmed	Com. reversed
Robinson vs. Emmetsburg Produce Co.	T. T.	Out of emp.	112.45	No appeal		
Enfield vs. Certain-Teed Products Co.	P. P.	Out of emp.	Disallowed	Affirmed	Com. reversed	Pending
Hamre vs. Langan Paper Co.	T. T.	Hernia	$ 194.18	No appeal		

Second Year—1929-1930

Allard vs. Collins-McNeal Realty Co.	T. T.	Employer	Disallowed	Affirmed	No appeal	
Buckner vs. Woodward, et al.	T. T.	Employer	$ 9.23 weekly	No appeal		
Robbins vs. Standard Oil Company	T. T.	Out of emp.	Disallowed	No appeal		
Martyn vs. Des Moines Electric Co.	T. T.	Out of emp.	Disallowed	Affirmed	Com. affirmed	Pending
Gells vs. Van Wechel	T. T.	Ext. of injury	$ 49.22	No appeal		
Lynch vs. Bayles	T. T.	Employer	110.80	No appeal		
Ratcliffe vs. Town of Humeston	T. T.	Coverage	Disallowed	Pending		
Wright vs. Wright Construction Co.	Fatal.	Dependency	$4,150.00	No appeal		
Anderson vs. Iowa City Canning Co.	Fatal.	Dependency	1,218.00	No appeal		
Woods vs. Bumgardner & Schraeder	Fatal.	Coverage	Disallowed	Affirmed	No appeal	
Carlson vs. Ford Motor Co.	T. T.	Out of emp.	$ 15.00 weekly	No appeal		
Butterfield vs. Stein	T. T.	Out of emp.	Disallowed	Pending		
Lewis vs. Davenport Locomotive Works	Fatal.	Cause of death	$3,934.52	No appeal		
Schenatzky vs. Tuerke Mercantile Co.	T. T.	Hernia	Disallowed	No appeal		
Roberts vs. Decker & Sons	P. P.	Ext. of injury	$ 367.75	No appeal		
Wallukait vs. United States Gypsum Co.	P. P.	Ext. of injury	422.50	No appeal		
Inman vs. John Deere Tractor Co.	P. P.	Out of emp.	Disallowed	No appeal		
Gotting vs. Rath Packing Co.	T. T.	Hernia	$ 66.48	No appeal		
Fine vs. United Fruit Co.	T. T.	Hernia	115.36	No appeal		
Kronenfeldt vs. Theo Stark Const. Co.	T. T.	Out of emp.	Disallowed	No appeal		

Kohl vs. Frith Estate	T. T.	Ext. of injury	$ 93.49 (Reopening)		No appeal	
Amos vs. Miller Const. Co.	T. T.	Ext. of injury	Disallowed (Reopening)		No appeal	
Sheriff vs. Jones-Husland Const. Co.	Fatal.	Dependency	$ 927.00	No appeal		
Messer vs. Pottawattamie Co.	P. P.	Ext. of injury	156.00	No appeal		
Portis vs. Giant Manufacturing Co.	T. T.	Hernia	Disallowed	No appeal		
Hatcher vs. Hurd Creamery Co.	T. T.	Ext. of injury	$ 297.14 (Reopening)		No appeal	
Allard vs. Brady	P. P.	Employer	750.00	Affirmed	Pending	
Schane vs. Jones & Hiestand	Fatal.	Dependency	697.00	No appeal		
Russell vs. Devlin	Fatal.	Coverage	Disallowed	Pending		
Amos vs. Swift & Co.	P. P.	Ext. of injury	$ 433.54 (Reopening)		No appeal	
Behal vs. Shapino	T. T.	Hernia	Disallowed	No appeal		
Heissler vs. Strange Bros. Hide Co.	P. P.	Out of emp.	$ 416.25	Affirmed	Pending	
Stewart vs. Dunn & Matheney	P. P.	Coverage	Disallowed	No appeal		
Paxton vs. Bogardus	Fatal.	Stat. of lim.	$4,500.00	No appeal		
Talmage vs. Dixon Coal Co.	P. P.	Employer	300.00	No appeal		
Hyland vs. Gebuhr	P. P.	Ext. of injury	1,500.00 (Reopening)		No appeal	
Drish vs. Scheffel	P. P.	Coverage	Disallowed	No appeal		
Scheer vs. Kari-Keen Mfg. Co.	Fatal.	Cause of death	$4,500.00	No appeal		
Hall vs. Des Moines Coal Co.	P. P.	Ext. of injury	300.00 (Reopening)		No appeal	
Nolen vs. Town of LeClaire	P. P.	Coverage	1,225.80	No appeal		
Haupt vs. Climax Engineering Co.	Fatal.	Out of emp.	4,500.00	No appeal		
Kurth vs. Eclipse Lumber Co.	T. T.	Ext. of injury	$ 15.00 weekly (Reopening)		No appeal	
Young vs. Wilson Const. Co.	T. T.	Ext. of injury	359.84	No appeal		
McCormick vs. Morningside Nurseries	Fatal.	Employer	Disallowed	No appeal		
Rodosevich vs. Madrid Coal Co.	P. P.	Ext. of injury	$1,350.00 (Reopening)		No appeal	
Stevens vs. National Const. Co.	Fatal.	Dependency	1,800.00	Affirmed	No appeal	
Christensen vs. Cloverleaf Coal Co.	Fatal.	Coverage	Disallowed	No appeal		
Morrow vs. Ford Motor Co.	T. T.	Ext. of injury	Disallowed (Reopening)			
Joy vs. Marshall Canning Co.	T. T.	Ext. of injury	Disallowed (Reopening)		No appeal	
Benson vs. Polk County	T. T.	Out of emp.	$ 37.71	Affirmed	Pending	
Wheeler vs. Koss Const. Co.	P. P.	Out of emp.	Disallowed			
Vreeland vs. Younker Bros.	Fatal.	Out of emp.	Disallowed	No appeal		
Gerdes vs. Fullerton Lumber Co.	T. T.	Ext. of injury	Disallowed (Reopening)		No appeal	
Halloran vs. Carson	P. P.	Employer	$ 450.00	No appeal		
Pyle vs. Pershing Coal Co.	T. T.	Out of emp.	30.00	No appeal		
Ansley vs. Central Iowa Fuel Co.	T. T.	Out of emp.	278.56	Affirmed	No appeal	
Daniels vs. Red Rock Coal Co.	T. T.	Out of emp.	525.00	Affirmed	No appeal	
Dishan vs. Beebee	T. T.	Ext. of injury	181.65	No appeal		
Gehlen vs. Hurd Creamery Co.	T. T.	Out of emp.	79.97	Affirmed	No appeal	
O'Brien vs. City of Council Bluffs	T. T.	Hernia	36.00	No appeal		
George vs. Rope Motor Co.	T. T.	Out of emp.	Disallowed	No appeal		
Reynolds vs. Larson Const. Co.	T. T.	Coverage	Disallowed	Pending		
Leibsohn vs. James Badlat, et al.	P. P.	Employer	$1,500.00	No appeal		
Genson vs. Jones Transfer Co.	T. T.	Ext. of injury	130.00	No appeal		
Grobstick vs. McDonald Mfg. Co.	T. T.	Out of emp.	70.00	No appeal		
Simon vs. The Adams Co.	T. T.	Hernia	Disallowed	No appeal		
Mowatt vs. Wm. Beu & Son	T. T.	Coverage	Disallowed	Affirmed	Affirmed	
Saulner vs. Interstate Power Co.	Fatal.	Dependency	$3,100.00	Affirmed	No appeal	

CASES ARBITRATED DURING BIENNIUM

SECOND YEAR—Continued

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
Berkholz vs. Sherman Nursery Co.	T. T.	Hernia	82.04	Affirmed	No appeal	
Ambrose vs. N. W. Bell Tel. Co.	T. T.	Out of emp.	$ 45.00	No appeal		
Frazier vs. C. N. W. Ry. Co.	Fatal.	Out of emp.	Disallowed	No appeal		
James vs. Iowa State Highway Commission	Fatal.	Dependency	$2,076.00	No appeal		
Mellus vs. Bayless & Loosee	T. T.	Out of emp.	255.00	No appeal		
Nelson vs. Swift & Co.	P. P.	Ext. of injury	712.46	No appeal		
Hanson vs. Sioux City Stock Yards Co.	Fatal.	Out of emp.	4,155.00	No appeal		
Maier vs. Universal Gypsum & Lime Co.	T. T.	Hernia	Disallowed	Pending		
Snook vs. Barish Bros. Motor Co.	P. P.	Ext. of injury	$ 900.00	Pending		
Reavis vs. Burgen Corporation	T. T.	Out of emp.	Disallowed	Pending		
Bedian vs. Bettendorf Co.	P. P.	Ext. of injury	$ 175.00	Affirmed	Pending	
Sutherland vs. Iowa-Ill. Airway Co.	Fatal.	Out of emp.	4,500.00	No appeal		
McGinty vs. Glaub Const. Co.	P. P.	Ext. of injury	82.04	No appeal		
Hickman vs. Holdcroft & Sloan Motor Co.	Fatal.	Dependency	Disallowed	No appeal		
Allen vs. Stuart Feed Co.	P. P.	Ext. of injury	$ 82.04	No appeal		
Martens vs. Witt	T. T.	Hernia	Disallowed	No appeal		
Gibbons vs. Sanitary Bakery Co.	T. T.	Out of emp.	Disallowed	No appeal		
Decks vs. Concrete Material Corp.	Fatal.	Dependency	$ 375.00	No appeal		
Hockman vs. Old King Coal Co.	P. P.	Ext. of injury	270.00 (Reopening)		Pending	
James vs. Thode Coal Co.	T. T.	Out of emp.	Disallowed	Pending		
Even vs. Wagner-Erling Co.	P. P.	Ext. of injury	$1,062.00 (Reopening)		Pending	
Hammond vs. Hanford Produce Co.	P. P.	Out of emp.	450.00	No appeal		
Dille vs. Plainview Coal Co.	Fatal.	Out of emp.	Disallowed	Pending		
Severt vs. Champion Milling & Grain	Fatal.	Out of emp.	Disallowed	No appeal		

CASES REVIEWED AND APPEALED DURING BIENNIUM

FIRST YEAR—1928-1929

Mallinger vs. W. C. Oil Co.	Fatal.	Coverage	Disallowed	Affirmed	Com. reversed	Pending on rehearing
Busing vs. Iowa Ry. & Light	Fatal.	Out of emp.	Disallowed	Reversed	Com. affirmed	Com. affirmed
McKinley vs. Sanitary Dairy	T. T.	Out of emp.	$ 560.00	Affirmed	Com. affirmed	No appeal
Schuler vs. Hart-Parr Co.	Fatal.	Out of emp.	4,500.00	Affirmed	Com. affirmed	No appeal
Mumey vs. Stephan Bros.	P. P.	Ext. of injury	576.00	Affirmed	Com. affirmed	No appeal
Collingwood vs. Morrell Co.	T. T.	Hernia	Disallowed	Affirmed	No appeal	
Johnson vs. Lytle Const. Co.	T. T.	Hernia	$ 189.80	Affirmed	No appeal	
Preston vs. Adams County	T. T.	Coverage	Disallowed	Affirmed	Pending	
Williams vs. Central Iowa Fuel	T. T.	Out of emp.	Disallowed	Affirmed	Pending	

O'Day vs. U. S. Button Co.	P. P.	Out of emp.	$ 900.00	Affirmed	No appeal	
Jones vs. Eppley Hotels	Fatal.	Cause of death	3,057.00	Affirmed	Com. affirmed	Com. affirmed
Brasch vs. Tenenbom	P. P.	Out of emp.	Disallowed	Affirmed	Reversed	
Carothers vs. Durand	T. T.	Coverage	Disallowed	Affirmed	Pending	
Quaintance vs. Rowan School	Fatal.	Out of emp.	Burial	Affirmed	No appeal	
Arthur vs. Marble Rock School	Fatal.	Coverage	$1,800.00	Affirmed	Com. affirmed	Com. reversed
Vaverka vs. Castone Products	Fatal.	Coverage	Disallowed	Affirmed	No appeal	
Dawson vs. Pratt-Mallory	Fatal.	Coverage	Disallowed	Affirmed	Pending	
Morey vs. 3-Minute Cereal	T. T.	Hernia	Disallowed	Affirmed	No appeal	
Wilson vs. Pershing Coal Co.	Fatal.	Cause of death	$4,500.00	Reversed	Pending	
Gee vs. Crabb	Fatal.	Out of emp.	1,960.00	Affirmed	Pending	
Cross vs. Economy Coal Co.	T. T.	Out of emp.	$ 125.00	Affirmed	Pending	
Riley vs. Dallas Products Co.	Fatal.	Dependency	900.00	Reversed	Pending	
Turk vs. Adelphi Coal Co.	T. T.	Out of emp.	Disallowed	Affirmed	Pending	
Penniwell vs. Sodin & Bacino	T. T.	Hernia	$ 64.64	Affirmed	No appeal	
Rodgers vs. Iowa Railway & Light Co.	Fatal.	Cause of death	4,500.00	Affirmed	No appeal	
Porter vs. Afton, City of	Fatal.	Dependency	Disallowed	Affirmed	Pending	
Wells vs. Kelly-Atkinson	Fatal.	Cause of death	$4,436.25	Affirmed	No appeal	

SECOND YEAR—1929-1930

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
Mendina vs. Scandia Coal	Fatal.	Dependency	$ 300.00	Reversed	Pending	
Bittner vs. Iowa Ry. & Light	Fatal.	Dependency	3,738.00	Affirmed	Affirmed	No appeal
Stiles vs. Boy Scouts	T. T.	Coverage	63.00	Affirmed	Com. affirmed	Com. reversed
Allard vs. McNeal	T. T.	Employer	Disallowed	Affirmed	No appeal	
Walton vs. Smith & Robison	P. P.	Coverage	Disallowed	Affirmed	Com. affirmed	No appeal
Smith vs. Henry County Hospital	T. T.	Hernia	Disallowed	Affirmed	Com. reversed	Com. affirmed
Parfenow vs. Harrison Const. Co.	P. P.	Out of emp.	$2,310.00	Reversed	No appeal	
Pendley vs. Cook & Stueker	P. P.	Ext. of injury	Disallowed	Affirmed	Pending	
Schneberger vs. Wright Const. Co.	Fatal.	Dependency	Disallowed	Affirmed	No appeal	
Woods vs. Baumgardner & Schroeder	Fatal.	Coverage	Disallowed	Affirmed	No appeal	
Malmoed vs. Scheuerman Bros.	P. P.	Out of emp.	Disallowed	Affirmed	No appeal	
Vignaroli vs. Norwood-White	Fatal.	Dependency	$ 600.00	Modified	No appeal	
Saulner vs. Interstate Power	Fatal.	Dependency	3,100.00	Affirmed	No appeal	
Allard vs. Brady	P. P.	Employer	750.00	Affirmed	Pending	
Martyn vs. Des Moines Electric	T. T.	Out of emp.	Disallowed	Affirmed	Com. affirmed	Pending
Enfield vs. Certainteed Products Co.	P. P.	Out of emp.	Disallowed	Affirmed	Com. reversed	Pending

CASES REVIEWED AND APPEALED DURING BIENNIUM—Continued

Title of Case	Injury	Issue	Arbitration	Review	Dist. Court	Sup. Court
Bye vs. Nevada Poultry Co.	Fatal	Cause of death	Disallowed	Reversed	Affirmed	No appeal
Benson vs. Polk County	T. T.	Out of emp.	$ 37.71	Affirmed	Pending	
Heissler vs. Strange Bros.	P. P.	Out of emp.	416.25	Affirmed	Pending	
Stevens vs. National Const. Co.	Fatal	Dependency	1,800.00	Affirmed	Affirmed	No appeal
Bedian vs. Bettendorf Co.	P. P.	Ext. of injury	175.00	Affirmed	Pending	
Birkholz vs. Sherman Nursery	T. T.	Hernia	83.04	Affirmed	No appeal	
Mowatt vs. Wm. Beu & Sons	T. T.	Coverage	Disallowed	Affirmed	Affirmed	
Gehlen vs. Hurd Creamery Co.	T. T.	Out of emp.	$ 79.97	Affirmed	No appeal	

FATAL CASES REPORTED DURING BIENNIUM

FIRST YEAR—1928-1929

Employer	Employe	Cause	Amount	Dependent	Adjustment
American Transfer Co.	Geo. S. Perkins	Thrown against car	$ 4,152.00	Widow	By agreement
Abramson, John P.	Wendell Palmer	Auto collision		No dependents	No claim filed
Alexander, A. A.	John Vail	Fall	3,600.00	Widow	By agreement
Alstadt & Langlas Baking Co.	Paul Townsley	Struck by truck		No dependents	No claim filed
Bumgardner & Schroeder	J. R. Wood	Overturned truck	Denied	Widow	Arbitration
Burlington Paper Co.	Laurence Kennedy	Struck by car	4,500.00	Widow	By agreement
Bennett Bros. Coal Co.	Wm. Heathcote	Fall of slate	1,800.00	Widow	By agreement
Bennett Bros. Coal Co.	H. Chipchase	Fall of slate	4,500.00	Widow	By agreement
Builders Material Co.	Geo. Elam	Fall	4,500.00	Widow	By agreement
Builders Material Co.	B. L. Balcom	Smothered	3,150.00	Widow	By agreement
Burlington Basket Co.	Fred Boughton	Struck by tree	2,037.00	Widow	By agreement
Beck Coal & Mining Co.	Tom Pappas	Asphyxiated	4,500.00	Widow	By agreement
Bennethum, F. G.	Sam Raygor	Struck by train		Widow	Liability denied
Chetek Resort Co.	Edwin J. Tilleson	Explosion		Widow	Wisconsin case
Coon River Sand Co.	Gerald Phillips Perdue	Electrocuted	4,500.00	Widow	By agreement
Central Service Co.	Tom Erickson	Fall	1,500.00	Children	By agreement
Central States Electric Co.	Geo. Rickett	Meningitis		No dependents	No claim filed
Clay County	L. H. Dayton	Struck on head	100.00	No dependents	No claim filed
Consolidated Indiana Coal Co.	D. J. Jamieson	Mine accident	4,500.00	Widow	By agreement
Central Iowa Fuel Co.	Robert L. Caldwell	Fall of slate	4,500.00	Widow	By agreement
Central Iowa Fuel Co.	John Maholic	Fall of slate	4,500.00	Widow	By agreement
Convent of Good Shepherd	John J. Desmond	Infection	2,796.00	Widow	By agreement
Chicago, R. I. & Pacific R. R.	L. G. Larson	Fall	300.00	Sister	By agreement
Central West Public Service	Arthur G. Barton	Fall from ladder		Widow	Not compensable

Coffeen, A. R.	Herman Buer	Electrocuted	4,326.00	Widow	By agreement
Cloverleaf Coal & Mining Co.	Carl Christiansen	Crushed in mine		Widow	Arbitration
Cownie Tanning Co.	Clyde Fickes	Died of natural causes			Not compensable
Coca Cola Bottling Co.	Harold Williams	Fall against truck	500.00	Widow	By agreement
Cram Const. Co.	Ernest Lester	Fell in river—pneumonia			Not compensable
Davenport, City of	Bernard Geerts	Shot by thief		Widow	Not compensable
Dickenson & Stark	Olaf M. Blogen	Crushed	2,769.00	Widow	By agreement
Davidson Bros. Co.	Art Stevens	Hernia	750.00	Minor son	Compromise
Determan Co., H. C.	Leland Determan	Car accident	972.54	Mother	Arbitration
Des Moines, City of	Ike Levich	Cancer		Widow	Not compensable
Des Moines Gas Co.	John Hedlind	Cancer		Widow	Not compensable
Deere, John, Tractor Co.	C. E. Penticoff	Crushed in mill	4,500.00	Widow	By agreement
Des Moines City Ry. Co.	D. Rillahan	Struck by truck	3,249.00	Widow	By agreement
Dewees & Whitney	Harry Wilmott	Falling rocks		No dependents	No claim filed
Decker, Jacob E. & Sons	Harold Glazier	Malta fever	500.00	Mother	Arbitration
Decker, Jacob E. & Sons	Fred Buehler	Fall	1,640.00	Widow	Arbitration
Decker, Jacob E. & Sons	Charles Buchanan	Auto accident	4,320.00	Widow	By agreement
Davenport Locomotive & Mfg. Co.	Jacob Lewis	Natural causes			Not compensable
Dawson, J. W.	Wm. Bainbridge	Fall of slate	1,320.00	Widow	Compromise
Des Moines Packing Co.	Sidney Caple	Attacked by bull	4,500.00	Widow	By agreement
Eppley Hotel Co.	James W. Jones	Fall	2,007.00	Widow	Arbitration
Eichmeir, Fred & Marjory	Emanuel Esslinger, Jr.	Fell from roof		Widow	Not compensable
Economy Coal Co.	C. Howard	Blow on head	4,500.00	Widow	By agreement
Fort Dodge, D. M. & Southern Ry.	Lee Buck	Electrocuted	4,500.00	Widow	By agreement
Fort Dodge, D. M. & Southern Ry.	Frank Duel	Struck by car	4,500.00	Widow	By agreement
Farmers Mutual Telephone Co.	Harry Johnston	Fall	2,835.00	Sister	By agreement
Farmers Mutual Hail Ins. Co.	M. J. Arnold	Struck by truck	4,500.00	Widow	By agreement
Garlock, E. J.	Monroe Thorn	Fell from tree		No dependents	No claim filed
Harrison Engineering & Const. Co.	H. C. Potete	Truck turned over	510.00	Widow	Compromise
Hawkeye Portland Cement Co.	Pete Polkonjak	Struck by car	Unsettled	Widow	Pending
Hughes Motor Co.	Milton Brooks	Struck by train	3,324.00	Widow	By agreement
Hauser Furniture Co.	Harry Curtis	Infection	4,500.00	Widow	By agreement
Hauptmann, Edward	Anthony Hauptmann	Blow on head	Farm labor	Widow	Not compensable
Hamilton County	Frank M. Baker				Not compensable
Holdcraft, W. J., & Sloan Motor Co.	Georgia Hickman	Car accident	150.00	Widow	Arbitration
Hahn Bros. Co.	Robert Nichols	Fall	1,180.00	Widow	By agreement
Iowa Public Service Co.	A. W. Scharnweber	Electrocuted	4,500.00	Widow	By agreement
Iowa Public Service Co.	C. F. Schlact	Fall	4,500.00	Widow	By agreement
Iowa Public Service Co.	Dennis C. Jensen	Electrocuted	4,500.00	Widow	By agreement
Iowa Railway & Light Co.	Francis Rodgers	Electrocuted	4,500.00	Widow	Arbitration
Iowa Railway & Light Co.	Peter Hardin	Electrocuted	4,500.00	Widow	By agreement
Iowa Railway & Light Co.	Edward Hawkins	Crushed	1,500.00	Parents	Arbitration
Iowa Railway & Light Co.	Martin Bittner	Explosion	3,738.00	Widow	Arbitration
Iowa City Canning Co.	Olaff Anderson	Electrocuted	1,147.95	Parents	Arbitration
Independent School Dist. of D. M.	H. L. Holbrook	Asphyxiated	4,500.00	Widow	By agreement
Iowa Power & Light Co.	Lewis C. Schade	Electrocuted	800.00	Father	By agreement
Iowa City Iron Works	F. Roberts	Caught in machinery	10,000.00	Widow	Third party settled

FATAL CASES REPORTED DURING BIENNIUM—Continued

First Year—Continued

Employer	Employe	Cause	Amount	Dependent	Adjustment
Iowa Southern Utilities	Wm. F. Carries	Electrocuted	4,500.00	Widow	By agreement
Interstate Power Co.	Joseph Saulner	Electrocuted	4,500.00	Widow	Arbitration
Iowa Electric Co.	Jas. L. Croft	Fell from pole		No dependents	No claim filed
Ind. School Dist. of Ottumwa	Geo. Bulsen	Died in auto accident		Widow	Not compensable
Iowa City, City of	Tim Ford	Infection			Not compensable
Iowa-Illinois Airways	Chester Sutherland	Fall	4,500.00	Widow	Arbitration
Johnson, A. F., Const. Co.	Ed Dwyer	Gas poisoning	4,500.00	Widow	By agreement
Johnson, A. F., Const. Co.	Geo. Fogel	Caught in machinery	3,459.00	Widow	By agreement
Jones & Hiestand	Elmer Schave	Fall	627.00	Mother	Arbitration
Johnson Hotel	Gus Samuelson	Natural causes		Widow	Not compensable
Keokuk Electric Co.	Chas. West	Electrocuted		No dependents	No claim filed
Kohrs Packing Co.	Martin Johnson	Crushed	3,633.00	Widow	Arbitration
Kohrs Packing Co.	Louis W. Reihman	Fall from platform	708.00	Widow	Compromise
Lyttle, C. F., Const. Co.	Tom Goff	Struck by train	3,600.00	Widow	By agreement
Ladora Lumber & Grain Co.	Claud S. Carey	Fell from scaffold	2,750.00	Widow	Arbitration
Morrison Bros.	Fred Stock	Caught by crane	4,500.00	Widow	By agreement
Maytag Co.	W. W. Halstead	Cancer	1,000.00	Widow	Compromise
McClelland Co.	Gustav Lorenz	Caught in machine	120.00	Widow	Compromise
McCarthy Improvement Co.	J. F. Miller	Kicked by mule		Widow	Illinois case
McCarthy Improvement Co.	John Green	Struck by bolt	3,117.00	Widow	By agreement
McDonald, A. Y., Mfg. Co.	Simon Blum	Caught in machinery	3,687.00	Widow	By agreement
Management & Engineering Co.	Howard Jackson	Burned	2,250.00	Mother	By agreement
Morrell, John, & Co.	J. O. Short	Fall	3,945.00	Widow	Arbitration
Morrell, John, & Co.	W. Champ	Peritonitis	600.00	Widow	Compromise
Geo. McBride	Melvin Slaymaker	Struck by train	427.00	No dependents	No claim filed
Marshall Electric Co.	Merle F. Easter	Electrocuted	4,500.00	Widow	By agreement
Northwestern Bell Telephone Co.	Arleigh C. Willis	Cave in	3,780.00	Widow	By agreement
Northwestern Bell Telephone Co.	Wilbur Hoffman	Electrocuted		No dependents	No claim filed
Neuman & Co., Arthur H.	George Earl	Fall	4,500.00	Widow	By agreement
Norwood-White Coal Co.	S. Vignaroli	Fall of slate	1,500.00	Parent (partial)	Arbitration
Norwood-White Coal Co.	Lee Wolfe	Electrocuted	3,298.26	Widow	By agreement
Norwood-White Coal Co.	Curtis Cooley	Struck by car	4,500.00	Children	Arbitration
Norwood-White Coal Co.	Dave Utterson	Fall of slate	4,500.00	Widow	By agreement
Olesen, Jens & Sons, Const. Co.	Pete Meacham	Crushed	4,500.00	Widow	By agreement
Oak Grove Dairy	Paul Dorothy	Struck by train	1,945.00	Parents	By agreement
Ottumwa, City of	Harry Noe	Fall	Dismissed	Widow	Arbitration
Oard & Peterson	Frank Peterson	Struck by auto	400.00	Parents	Compromise
Oler, Norman	Ben Hackelson	Fall	250.00	No dependents	By agreement
Pershing Coal Co.	Henry Ferguson	Cancer	None	Widow	Not compensable
Peoples Light Co.	Albert J. Hass	Electrocuted	4,500.00	Widow	By agreement

Poweshiek County	Earl Jordan	Cave in	3,375.00	Widow	By agreement
Quaker Oats Co.	Ivan Augustine	Explosion	Denied	Minor son	Arbitration
Royal Lumber Co.	Peter Rasmussen	Heart attack	500.00	Widow	Compromise
Shuler Coal Co.	Geo. Johnson	Crushed	4,500.00	Widow	By agreement
Shuler Coal Co.	Le Roy Thomas	Mine accident	197.67	Parents	Compromise
Standard Oil Co.	Dave Rea	Fall	582.00	Children (partial)	By agreement
Stokes, Roy	Herman Brunner	Car accident		No dependents	No claim filed
Scandia Coal Co.	Tony Mondini	Fall of slate	Denied	Father	Arbitration
Scandia Coal Co.	A. Robinson	Fall of slate	4,203.00	Widow	Agreement
Scandia Coal Co.	M. J. Arnold	Struck by auto	4,500.00	Widow	By agreement
Scandia Coal Co.	Angelo Santi	Fall of slate	2,646.69	Parents	By agreement
Schneider, Dan	John Homann	Fell from ladder		No dependents	No claim filed
Swift & Co.	Thos. F. Brady, Jr.	Auto accident	4,500.00	Widow	By agreement
Swift & Co.	Francis Bousquet	Electrocuted	4,242.00	Widow	By agreement
Shipley Co.	Henry Reimer	Heart attack		Widow	Not compensable
Standard Clay Products	Joe Graham	Crushed by wagon	2,802.00	Children	By agreement
Soukup, John	Alvin Soukup	Scalded		Parents	By agreement
Schmidt, Alex D.	W. F. Zimmerman	Fall	None	Widow	Not compensable
United States Gypsum Co.	H. Landels	Electrocuted	4,500.00	Widow	By agreement
Union Bridge & Const. Co.	Frank Ferris	Struck by brace		None	Nebraska case
Union Bridge & Const. Co.	J. W. Stepp	Burned	3,000.00	Parents (partial)	By agreement
Vale, W. J.	Clarence Pointer	Fall	200.00	Parents (partial)	By agreement
Weaver, M. O.	Verne Weaver	Fall	4,500.00	Widow	By agreement
Wickham Bridge & Pipe Co.	Chas. Chadwick	Unknown		Sister	Not compensable
Wright Const. Co.	J. W. Schmidt	Run over by truck	4,500.00	Widow	By agreement
Woods Bros. Thresher Co.	John Shaklee	Occupational disease		None	Not compensable
Williams & Hunting Co.	Chas. Hermann	Unknown		Widow	Pending
Waugh & Tackman	Ted Engle	Struck by train	150.00	No dependents	By agreement
Wright Const. Co.	Raymond Wright	Car accident	4,150.00	Widow	Arbitration
Western Silo Co.	Lee E. Arne	Car accident	Unsettled	Widow	Arbitration
Younglove Engineering Co.	Wm. Klinzman	Fall from scaffold	4,500.00	Widow and children	By agreement
Zwack, Anton, Inc.	LeRoy J. Kellogg	Fall	1,500.00	Parents (partial)	Compromise

Second Year—1929-1930

American Telephone & Telegraph	Forrest Walker	Asphyxiation	$ 4,500.00	Widow	By agreement
Automatic Pearl Button Co.	E. Snyder	Infection	800.00	Mother and child	Compromise
Abrahamson, J. P., Const. Co.	Daniel Harrigan	Crushed	Unsettled	Daughter	Arbitration
American Shell Products Co.	D. L. Goodwin	Hit by train		No dependents	No claim filed
Acres Blackmar Co.	Henry Hungate	Fell down elevator	3,870.00	Widow	By agreement
Bryant Paving Co.	Dominic Nicolini	Crushed by car	1,730.00	Widow and children	Arbitration
Brunswick Balke Collender Co.	W. Haas	Streptococcus infection	3,633.00	Widow	By agreement
Bettendorf Co.	Frank Yearwood	Crushed	3,966.72	Widow	By agreement
Builders Lime & Cement Co.	Chas. Murphy	Dragged by team	389.58	No dependents	By agreement
Bennett Bros. Coal Co.	Peter Young	Fall of slate		No dependents	No claim filed

FATAL CASES REPORTED DURING BIENNIUM—Continued
SECOND YEAR—Continued

Employer	Employe	Cause	Amount	Dependent	Adjustment
Benson Coal Co.	Joe Chandler	Fall	3,585.00	Widow	By agreement
Boone Coal Co.	Geo. Brooks	Fall of coal	3,240.00	Widow	By agreement
Barish, E. Motor Co.	Frank G. Taylor	Auto accident	Pending	Widow and child	Arbitration
Burlington Basket Co.	Jas. Cogswell	Burned	Pending	Son	Arbitration
Climax Engineering Co.	Morris Haupt	Crushed by elevator	3,403.00	Widow and child	Arbitration
Cedar Rapids, City of	Fred L. Lucore	Electrocuted		No dependents	No claim filed
Cedar Rapids & Iowa City Ry.	Lewis Wisehart	Electrocuted	4,500.00	Widow	By agreement
C., R. I. & P. R. R. Co.	Paul Ross	Blood poisoning	1,000.00	Widow	Compromise
Central Service Co.	Chas. Shives	Fall of slate	4,500.00	Widow	By agreement
Carbon Coal Co.	Willard Welsh	Fall	4,500.00	Widow	By agreement
Consolidated Indiana Coal Co.	John Lucas	Fall of slate	4,500.00	Widow	By agreement
Concrete Materials Corp.	Clarence Johnson	Crushed	375.00	Stepfather	Arbitration
Cudahy Packing Co.	Tom Shkirick	Infection	1,250.00	Widow and child	Compromise
Colfax Coal Co.	Thos. D. Willey	Crushed	4,500.00	Widow	By agreement
Chicago, Northwestern R. R. Co.	Roy Peach	Crushed	4,500.00	Widow	By agreement
Chicago, Northwestern R. R. Co.	Gerald Frazier	Infection	Denied	Widow	Arbitration
Chicago, Northwestern R. R. Co.	Alfred S. Croft	Struck by engine	4,500.00	Widow	By agreement
Chittenden & Eatman Co.	Belle Hendrickson	Fall	1,204.00	Mother	By agreement
Champion Milling & Grain Co.	Robert Severt	Blow on head	Denied	Widow	Arbitration
Central Iowa Fuel Co.	Dominic Gotta	Fall of slate	4,500.00	Children	By agreement
Cutshall, F. E., Motor Co.	Wm. H. Meyer	Infection	4,500.00	Widow	By agreement
Devlin Const. Co.	A. Russel	Electrocuted	Denied	Widow	Arbitration
Des Moines Stove Repair Co.	Mike Kennedy	Heart failure		No dependents	Not compensable
Dunlap Lumber & Grain Co.	Fred Wettergil	Kicked by horse	450.00	No dependents	No claim filed
Deere, John, Tractor Co.	Wm. Krug	Electrocuted	4,500.00	Widow	By agreement
Dyersville, City of	Henry Hanfelt	Shot by thief	150.00	No dependents	By agreement
Des Moines, City of	Richard O. Chamberlain	Skull fractured	Pending	Widow	Arbitration
E. D. DuPont De Nemours Co.	John Hedden	Explosion	4,500.00	Wife and children	By agreement
Electric Rail Weld Sales Corp.	Clayton S. Howard	Killed by train	2,250.00	Mother	Arbitration
Elgin Dairy	Chas. Julander	Auto collision		Son	Pending
Economy Coal Co.	John Erickson	Struck by bar			Pending
Farmers Co-op. Elevator Co.	Andrew Lovig	Crushed by elevator	3,384.00	Widow and children	By agreement
Fisher Co.	Otto Hatzky	Fall	4,500.00	Widow	By agreement
Fullerton Lumber Co.	Joseph Hanson	Fall	4,500.00	Widow	By agreement
First National Bank	Louis Biggs	Fall	3,140.00	Widow	By agreement
Federal Bridge Co.	F. W. Martin	Struck on back	2,769.00	Widow	By agreement
Griffis Bros. Const. Co.	Harold Sheriff	Fall	927.00	Mother	Arbitration
Glenwood Canning Co.	Mary Wilkins	Struck by car			Pending
Grimes Canning Co.	Hazel McKinney	Explosion		Husband	Pending
Grimes Canning Co.	Martin Grief	Burned	2,361.00	Widow	Arbitration

Graber Motor Co.	P. M. Taylor	Crushed by truck	4,500.00	Widow	By agreement
Greeve Produce Co.	Carl Hoeft	Blood poisoning		Widow	Pending
Graham Coal Co.	Lewis Sebben	Fall of slate	4,500.00	Widow	By agreement
Great Western Coal Co.	Albert Palmoeri	Struck by kick	4,500.00	Widow	By agreement
Griggs, A. P., Piano Co.	Oscar Colberg	Infection	4,500.00	Widow	By agreement
Graves & Sons, Co., S. J.	Hugh McEachran	Wagon passed over body		Widow	Pending
Halliburton Bros.	R. H. McClary	Infection	4,500.00	Widow	By agreement
Horrabin, Wm., Contracting	Geo. Van Dusen	Struck by car	2,970.00	Widow	By agreement
Horn, J. C.	Geo. Sink	Fell from scaffold		Widow	Pending
Home Oil Co.	J. C. Upchurch	Struck by train	4,500.00	Widow	By agreement
Hawkeye Portland Cement Co.	R. C. Tucker	Scalded	4,500.00	Widow	By agreement
Hardy & Eckoff	Elbert Eckhoff	Explosion	4,500.00	Widow	By agreement
Home Oil & Gas Co.	John E. Beach	Struck by truck	2,750.00	Widow	By agreement
Hancock County	E. H. Wahlert	Accidentally shot	4,500.00	Widow	By agreement
Hart-Parr Co.	Roy Luther	Infection in lung	4,500.00	Widow	By agreement
Home Furniture Co.	Wm. Kampschroer	Carbon-monoxide poison	3,250.00	Widow	Arbitration
Iowa State Highway Commission	Engel Boot	Fall	4,500.00	Widow	Arbitration
Iowa State Highway Commission	Henry Carlson	Paralysis			Not compensable
Iowa State Highway Commission	Wendell James	Struck by truck	2,076.00	Parents	Arbitration
Iowa State Highway Commission	John C. Stearns	Struck by truck	Pending	Widow	Unsettled
Iowa Canning Co.	J. M. McColeb	Crushed	3,369.00	Widow	By agreement
Iowa Warehouse Co.	Wm. Shook	Fall		No dependents	No claim filed
Iowa Southern Utilities	Fred M. Giles	Electrocuted	4,500.00	Widow	By agreement
International Milling Co.	Jas. W. Bolton	Struck by cable	4,500.00	Widow	By agreement
Iowa Nebraska Light & Power Co.	Virgil L. Bettis	Explosion	3,996.00	Widow	By agreement
Iowa Nebraska Light & Power Co.	J. C. Rusmisel	Electrocuted	4,500.00	Widow	By agreement
Iowa Electric Co.	Milton A. Erickson	Car accident		No dependents	No claim filed
Illinois Central System	J. C. Donahue	Infection	2,800.00	Widow	Compromise
Iowa Machinery Supply	S. J. St. Clair	Auto accident	4,500.00	Widow	By agreement
Iowa Public Service	James Edwards	Electrocuted	Pending	Parents	Unsettled
Iowa Ry. & Light Corp.	Milton Simmons	Auto collision	4,500.00	Widow	By agreement
Iowa Ry. & Light Corp.	Herbert Martinson	Electrocuted	4,500.00	Widow	By agreement
Interstate Power Co.	Alfred E. Bergman	Electrocuted	Pending	Child	Arbitration
Iowa City, City of	Tim Ford	Fell off truck	Pending	Widow	Arbitration
Jewell Tea Co.	Daniel Nunnally	Struck by car	Pending	Widow	Unsettled
Johnson, E. M.	Dan F. Crowl	Fall	Pending	Widow	Unsettled
Kahl, H. C.	Patrick Crowley	Crushed by power belt	4,500.00	Widow	By agreement
Kipper & Son, F. B.	Jos. Skalecki	Fall of rock	900.00	Father	By agreement
Kirkwood Hotel	Arthur Davis	Elevator fell on head		No dependents	No claim filed
Kresge, S. S., Co.	Lester Clark	Fall	1,920.00	Parents	By agreement
Larson, C. E., Const. Co.	C. E. Wynn	Fall	150.00	No dependents	No claim filed
Larson Const. Co.	Gus Himmer	Struck by tractor	1,200.00	Widow	Compromise
Larson-Erling Co.	D. W. McMahon	Crushed by wagon		No dependents	No claim filed
Lauritsen, Peter	W. J. Watson	Fall	Pending	Widow	Arbitration
Metz Const. Co.	Alfred H. Hoover	Run over by truck	4,206.00	Widow	By agreement
Moeller, Ed	Wm. Courtney	Fall	4,500.00	Widow	By agreement
Marsch, John	Henry O'Dell	Burned		No dependents	No claim filed
Management & Engineering Co.	Herman A. Bundtzen	Electrocuted		No dependents	South Dakota case

FATAL CASES REPORTED DURING BIENNIUM—Continued
SECOND YEAR—Continued

Employer	Employe	Cause	Amount	Dependent	Adjustment
Mona Motor Oil Co.	Herbert Heebner	Asphyxiated	4,500.00	Widow	By agreement
Merchants Transfer & Storage	Chas. W. Barnett	Electrocuted	4,500.00	Widow	By agreement
Morton Salt Co.	Edward F. Bouldin	Auto accident	Pending	Widow	Arbitration
N. W. States Portland Cement Co.	Leo Block	Thrown from engine	4,500.00	Widow	By agreement
Newton, City of	E. J. Fallor	Auto collision	4,500.00	Widow	By agreement
National Carbide Corp.	John Young	Hernia	1,586.00	Widow	Arbitration
National Const. Co.	D. E. Stevens	Killed by truck	1,500.00	Widow	Compromise
Norwood-White Coal Co.	Hillary Cunningham	Fall of slate		No dependents	No claim filed
Northwestern Bell Telephone	James Reid	Crushed	4,320.00	Widow	Unsettled
Osceola County Co-op. Creamery	H. Garthwaite	Crushed	Pending	Widow	Unsettled
Pearson Regnell Co.	Richard F. Potts	Fall	4,500.00	Widow	By agreement
Pittsburg Des Moines Steel Co.	Wayne Witzel	Fall	4,500.00	Widow	By agreement
Pittsburg Des Moines Steel Co.	E. H. Ellis	Fall	4,500.00	Widow	By agreement
Pittsburg Des Moines Steel Co.	Francis Taylor	Fall	4,494.00	Widow	By agreement
Peoples Fuel Co.	Ben Votroubek	Struck by train	3,474.00	Widow	By agreement
Puritan Cafe	Lawrence Goehring	Fall		No dependents	No claim filed
Peoples Light Co.	Delbert C. Hamilton	Explosion	4,500.00	Widow	By agreement
Postal Telegraph Co.	Freeman A. Trout	Fall	1,165.00	Parents (partial)	By agreement
Poweshiek County	Edmund Swain	Struck by derrick	680.00	Parents	By agreement
Penrod, Jurden & Clark	Ora Gilliman	Car accident	Pending	Widow	Arbitration
Robbins Bros. Circus	Louis Brundage	Crushed by train		None	Not compensable
Robbins Bros. Circus	Jas. O'Mealy	Trampled by horse	1,800.00	Widow	Arbitration
Robbins Bros. Circus	Donald Williams	Crushed by train		Not known	No claim filed
Ringgold County	Geo. Weiermann	Crushed	2,764.00	Widow	By agreement
Rex Fuel Co.	Geo. Koller	Fall of slate	4,047.00	Widow	By agreement
Rex Fuel Co.	Wm. Swim	Fall of slate	4,047.00	Widow	By agreement
Standard Oil Co.	Emmett C. Holcomb	Crushed by truck	4,500.00	Widow	By agreement
Standard Oil Co.	Geo. W. Kibby	Explosion	4,500.00	Widow	By agreement
Standard Oil Co.	Arthur Stewart	Explosion	4,500.00	Widow	By agreement
Sunshine Coal Co.	Flora Mattioda	Fall of rock	4,500.00	Widow	By agreement
Scandia Coal Co.	Donald Burton	Struck by stone	4,500.00	Widow	By agreement
Jas. Stewart Corp.	Dan J. Greer	Crushed	4,500.00	Widow	By agreement
Sioux City Service Co.	Thos. Norris	Struck by car	4,500.00	Widow	By agreement
Shuler Coal Co.	Joe Susick	Caught under car	4,500.00	Widow	By agreement
Smith, M. S.	Thomas Giblin	Fall	4,500.00	Widow	By agreement
Sioux City Stock Yards	N. H. Harrison	Natural causes		Widow	Not compensable
Sutcliff & Case Co.	John Vincent	Struck by car	Unsettled	Widow	Arbitration
Speeder Machinery Co.	Chas. E. Walker	Struck by car	Unsettled	Widow	Arbitration
Sanitary Dairy Co.	Fred Hamerlinck	Crushed	Pending	Widow	Unsettled
Smith Nest Co.	Krell Smith	Explosion	Pending		Unsettled
Sioux City Bus & Transfer Co.	D. W. Corney	Fall			Unsettled
Taxpayers Municipal Water Works	W. Foster	Blood poisoning		Widow	Not compensable
United States Gypsum Co.	Geo. Bombery	Struck by tube	4,500.00	Widow	By agreement
Western Asphalt Paving Corp.	John Hopson	Heat prostration		Mother	Not compensable
Western Asphalt Paving Corp.	Herman Meyers	Fall	3,114.00	Widow	By agreement
Wright Const. Co.	Robert Schneberger	Crushed	4,500.00	Widow	Arbitration
Wright Const. Co.	J. E. Collar	Struck by truck	2,943.00	Widow	By agreement
Western Flour Mills	James Bolton	Struck by cable	4,500.00	Widow	By agreement
Washington, City of	Aaron Bailey	Killed by thief	4,500.00	Widow	By agreement
Washington, City of	W. F. Sweet				Not compensable
Webster City, City of	Harley Gardner	Electrocuted	4,500.00	Widow	By agreement
Younker Bros.	Everett Vreeland	Appendicitis	Denied	Widow	By arbitration
Yokom Const. Co., W. L.	John Weller	Fall	4,278.00	Widow	By agreement
Zwack, Anton	S. W. Kinder	Fall	4,500.00	Widow	By agreement

COMPENSATION STATE CASES

Under the law the state undertakes to carry out the compensation obligations of itself and its various departments as employers and payments are made directly out of the state treasury upon orders of the Industrial Commissioner issued after the proper preliminaries and liability is established. The State, in and for itself, or in its many departmental activities, has many thousands of employes who are under coverage of the compensation law. They are in every county of the State. In the main they are well paid, and injured employes or their dependents generally receive the maximum compensation allowance. The percentage of injury cases appears to be not large. But in recent years the number of these employes has been greatly increased, and the drain upon the state treasury is of growing importance.

STATE EMPLOYES

Following this is given a table showing compensation payments under this heading for each of the past four years separately and classified by departments and institutions. It will be seen by this table there was a substantial increase in the payments made out of the fund provided by the general assembly for the biennium just closed, over that for the previous biennium. But it will also not escape attention that for the last year of the current biennium there was a substantial decrease from the cost for the first year. This decrease is, at least, in large part, more apparent than real, and it represents a temporary fluctuation in working conditions in a few departments. It is also in part due to earnest effort on the part of those in authority to keep down these costs by lessening the number of accidents and give prompt and effective aid to the end that the least amount of time shall be lost from employment.

It can be fairly said that the various heads of departments and all who are in authority in the matter of employment for the State have cooperated whole-heartedly with the department in seeking to minimize the loss in labor and money under the compensation plan. The fact that the payments to injured workmen or to the dependents of those who have been killed, shows some decrease, while the expenditures on account of medical and hospital service have increased, but indicates that great success has been attained in preventing time lost from employment. In very many cases, where medical bills have been paid, there was no payment

of compensation. The injured workmen went back on the payrolls before the expiration of the waiting period. In the past two years compensation was payable in some fifty cases, but medical, hospital or burial expenses were incurred in more than three times this number.

At the close of the biennium for which this report is made payments are being made regularly in five cases where death ensued and there were dependents. The compensation period will have run its 300-weeks course in three of these cases before the end of the next biennium. There are, however, at least three disability cases on which payments are being made, that will run for the 400 weeks provided by law.

PEACE OFFICER CASES

Another call upon the State treasury arising in an entirely different way, but handled strictly in accord with the provisions of the workmen's compensation law, relates to payments to injured peace officers or to dependents of those who are killed in the line of their duty. This law went into effect July 4, 1923. The dependents, that is, widows and minor children, or others actually dependent upon sheriffs, marshals or other peace officers, are entitled to compensation out of the State treasury at the maximum rate of compensation, under terms and conditions the same as in case of injuries to employes.

Since the law went into effect there has been paid out, on this account, a total of $34,506.77. Of this, $14,276.55 was paid out in the last two years. Payments will continue to increase by accumulation of cases. Two death cases have been ended, and five others of the eight now being carried will terminate during the coming biennium. In two cases of death there were no dependents, hence only burial and medical costs were chargeable to the State. In two other cases, where the sheriff and marshal were killed at Washington near the close of the biennium, liability was at once accepted, but payments had not been made before the close of the period. In one of these cases there were dependents. Another more recent case is in the records, but on which compensation to a dependent had not been commenced on the date of this report. Payments under this heading are made without special appropriation and are not included in the table showing payment out of appropriated funds for injuries to State employes.

Iowa was the pioneer state in providing compensation on account of the extreme hazards of peace officers, and having now

had seven years' experience with the law, it can be most heartily commended.

WORKMEN'S COMPENSATION—STATE EMPLOYES

Expenditures for four years, classified, and Expenditures for Biennium by Departments

COMPENSATION PAYMENTS

	1926-1927	1927-1928	1928-1929	1929-1930
Deaths	$ 3,527.29	$ 2,501.45	$ 2,602.49	$ 3,457.47
Disability	8,321.05	9,194.20	11,775.79	8,911.15
Medical and Hospital	2,384.42	3,252.08	6,188.44	4,941.80
Burial costs	250.00	200.00	.....	450.00
Total	$ 14,482.76	$ 15,147.73	$ 20,566.72	$ 17,760.42

Total for 1926-28, all compensation benefits ..... $ 29,630.49
Total for 1928-30, all compensation benefits 38,327.14

PAYMENT BY DEPARTMENTS DURING BIENNIUM

Department	Year 1928-1929 Compensation	Burial	Year 1929-1930 Compensation	Burial
	DEATH CASES			
Highway Commission	$ 728.25	.....	$ 1,647.02	$ 450.00
State University	608.92	.....	600.68	.....
Cherokee hospital	667.46	.....	626.38	.....
Fish and Game Dept.	597.86	.....	583.39	.....
Totals	$ 2,602.49	.....	$ 3,457.47	$ 450.00
	DISABILITY CASES			
Department	Compensation	Medical	Compensation	Medical
Highway Commission	$ 3,002.30	$ 4,817.19	$ 3,671.83	$ 3,406.60
State University	3,772.12	9.00	1,751.00	5.00
State College	98.57	88.50	513.95	24.00
Board of Control	1,779.84	200.00	.....	26.00
Eldora Boys' School	946.49	275.75	327.27	98.50
Woodward Colony	797.14	.....	170.36	.....
Davenport Home	.....	200.00	242.48	269.60
Marshalltown Home	.....	86.00	.....	.....
Fort Madison Prison	.....	47.00	.....	.....
Clarinda Hospital	.....	.....	509.60	.....
Oakdale Sanitarium	.....	.....	84.00	.....
Rockwell City Ref'm't'ry.	.....	.....	.....	120.25
Fish and Game Dept.	.....	.....	690.00	300.00
Board of Conservation	.....	.....	478.50	271.70
Custodian Buildings	.....	78.50	.....	342.65
Board of Health	.....	129.75	37.16	53.00
National Guard	.....	12.75	.....	.....
State Fair	1,379.33	244.00	435.00	24.50
Totals	$ 11,775.79	$ 6,188.44	$ 8,911.15	$ 4,941.80

Compensation Payments 1928-1930 ..... $ 26,746.90
Medical and Hospital 1928-1930 ..... 11,130.24
Burial Benefits 450.00

Total for Biennium ..... $ 38,327.14

WORKMEN'S COMPENSATION—PEACE OFFICERS

Compensation Paid by State During the Biennium on Account of Injury to Peace Officers

Officer	Date	Burial	Medical	Compensation
Margretz, Victor, Waterloo, police	6- 7 25	.....	.....	$ 1,575.00
Case, Orin L., Harrison County, deputy sheriff	9-12-25	.....	.....	1,575.00
Hemmer, Leo P., Dubuque County, deputy sheriff	10-12-25	.....	.....	1,500.00
Armstrong, J. W., Logan, marshal	12-14-25	.....	.....	1,500.00
Collings, N. F., Union County, sheriff	3- 8-26	.....	.....	1,500.00
Marshall, Dewey, Polk County, deputy sheriff	10-30-26	.....	.....	1,575.00
McConnell, Clint, Decatur County, deputy sheriff	7- 7-27	.....	.....	1,575.00
Dayton, Lewis, Clay County, deputy sheriff	3-20-29	$ 100.00	.....	.....
Baker, F. N., Hamilton County, deputy sheriff	6- 4-29	150.00	$ 200.00	840.00
Hanfelt, Harry J., Dyersville, marshal	3- 8-30	150.00	.....	.....
Wahlert, E. H., Hancock County, sheriff	3- 4-30	150.00	.....	315.00
Sweet, W. F., Washington, sheriff	6-26-30	.....	.....	.....
Bailey, Aaron, Washington, marshal	6-26-30	.....	.....	.....
Total death cases		$ 550.00	$ 200.00	$ 12,225.00
Greene, A. C., Crawford County, sheriff	3- 8-28	.....	$ 141.70	$ 843.70
Wagner, H. T., Black Hawk County, deputy sheriff	10-17-28	.....	45.25	.....
Tullar, Myron G., Webster County, sheriff	12-11-28	.....	116.65	.....
Christopher, A. E., Fremont County, deputy sheriff	1-10-30	.....	25.00	.....
Clark, H. K., Carroll, police	2- 5-30	.....	24.50	.....
Willey, Harry R., Buchanan County, deputy sheriff	2-21-30	.....	95.75	.....
Ingraham, C. G., Council Bluffs, bailiff	6-17-30	.....	.....	.....
Total for disabilities		.....	$ 448.85	$ 843.70

Total payments, peace officers, for biennium $14,276.55
Total paid in previous five years under same law 20,230.32

Total for seven years $34,506.77

COURT DECISIONS COMPENSATION CASES

Decisions of Iowa Supreme Court on Matters Relating to Workmen's Compensation

CASE	CITATION
American Bridge Co. vs. Funk (Pettit)	173 N. W. 119
Arthur vs. Marble Rock School District	228 N. W. 70
Bach vs. Interurban R. R. Co.	171 N. W. 723; 174 N. W. 333
Baker vs. Roberts & Beier	228 N. W. 9
Baldwin vs. Sullivan	204 N. W. 420
Belcher vs. Des Moines Electric Co.	225 N. W. 404
Black Dry Goods Co. vs. Funk (Wright vs. Black)	173 N. W. 23
Brugioni vs. Saylor Coal Co.	197 N. W. 470
Buncle vs. Sioux City Stock Yards	185 N. W. 139
Busing vs. Iowa Railway and Light Co.	226 N. W. 719
Christensen vs. Hauff Bros.	188 N. W. 851
C., R. I. & P. Ry. vs. Lundquist	221 N. W. 75
C., R. I. & P. Ry. vs. Schendel (Federal Court)	270 U. S. 971
Clingensmith vs. Jackson Dairy Co.	211 N. W. 413
Comingore vs. Shenandoah Artificial Ice Co.	226 N. W. 124
Crooke vs. Farmers Mutual Hail Ins. Co.	218 N. W. 513
Daugherty vs. Scandia Coal Co.	219 N. W. 65
Davey vs. Norwood-White Coal Co.	192 N. W. 304
Davidson vs. Bidwell Coal Co.	174 N. W. 592
Des Moines Union Ry. Co. vs. Funk, Commissioner	179 N. W. 529
Double vs. Iowa-Nebraska Coal Co.	201 N. W. 97
Farrow vs. What Cheer Clay Products Co.	200 N. W. 625
Fischer vs. Priebe Co.	160 N. W. 48
Flint vs. Eldon, City of	183 N. W. 344
Franks vs. Carpenter	186 N. W. 647
Fraze vs. McClelland Co.	205 N. W. 737
Grant vs. Fleming Bros.	176 N. W. 640
Griffith vs. Cole	165 N. W. 577
Guthrie vs. Iowa Gas & Electric Co.	204 N. W. 225
Hanson vs. Dickinson (C., R. I. & P. Ry.)	176 N. W. 823

Heinen vs. Motor Inn Corporation....219 N. W. 415
Herbig vs. Walton Auto Co....171 N. W. 154; 182 N. W. 210
Hinrichs vs. Davenport Locomotive Co....214 N. W. 589
Hoover vs. Central Iowa Fuel Co....176 N. W. 945
Hop vs. Brink (Sherman Tp., Sioux Co.)....217 N. W. 551
Hughes vs. Cudahy Packing Co....185 N. W. 614
Jackson vs. Iowa Telephone Co....179 N. W. 849
Jennings vs. Mason City Sewer Pipe Co....174 N. W. 785
Johnson vs. Albia, City of....212 N. W. 419
Johnston vs. C. & N. W. Ry....225 N. W. 357
Jones vs. Eppley Hotels Co....227 N. W. 153
Kent vs. Kent....208 N. W. 709
Keys vs. American Brick & Tile Co....170 N. W. 295
Knudson vs. Jackson (Jackson vs. Knight)....183 N. W. 391
Kraft vs. West Hotel Co....188 N. W. 870
Kratz vs. Holland Inn (Owens vs. Holland Inn)....173 N. W. 292
Kramer vs. Tone Bros....199 N. W. 185
Kutil vs. Floyd Valley Mfg. Co....218 N. W. 613
Kyle vs. Greene High School....226 N. W. 71
McKinney vs. Central Iowa Fuel Co....210 N. W. 459
Mallinger vs. Webster City Oil Co. (Rehearing Pending)....228 N. W. 41
Miller vs. Gardner & Lindberg Co....180 N. W. 742
Mitchell vs. Consolidation Coal Co....192 N. W. 145
Moses vs. National Union Coal Mining Co....184 N. W. 746
Mueller vs. United States Gypsum Co....212 N. W. 577
Murphy vs. Shipley....205 N. W. 497
Nester vs. Korn Baking Co....190 N. W. 949
Norman vs. Chariton, city of....221 N. W. 481
Norton vs. Day Coal Co....180 N. W. 905
O'Callahan vs. Dermedy (Grand Hotel)....196 N. W. 10; 197 N. W. 456
Oliphant vs. Hawkinson....183 N. W. 805
O'Neill vs. Sioux City Terminal Co....186 N. W. 633
Pace vs. Appanoose County....168 N. W. 916
Pappas vs. North Iowa Brick and Tile Co....206 N. W. 146
Parkinson vs. Brown-Camp Hardware Co....192 N. W. 420
Pfister vs. Doon Electric Co....202 N. W. 371
Pierce vs. Bekins Van & Storage Co....172 N. W. 191
Reed vs. Automatic Electric Washer Co., Admr....179 N. W. 323
Reeves vs. Northwestern Mfg. Co....209 N. W. 289
Renner vs. Model Laundry Co. (Bodine case)....184 N. W. 611
Richards vs. Central Iowa Fuel Co....159 N. W. 696; 166 N. W. 1059
Rish vs. Iowa Portland Cement Co....170 N. W. 532
Robinson vs. Eaves and Morey Clay Products....210 N. W. 578
Roessler vs. Chain Grocery & Meat Co....196 N. W. 110
Root vs. Shadbolt & Middleton....193 N. W. 634
Royal (Hanoon) vs. Cudahy Packing Co....190 N. W. 427
Royal (Kolar) vs. Hawkeye Portland Cement Co....192 N. W. 406
Sauter vs. Cedar Rapids and Iowa City Ry. Co....214 N. W. 707
Serrano vs. Cudahy Packing Co....190 N. W. 132
Slack, Admr. (Joslin) vs. Percival Co....199 N. W. 323
Smith vs. Henry County S. & S. M. Hospital....231 N. W. 490
Smith vs. Interurban R. R. Co....171 N. W. 134
Smith vs. Marshall Ice Co....217 N. W. 264
Sparks vs. Consolidated Indiana Coal Co....190 N. W. 593
Springsteel vs. Hanford Produce Co....191 N. W. 851
Spurgeon vs. Iowa & Missouri Granite Works....194 N. W. 286
Starcevich vs. Central Iowa Fuel Co....226 N. W. 138
Stiles vs. Des Moines Council Boy Scouts....229 N. W. 841
Storm vs. Thompson....170 N. W. 403
Susich vs. Norwood-White Coal Co....224 N. W. 86
Swim vs. Central Iowa Fuel Co....215 N. W. 603
Tunnicliff vs. Bettendorf....214 N. W. 516
Van Gorkom vs. O'Connell....206 N. W. 637
Webb vs. Iowa-Nebraska Coal Co....200 N. W. 225
Wittmer vs. Dexter Manufacturing Co....214 N. W. 700
Young vs. Mississippi River Power Co....180 N. W. 986
Zenni vs. South Des Moines Coal Co....182 N. W. 210

COMPENSATION CASES NOT APPEALED FROM COMMISSIONER

Adel vs. Casualty Company of America....175 N. W. 846
Balen vs. Colfax Consolidated Coal Co....168 N. W. 246
Bedard vs. Sweinhart....172 N. W. 937
Block vs. C. G. W. Ry....174 N. W. 774
Butkovitch vs. Centerville Block Coal Co....177 N. W. 479
Cawley vs. People's Gas & Electric Co....187 N. W. 591
Duncan vs. Iowa Railway and Light Co....187 N. W. 486
Eddington vs. Northwestern Bell Telephone Co....202 N. W. 374
Elks vs. Conn....172 N. W. 173
Fidelity & Casualty Co. vs. Cedar Valley Electric Co....174 N. W. 709
Gay vs. Hocking Coal Co....169 N. W. 360
Hilsinger vs. Zimmerman Steel Co....187 N. W. 493
Hunter vs. Colfax Consolidated Coal Co....154 N. W. 1037; 157 N. W. 145

Martin vs. Chase....189 N. W. 958
Meyer vs. Postal Telegraph Cable Co....194 N. W. 273
Mitchell vs. Des Moines Coal Co....165 N. W. 113
Mitchell vs. Mystic Coal Co....179 N. W. 428
Mitchell vs. Phillips Mining Co....165 N. W. 108
Mitchell vs. Swanwood Coal Co....166 N. W. 391
Paucher vs. Enterprise Coal Mining Co....164 N. W. 1035
Porter vs. Mapleton Electric Light Co....183 N. W. 802
Potier vs. Winifred Coal Co....184 N. W. 729
Reed vs. Dickinson....169 N. W. 673
Sechlich vs. Harris-Emery Co....169 N. W. 325-7
Slycord vs. Horn....162 N. W. 249
Southern Surety Co. vs. C., St. P., M. & O. Ry....174 N. W. 329
Stricklin vs. Pearson Construction Co....169 N. W. 628

SELF-INSURERS

RELEASE FROM INSURANCE REQUIREMENTS GRANTED TO EMPLOYERS DURING THE BIENNIUM

Adel Clay Products Company, Adel.
Amana Society, Amana.
American Bridge Company, Pittsburgh.
American Telephone & Telegraph Company, New York.
Atlantic Northern Railway Company, Atlantic.
Bettendorf Company, Bettendorf.
Bremner, W. H., Receiver for M. & St. L. R. R. Co., Minneapolis.
Buehler Bros. Markets of Estate of Christian Buehler, Peoria.
Carr, Ryder, Adams & Company, Dubuque.
J. I. Case Threshing Machine Company, Racine.
Cedar Rapids Gas Company, Cedar Rapids.
Cedar Rapids & Marion City Railway Company, Cedar Rapids.
Central Iowa Fuel Company, Des Moines.
Central States Electric Company, Cedar Rapids.
Champlin Refining Company, Mason City.
Chandler Pump Company, Cedar Rapids
Chicago Bridge & Iron Works, Chicago.
Chicago, Burlington & Quincy Railroad Co., Chicago.
Chicago, Great Western Railroad Company, Chicago.
Chicago & Northwestern Railway Company, Chicago.
Chicago, Rock Island & Pacific Railway Co., Chicago.
Chicago, St. Paul, Minneapolis & Omaha Railway Co., St. Paul.
Citizens Power & Light Company, Council Bluffs
Clay Equipment Corporation, Cedar Falls.
Clear Lake Independent Telephone Company, Mason City.
Clinton, Davenport & Muscatine Railway Co., Davenport.
Community Service Station Company, Kansas City.
Cudahy Bros. Company, Cudahy.
Dain Manufacturing Company, Ottumwa
Denniston & Partridge Company, Newton.
Des Moines Railway Company, Des Moines.
Des Moines & Central Iowa Railroad Company, Des Moines.
Des Moines Electric Light Company, Des Moines.
Des Moines Gas Company, Des Moines.
Des Moines Union Railway Company, Des Moines.
Dewey Portland Cement Company, Kansas City.
Dolese Brothers Company, Chicago.
Eastman Kodak Stores, Inc., Des Moines.
E. I. Dupont De Nemours Company, Wilmington.
Electrical Research Products, Inc., New York.
Farmer's Union Live Stock Commission, Sioux City.
Ford Motor Company, Detroit.
Fort Dodge, Des Moines & Southern R. R. Company, Boone.
Fort Dodge Gas & Electric Company, Fort Dodge.
Fort Madison Electric Company, Fort Madison.
French & Hecht, Davenport.
General Electric Company, Schenectady.
General Outdoor Advertising Company, New York.
Graybar Electric Company, Inc., New York.
Great Atlantic & Pacific Tea Company, Chicago.
Griffin Wheel Company, Chicago.
Guardian Life Insurance Company, New York.
Hanford Produce Company, New York.
Home Lumber Company, North English.
Illinois Central Railroad Company, Chicago.
International Harvester Company, Chicago.
International Milling Company, Minneapolis.
Interstate Transit Lines, Omaha.
Interstate Oil Company, Burlington.
Iowa City Light & Power Company, Iowa City.
Iowa Electric Company, Cedar Rapids.
Iowa National Fire Insurance Company, Des Moines.
Iowa-Nebraska Light & Power Company, Lincoln.
Iowa Power & Light Company, Des Moines.
Iowa Public Service Company, Sioux City.
Iowa Southern Utilities Company, Centerville.
Iowa Transfer Railway Company, Des Moines.
Iten Biscuit Company, Omaha.
Jake Lampert Yards, Inc., St. Paul.
John Deere Tractor Company, Waterloo.

Jewell Tea Company, Chicago.
Keokuk Electric Company, Keokuk.
Lagomarcino-Grupe Company, Burlington.
Lane-Moore Lumber Company, Webster City.
LeGrande Limestone Company, Chicago.
Lehigh Portland Cement Company, Allentown, Pa.
Lincoln National Life Insurance Co., Fort Wayne.
Louden Machinery Company, Fairfield.
Mason City & Clear Lake Railroad Company, Mason City.
Minneapolis-Moline Power Implement Company, Minneapolis.
Mississippi River Power Company, Keokuk.
Moline-Rock Island Manufacturing Company, Moline.
Murray Iron Works Company, Burlington.
Nash-Finch Company, Minneapolis.
National Biscuit Company, New York.
Noelke-Lyon Manufacturing Company, Burlington.
Northwestern Bell Telephone Company, Omaha.
Omaha & Council Bluffs Street Railway Company, Omaha.
Ottumwa Gas Company, Ottumwa.
Pacific Fruit Express Company, Omaha.
Peoples Gas & Electric Company, Mason City.
Peoples Light Company, Davenport.
Phillips Petroleum Company, Bartlesville, Oklahoma.
Pintsch Compressing Company, New York.
Postal Telegraph-Cable Company of Iowa, Des Moines.
Pittsburgh Plate Glass Company, Pittsburgh.
Prairie Pipe Line Company, Independence, Kansas.
Prudential Insurance Co. of America, Newark.
Railway Express Agency, Inc., New York.
Red Ball Stores, Inc., Des Moines.
Red Rock Coal Company, Des Moines.
Riverside Power Manufacturing Company, Davenport.
St. Anthony & Dakota Elevator Company, Minneapolis.
Sears Roebuck & Company, Chicago.
Shricker Marble & Granite Company, Davenport.
T. M. Sinclair & Company, Cedar Rapids.
Sinclair Refining Company, Chicago.
Sioux City Gas & Electric Company, Sioux City.
Sioux City Service Company, Sioux City.
Skelly Oil Co., Tulsa, Okla.
Southern Surety Company of New York, St. Louis.
Spencer Kellogg & Sons, Inc., Buffalo.
Standard Oil Company (Indiana), Chicago.
Stoners Incorporated, Des Moines.
Stoner-McCray System, Des Moines.
Shell Petroleum Corporation, St. Louis.
The Sherwin-Williams Company, Cleveland.
The Simmons Company, Kenosha, Wis.
Titman Egg Corporation, New York.
Transcontinental Oil Company, Pittsburgh.
Travelers Fire Insurance Company, Hartford.
Travelers Indemnity Company, Hartford.
Travelers Insurance Company, Hartford.
Tri City Railway Company of Iowa, Davenport.
Union Pacific Railroad Company, Omaha.
United Light & Power Engineering & Construction Co., Davenport.
United States Gypsum Company, Chicago.
United States Rubber Company, New York.
Vacuum Oil Company, Chicago.
Western Electric Company, New York. (Release issued Jan. 25, 1930.)
Western Ice Company, Chicago. (New application not sent in.)
Western Union Telegraph Company, New York.
E. A. Wickham & Company, Council Bluffs.
Wisconsin Bridge & Iron Company, North Milwaukee.
Worden-Allen Company, a corporation, Milwaukee.

LITIGATION

The chief service rendered by this department is administrative. Only in instances comparatively rare is litigation invoked in the adjustment of claims. Many situations more or less complex are cleared up by informal interpretation of the law and in other department counsel. It should be understood, however, that the Industrial Commissioner is without authority to enforce ruling or order except through litigation. When controversy may not be reconciled by negotiation, individual rights must be submitted in arbitration.

When action is brought it is the purpose and practice of the department to bring on all hearings as promptly as practicable, taking into consideration the making of schedules for hearings about the state within the reasonable range of department capacity as to time and due consideration to the state in the matter of expense. Consistent with these reasonable limitations case grouping is necessary, though in instances of urgent requirement especial trips may be made. In this connection it may be said that when parties are prepared and no reasonable excuse for continuance exists long delay does not occur.

In case of appeal review hearing comes on as soon as the record is in readiness. The statute provides for the admission of additional evidence at the review hearing, but here the record is closed. At rare intervals the suggestion is made that the statute be so amended as to provide for hearing de novo in the district court. This procedure might serve to reduce compensation payment on the part of employers and insurers as it would so much increase the cost of litigation as to cut out to a considerable extent the exercise of the right of appeal except in cases where a large award is involved. There is no basis for the belief, however, that insurers or employers would favor the introduction of such legal expedient. Workmen surely would oppose this change so manifestly discriminating against their interest in holding down the expense of litigation. Such expense is a very serious matter to claimants.

On pages following appear in full decisions in review. Very few of such decisions are omitted for the reason with rare exception each case contains some point peculiar to conditions and circumstances not hitherto decided in this jurisdiction. The interest manifested in the publications of these decisions abundantly justifies their inclusion in our biennial report.

REVIEW DECISIONS

DEPENDENCY BASED ON MARRIAGE—COMPLICATIONS

Maude Bittner, Claimant,

vs.

Iowa Railway & Light Corporation, Employer,
Standard Accident Insurance Company, Insurance Carrier, Defendants.
Malinda C. Bittner, Intervenor.
Bryant & Bachman, for Claimant;
E. N. Farber and Maurice V. Pew, for Defendants;
Roy L. Pell, for Intervenor.

In Review

The chief issue in this controversy is as to whether or not the claimant, Maude Bittner, can qualify as the lawful wife of Martin Bittner at the time of his death, October 24, 1928, in the employ of the Iowa Railway and Light Corporation.

The intervenor, Malinda C. Bittner, contends that the alleged marriage of Martin Bittner and Maude Bittner was without force or effect, and as the mother of this deceased she seeks to establish dependency on the basis of actual contribution on his part to her support.

Defendants deny that Maude Bittner was the legal wife of Martin Bittner at the time of his death for these reasons:

1. At the time they assumed marital relations both of these parties had been divorced from other spouses within the year of statutory prohibition of marriage of divorced persons.
2. In the case of Maude Bittner it was noted in court entry that her divorce was to become effective upon payment of costs which remained unpaid at the time of her remarriage.

On the part of Maude Bittner it is contended

1. That remarriage within the prohibition period is a misdemeanor for which punishment is provided and that the statutory expression as to conditions voiding marriage does not include such remarriage.
2. That the judicial qualification as to the payment of costs cannot serve to nullify the docket entry of the court granting divorce.
3. That the first marriage of Maude Bittner was void because the contracting parties were first cousins, the marriage of whom is definitely barred by statute.

The supreme court of Iowa has never had occasion to pass squarely and definitely upon the question as to domestic status of persons who marry contrary to the mandate of section 10,484 of the code.

In this connection, however, it is interesting and fairly convincing to examine expression of the court in *Lee vs. Lee*, 130 N. W. 129 and *Farrell vs. Farrell*, 181 N. W. 12. These opinions afford substantial basis for the conclusion that the marriage of Maude and Martin Bittner cannot be regarded otherwise than as legal.

Courts generally seem inclined to bring within legal recognition all marriage contracted in evident good faith and consummated in ceremonial propriety.

If, however, it were to be held that this man and this woman were not legally married under ceremonial forms of law, they were free to contract legal marriage at the expiration of one year from the date of the divorce latest granted. This period was concluded long before the death of Martin Bittner. The Bittners during all this period were maintaining such relations with each other and such attitude before the public and of common knowledge as to qualify this woman as the legal wife of the deceased, and as a dependent widow under common law provisions.

Upon this entire record it is held that at the time of the death of Martin Bittner, Maude Bittner was his lawful wife and that she is entitled to the relief provided by the compensation law to a dependent widow.

Under this holding it inevitably follows that Malinda Bittner has no standing in this action as a dependent of the deceased, Martin Bittner.

The arbitration decision is affirmed.

Dated at Des Moines this 5th day of July, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed District Court; no further appeal.

SCOPE OF EMPLOYMENT—AWARD DENIED

Matthew Parfenow, Claimant,

vs.

Harrison Engineering & Construction Co., Employer,
Hartford Accident & Indemnity Co., Insurance Carrier, Defendants.
Emmert, James & Needham, for Claimant;
Miller, Kelly, Shuttleworth & McManus, Frederic M. Miller, appearing for Defendants.

In Review

Arbitration hearing at Ottumwa February 27, 1929, resulted in statutory award.

Circumstances of injury are substantially as follows: On May 18, 1928, while attempting to cross a railway track at an opening between freight cars of a standing train, movement of the forward section caught the right arm of claimant between the bumpers making amputation necessary at a point a few inches below the elbow.

On the part of the defense obligation is denied on the ground that at the time of his injury as aforesaid, Matthew Parfenow was not in the employ of the Harrison Engineering & Construction Company.

It appears from the evidence that through the negotiation of his half-brother or step brother, Paul G. Kratzke, serving as inspector of the State Highway Commission, this claimant came from northern Minnesota to take work with the defendant employer. In this relationship as it would appear, workmen are entered upon the pay roll of the employer for services as required, being paid only for such days or parts of days as services are authorized.

Parfenow testifies he arrived from Minnesota April 14, 1928, and began working at Cottonwood, Lee county, under arrangement with Superintendent Frank Turner ten days later. Under instruction he worked two or three days unloading cement from cars into the cement house. Then he says he moved a fence and later he was sent out on the highway to aid in construction work. Subsequently he was ordered to do sprinkling

work required in the process of cement setting after it is laid in pavement. Later he was asked by a fellow workman to turn over the work in day time to take on night service in the same capacity. This was Tuesday morning. It rained later in the day and on Wednesday and Thursday, removing the necessity of sprinkling and hence no night or other service was rendered in this period.

Meanwhile claimant stayed in his rooming house at construction headquarters. He testifies that at noon on Friday "as he went around on the north side of the rooming house he saw a man on a truck with a load of planks"; that "he drove swiftly by and waved at me and told me to go and clean up the rubbish in the yard." Says he did not know the man who gave the order; could not place him; could not say whether or not he was driving a company truck. Says he went to the yard and threw some boards lying there over the fence to the west of the yard. After working about an hour he went as he says into the office of his relative, the gravel inspector, for a drink of water. As there was none there he took a dinner pail and was crossing the railway track to a pump when the injury occurred as aforesaid.

By a preponderance of the evidence it appears that under the working rules of that construction organization employment authority was vested chiefly if not wholly in the superintendent, Frank Turner. Timekeeper, B. F. Smith, may have to a slight degree assumed to act on occasion and in emergency a foreman may have picked up the workmen entered on the pay roll, but these instances would appear to have been exceedingly rare.

Under these circumstances defendants seem justified in questioning the right of the workman to resume labor after several days of suspension under orders of a man unknown to the claimant and whom he does not now pretend to be able to make any suggestions as to identification. At this time Parfenow had been among the construction people for more than five weeks. During this period it is reasonable to assume he came to know by sight or suggestion all his fellow workmen, at least to the extent of knowing from whom he should take orders.

Claimant testifies that when he referred to his foreman, Jack May, the matter of his shift from day to night work upon the suggestion of a fellow workman he was told by May that "it was all right, that when anybody told me to do anything I should go ahead and do it." Upon this statement counsel contends that claimant was given to understand that he must take orders from any source as sufficient authority to get busy. This assumption seems grossly inconsistent and foreman Jack May is not introduced to verify it.

This claim can stand only upon the testimony of claimant. Self-serving evidence is to be carefully considered, but in order to have vital force it must have such corroboration as to afford substantial basis for inherent probability. In this case such support is wanting in the record. The mysterious stranger who is said to have ordered Parfenow into service at noon May 18th would seem to have told claimant to do a work not reasonably required in the interest of the employer. Disinterested testimony tends substantially to show there was no conspicuous rubbish to remove. The claim is made that it had accumulated in the sawing of planks for road use, but it is shown that no scraps of planks were left and only saw dust remained and from hand sawing this accumulation must have been so inconsiderable as not to suggest removal as consistent with the general condition of the premises.

In the interest of justice it is sometimes necessary to make allowance for lack of intelligence or for want of language understanding on the part of an injured workman. In this case, however, no such condition is suggested. Matthew Parfenow testifies that he was educated in a Russian military academy, that he speaks eight languages and that he has been in this country thirty-five years. He is a man too intelligent and too sophisticated to take orders from any wayfarer that may have shouted to him from a swiftly passing motor if, indeed, such order was ever given for the removal of rubbish that presumably did not exist or need attention.

In depositions submitted by the defendants at the review hearing their case is much strengthened, as the history given by claimant is made less convincing as to compensable conditions said to exist. The only supplemental evidence submitted by claimant in review is the deposition of Paul Kratzke, whose testimony relates almost wholly to a ground of defense pleaded by defendants which it is not necessary to consider in view of conclusions reached in the foregoing.

It is held herein that Matthew Parfenow has failed to show by a preponderance of evidence that his existing disability arose out of his employment by the Harrison Engineering & Construction Company.

The arbitration decision is therefore reversed.

Dated at Des Moines this 14th day of October, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

COMPENSATION RIGHTS OF WIDOW AS AGAINST ALLEGED CHILD

Christina A. Schneberger, Claimant,

vs.

Wright Construction Company, Employer,
Fidelity & Casualty Company, of New York, Insurance Carrier, Defendants,
Lenora Schneberger, by her next friend, Ruby Kaufman, Intervenor.
Halligan, Fountain & Stewart, for Claimant;
B. O. Montgomery, for Defendants.

Arbitration and Review

Robert Schneberger sustained injury in the employ of this defendant, September 5, 1929, which resulted fatally four days later.

Because of conflicting reports relative to legal dependency, the insurer herein declines to make payment upon obligation admitted until the actual legal beneficiary can be identified by the Industrial Commissioner.

Accordingly a petition for arbitration was filed by Christina Schneberger, as the alleged spouse of Robert Schneberger, October 23, 1929.

October 30, 1929, there was filed a petition of intervention on the part of Lenora Schneberger, by her next friend, Ruby Kaufman, alleging that the said petitioner, as the natural daughter of Robert Schneberger, is entitled to award as legal dependent of the deceased workman.

Upon these petitions hearing in arbitration and review was held at the department, November 13, 1929, before the Industrial Commissioner.

At this hearing Christina Schneberger introduced in evidence a license to marry and a certificate of marriage with Robert Schneberger May 14, 1925. Having been divorced from her former husband less than a year previous to the date of this marriage, she also introduced a permit to marry within the year in due and legal form. She testifies that she and Robert Schneberger were living as man and wife at the time of his fatal injury and no showing is made to the contrary.

Ruby Kaufman testifies that the intervenor was born to her by Robert Schneberger in November of 1918, three months after her marriage to one Glen Smith with whom she continued to live until the following March when divorce was granted. In April of 1921, she married Thomas Green, with whom she lived until divorced the latter part of 1922. January 24, 1923, she married the deceased workman with whom she lived a year or so, divorce again occurring. The witness is now the wife of one Kaufman, having a home in Chicago. Except during the time he lived with her mother, Schneberger made no contribution to the support of the intervenor.

Save and except the statements of this witness there is nothing in this record to identify this intervenor as the daughter of Robert Schneberger. Christina Schneberger testifies she heard her husband deny this paternity. This is not very good evidence but quite as good as the affirmative testimony of Mrs. Kaufman, in view of all the relations appearing herein.

The record does not justify the holding that Lenora Schneberger, so called, is the daughter of the deceased workman, and it is not so held.

It may confidently be held, however, in accordance with Iowa supreme court opinions in *Hoover vs. Central Iowa Fuel Company*, 176 N. W. 945 and *Robinson vs. Eaves*, 210 N. W. 578, that if it were established that this relation of father and daughter did exist as alleged, this intervenor has not now and cannot have any legal claim as the dependent of Robert Schneberger.

The record plainly shows that as the legal wife of Robert Schneberger at the time of his death, Christina Schneberger is his sole dependent, and is therefore entitled to maximum benefits in such cases provided by statute.

Dated at Des Moines, this 21st day of November, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

CANCER FOUND NOT TO BE DUE TO COMPENSABLE INJURY

Carl Malmoed, Claimant,

vs.

Sheuerman Bros., Inc., Employers,
Fidelity & Casualty Company of New York, Insurance Carrier, Defendants.
Sam Abrahamson, for Claimant;
B. O. Montgomery, for Defendants.

In Review

Award was denied in arbitration April 9, 1928.

On the part of claimant it is alleged that in the year 1927 several injuries were sustained in working a pressing machine for the defendant employer, developing sarcoma on his right leg resulting in amputation.

This record is largely devoted to the purpose of establishing contention that cancer may have and frequently has origin in trauma. Argument is liberally exercised and citation is submitted in support of this contention. There is little of weight that may be said in opposition to a theory so well established in experience. If Carl Malmoed has made it clear in this record that at any particular day and hour he has sustained definite injury at the site of this cancer development, with reasonable certainty that important dates as to injury and development are consistently co-related, there was error in arbitration.

In order to establish compensation obligation it is necessary to show conclusively that injury arose out of employment, not merely in a general way, but that it had its origin in some specific incident of employment, occurring at a definite date and in a particular manner. Further it must be shown affirmatively that the employer within a period of ninety days had actual knowledge of such injury. These conditions are fundamental and controlling.

Now as to such actual knowledge in this case: Claimant testifies he told his foreman "a couple of weeks" after he got hurt. The foreman, Nathan Erman, says he first knew claimant had some trouble with his leg "around June or July." Don't remember exactly as to the month. Saw him limping. Had a bunch on his leg. Don't think he ever said anything about injury or accident. First knew about his making a claim for injury about three or four weeks before he quit work in the latter part of November, 1927.

In cross examination the foreman says claimant may have told him but he does not remember it. Upon this dubious situation counsel insists that statutory demand as to actual knowledge has been met.

Now as to proof of injury: The original petition alleges injury "during the latter part of the month of June" and a similar injury at the same place on the leg "the latter part of October." This statement is amended in supplemental filing by alleging as the date of a first injury to be "the latter part of the month of March." Dates are loosely fixed by months or weeks rather by days as required in substantial case history.

There is no corroboration either as direct or circumstantial evidence tending to support injury at any of these dates except on the part of the wife of claimant.

The evidence of claimant as to dates and circumstances is shifty, contradictory and generally unconvincing. In speaking for the Iowa court in a compensation case, Judge Weaver once announced that award may be justified to a claimant with little of corroboration because "his testimony may be so candid and so inherently probable as to command the confidence of a fair-minded court." In this case the testimony of the claimant is neither "candid" nor "inherently probable."

Upon full consideration of this entire record it is necessary to hold that

1. The employer was without actual knowledge of injury as alleged within statutory limitation.

2. Claimant has failed to meet the burden of proving that his disability due to sarcoma was caused by any accident or incident of employment.

The arbitration decision is affirmed.

Dated at Des Moines this 23rd day of December, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No. appeal.

MARRIAGE COMPLICATIONS WITH TWO CLAIMANTS

Maude Saulner, Obeline Williams Saulnier, Claimants,

vs.

Interstate Power Company, Employer,
Fidelity & Casualty Company of New York, Insurance Carrier, Defendants,
R. E. Johnson, Treasurer of the State of Iowa, Intervenor.
Kimball, Peterson, Smith & Peterson, for Claimant, Maude Saulner;
Royal & Royal, for Claimant, Obeline Williams Saulnier;
B. O. Montgomery, for Defendants;
John Fletcher, Attorney General, for Intervenor.

In Arbitration and Review

August 7, 1928, Joseph Saulner, sustained fatal injury in the employ of the Interstate Power Company.

February 2, 1929, action was brought by Maude Saulner, claiming dependency as the widow of the deceased workman.

February 27, 1929, petition for arbitration was filed by Obeline Williams Saulnier, alleging dependency as the widow of Joseph Saulner

December 20, 1929, John Fletcher, Attorney General, by C. J. Stevens, Assistant, filed petition of intervention for R. E. Johnson, as Treasurer of the State of Iowa, to protect any interest the state might have in the determination of this case under the provisions of sub-section 6 of section 1392 of the code of Iowa.

On the 20th day of December, 1929, petition for arbitration in the interest of Obeline Williams Saulnier was filed by Royal & Royal, acting as attorneys under the authority of the Consul General of the Kingdom of Great Britain, with official residence at Chicago, Illinois.

Hearing in arbitration and review was held before the Industrial Commissioner, December 27, 1929, appearances being made by counsel for each of the parties who had filed claims as the surviving widow of Joseph Saulner; also by the defense.

Exhibit A, of record, is stipulation as to the jurisdiction and place of hearing.

Exhibit B, is stipulation as to facts relating to the death under compensable circumstances of Joseph Saulner, also as to wages of the deceased, showing agreement that if the same were commuted on the basis of total dependency the obligation of the insurer would be fixed at $3,100.00.

The plaintiff, Maude Saulner, offered in evidence Exhibit C, being the depositions of J. Q. Ingram, S. D. Thornton, Jr., Charles Carpenter, Myrtle Bolk, G. A. Binkerd, testifying to the marriage of Joseph Saulner and Maude Lillie Parnke in due, legal and orderly form and to the fact of their living in consistent relationship as man and wife from the date of said marriage until the death of the husband. Furthermore, that during this period no impression was ever known to have existed in the community as to the irregularity of this union. Said exhibit also includes certified copies of the marriage license of Joseph Saulner and Miss Maude Lillie Parnke, same being dated February 17, 1923, and issued in Neligh, Antelope county, Nebraska, said copy containing the certificate of James E. Jones, Minister of the Gospel, to the effect that he joined these parties in the bonds of wedlock on the date of the issuance of the said marriage license.

The following statement was dictated into the record:

"The record should show that Obeline Williams Saulnier offers no evidence in support of her claim, and that R. E. Johnson, as Treasurer of State, offers no evidence in support of his petition of intervention."

On this entire record it is held that Maude Saulner is entitled to full dependency as the widow of the deceased Joseph Saulner, which the insurer, the Fidelity & Casualty Company of New York, is ordered to pay on a commuted basis in the sum of $3,100.00 as stipulated, presentation to the district court having been duly waived herein.

Dated at Des Moines this 31st day of December, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

ELECTRIC SHOCK NOT SHOWN AS CAUSE OF DISABILITY

M. Martyn, Claimant,

vs.

Des Moines Electric Company, Defendant.
H. S. Life, for Claimant;
Bradshaw, Schenk & Fowler, Rex Fowler appearing, for Defendants.

In Review

Claimant appeals from denial of award in arbitration decision filed September 7, 1929.

At the date of injury, July 23, 1923, M. Martyn was construction foreman in the employ of the defendant. While working on a power feed line out of Oskaloosa he received a shock from an electric current of 2,300 volts. Claimant testifies he sustained burns on his hands and arms and that he lost two toe nails. Record made to show that swelling first appeared six months after the accident. Witness says he suffered from eruptions on arm and heart trouble developed. Testifies he was never afterwards able to perform physical labor. Always in good health previous to accident.

At the time of injury and until in October following, Dr. R. M. Gillett was the company physician. He then moved away and his partner and brother, F. A. Gillett took over the work. The latter testifies as to the condition of claimant after the injury that he observed burns with his brother. Did not at that time make physical examination. When he took the company work claimant came to him for what seemed to be boils on both hands. Made no examination of heart until about three years later. Prescribed general tonics in spring of 1924. In talking over the case with his brother heart trouble was never mentioned. Made heart examination in 1926. Found double heart murmur. Heart had compensation and the workman was on job and seemed to be doing all right. Makes denial of testimony of claimant as to professional statements he is said to have made. Says he has no recollection that Martyn made mention to him of heart trouble or of swelling limbs.

Dr. Fred Jarvis testifies he was for years the Martyn family doctor. Within a year or so after the electrical shock "noticed the man had pulsating carotids.' Never examined him until in January 1928, when he operated him for a very bad hernia. Found greatly enlarged heart with several valves involved. Used anesthetic and patient came through nicely. Before this time had noticed atrophy of the biceps. Never gave it special thought but left arm was much smaller than the right. Witness positive existing disability due to injury of July, 1923.

Dr. W. L. Bierring, testifies to the belief that the ultimate physical disaster connects with the injury as alleged.

Dr. John M. Peck, heart specialist of Des Moines, is of the opinion that no such connection can be scientifically established.

Called by the defense Dr. F. A. Gillett expressed the opinion that the electrical incident of 1923 is not responsible for present condition of claimant. Believes effect would have come sooner from this source.

Introduced at the review hearing Dr. F. E. Vance, of Eddyville, testifies that in the year 1920, he treated claimant for bronchial trouble and in general examination he found the heart perfectly normal.

Exhibit A herein is the report of Dr. R. M. Gillett advising that M. Martyn, injured July 23, 1923, was able to resume light work July 25, 1923, and regular work soon.

Exhibit B is report of this doctor to the same effect giving more details as to incident of injury.

Exhibit C is a report of Dr. F. A. Gillett, based on examination of M. Martyn February 22, 1926. In this report the doctor unqualifiedly recommends claimant for service as lineman with this note "heart excepted, but O. K. yet."

Exhibit D is report of Dr. M. Childress of Oskaloosa, based upon examination of June 10, 1914. In arbitration the doctor testifies in interpretation of this report that he found at that time some valvular defect with well pronounced compensation. The heart was larger than normal. Thinks existing condition would likely result without intervening electrical shock. Does not think present condition due to shock. Is not of the opinion that such shock accentuated heart involvement. Has never "seen an organic heart trouble made worse or excited by an electrical shock." If shock ever affected the heart "it would have been noticeable in a few days afterwards."

Upon this record it becomes necessary to determine as to whether or not the deplorable condition of the workman at the date of arbitration was due to electrical shock of July 23, 1923, six years previous.

At the time of the electrical exposure claimant was taken to the office of the Doctors Gillett. After treatment he says he walked from the doctors' office to his home. States he remained at home "that afternoon and the next day." He returned to work, working continuously in his usual capacity as line foreman until he quit this engagement in the spring of 1926. He was then employed by the Iowa Southern Utilities Company and later by the Marshall Electric Company, these engagements being practically continuous, as claimant testifies until in May of 1928, when he says he was off until September, 1928, on account of sickness. Returning he worked for the Marshall Company until in May or June of 1929. Has not worked since.

Testimony of the workman shows that he was able to perform his usual services continually from the second day following his shock until near the middle of 1928, a period of five years. There is little support for his testimony that he was at all seriously indisposed during these years.

Dr. Jarvis was the family physician before and through this intervening period. He says that within a year or two after the injury while attending other members of the family, he observed evidence of heart trouble and other untoward physical tendency. He never examined him for any purpose, however, until in January of 1928, when it became necessary to operate him for hernia. Then he discovered serious heart complications. It seems strange that a family physician with the responsibility of family diagnosis and treatment should have for a period of three or four years noticed symptoms of serious heart trouble of the head of the family without giving him any professional attention whatever, and then only because hernia operation was imminent.

Experience shows that electrical current works curious results in its contact with the physical structure. Men are killed by what seems ridiculously low voltage while other men seem miraculously to resist very high pressure. What seems most certain however, is that the remoreless current usually does no half way work. Its victims with rare exception meet instant death or survive with little of physical impairment. It would be difficult, if not impossible, to find an instance where electricity has slowly sapped human vitality for a period of five or six years; then to complete the final collapse of its victim.

A rare case of comparatively prolonged physical devastation coming before the department was that of Fred L. Springle. August 25, 1923, he sustained shock from voltage to the extreme limit of 16,500 volts. He died seventeen months later. In this case award was made for the reason that the exposure was so remarkable and that an able-bodied man had steadily declined with distinct heart involvment from the time of injury until his death. There is almost no similarity between this record and that in the Sprinkle case. No appeal was taken from department award. (Commissioner's Report 1926, page 48.)

On the 30th day of October, 1918, Charles Flint, in the employ of the City of Eldon, was felled to the earth by an electrical shock. He returned to service four days later. Action was brought to recover on this injury as the cause of death occurring February 3, 1919. Award was denied on the ground that the claimant widow failed to discharge the burden of proving connection between injury and death. Carried to the supreme court this decision was affirmed without dissent. (Commissioner's Report 1920, page 40; 183 N. W. 344.)

Claimant testifies he was unable to do strenuous work after his electrical shock. His work was that of a line foreman, in which he was overseer rather than laborer. Says he had as many as 80 men under him in the employ of the Marshall Company long after his injury. He had full earning power from July 23, 1923, for four or five years.

The record fails to show at all conclusively that the collapse of this workman in 1929 was due to the electrical shock of 1923. It would require the exercise of strong conjecture and ingenious surmise so to conclude. Corroboration is vague and the vital element of inherent probability is wanting.

The arbitration decision denying award is affirmed.

Dated at Des Moines this 24th day of January, 1930.

A. B. FUNK,

Iowa Industrial Commissioner.

Commissioner affirmed District Court; pending.

VIOLATION OF RULES DEFEATS COMPENSATION

C. W. Enfield, Claimant,

vs.

Certain-Teed Products Corporation, Employer,
American Mutual Liability Insurance Co., Insurance Carrier, Defendants.
John E. Mulroney, for Claimant;
Havner, Flick, Huebner & Powers, for Defendants.

In Review

Claimant was in the employ of this defendant in the capacity of chief engineer. April 23, 1929, he was engaged in moving an electric motor from the first to the second floor of an employment building. He states that he placed the motor on a truck, conveyed it to a hoist in the central part of the building and with his helper he entered the elevator and started upward. In stopping at the second floor his right hand came in contact with the hoisting cable which carried it around a wheel and in this incident he sustained serious finger and hand injury.

On the part of the defendants compensation obligation is denied on the ground that disability existing did not arise out of and in the course of employment, for the reason that the elevator in question was intended for use in the transfer of material and equipment only, and that for some time previous to the injury all persons had been prohibited from riding the same.

Award was denied in arbitration June 18, 1929.

The record shows that placards conspicuously posted had warned all

persons from riding on this elevator. C. W. Enfield testifies in this connection; (tr. 18-19)

"Q. You knew you were not supposed to ride it?
A. Yes. Fact of the matter is, not to joy ride on them.
Q. Isn't this true none of the men ever did ride that elevator?
A. I couldn't say.
Q. You don't know of any men riding the elevator?
A. Couldn't say whether they did or not.
Q. You don't know any men ever riding the elevator? You don't know any men riding that elevator with the knowledge or consent of the Company do you?
A. I do not.
Q. Who was your superior officer?
A. Fisher.
Q. He was superintendent?
A. Yes, sir.
Q. Was he the man to whom you were accountable, the man who would give you your orders?
A. Yes, sir.
Q. Isn't it a fact that he was the only man had the authority to give you orders?
A. Yes, sir.
Q. And he didn't know that you rode this elevator did he before the accident?
A. No, sir. I haven't never ridden it except once.
Q. He didn't know you rode it on this occasion or at any other time?
A. Not until after I was hurt.
Q. And in fact none of the officers whether they had jurisdiction over you or not, or any foreman, knew that you had ever ridden this elevator or that you rode it on this occasion until after the accident?
A. I don't think so.
Q. Now had you put that truck on and not accompanied it up, just assume you had gone that way, in that event how would you start the elevator?
A. Stood to one side and pulled the cord.
Q. It would have started on up and when it got to the second floor would have stopped automatically would it?
A. Yes, sir.
Q. Had you gone up the stairway by the time you got there the elevator would have been there?
A. Yes, sir.
Q. Then all you would have had to do was to unhook two chains and take off the truck? There wouldn't have been any chance to have got injured if that process had been followed?
A. Possibly not."

In the endeavor to justify his violation of the prohibitory rule, claimant says his purpose in riding on the elevator was to save time and further to support the motor in transfer on the truck. We quote from his testimony; (tr. page 16)

"Q. Why couldn't three of you put that generator back in the middle or back far enough from the wheels so that it wouldn't tip up?
A. Couldn't seem to get it firm enough.
Q. You mean to tell the Board you couldn't do that?
A. We tried to shift it to a firmer location on the truck.
Q. When you had it loaded you want to tell the Board here it would still tip?
A. It had a tendency to be heavy on the front.
Q. Could have chained or wired down the handles? Could have done that? Wired it to the elevator? Could have done that couldn't you?
A. Possibly, I suppose if we wanted to go to all that bother.

Q. Disregarding inconvenience or how much bother, it could be done couldn't it?
A. Yes."

John W. Clark, foreman of the packing and shipping department for the past fifteen years testifies; (see Tr. page 28)

"Q. You know about this elevator they have there in the plant that takes—that hoists from one floor to the other, your men use that to send up materials?
A. Raw materials.
Q. Now in all the time you have been connected with this plant, have you known of anybody outside of this one incident where this injury occurred—of anyone of the employees or anybody else using that elevator to transport themselves up or down?
A. Just one man.
Q. Tell us about that?
A. Don't recall who he was now. When they first installed that elevator.
Q. How long ago was that?
A. Don't remember how many years. Year of 1920-21 somewhere around there.
Q. Tell about that.
A. This man got on. We had signs up there. Everybody had been told not to ride. I came along seeing this man riding the elevator. I stopped. Brings him back down, and tells him to walk up; take the stairway.
Q. Now if this man had persisted what would you have done?
A. Chances are he would have got a time check.
Q. What do you mean by that?
A. Discharged.
Q. So as I understand it, all the time you have been connected with this the rule prohibited the men or anybody else from riding on this elevator has been rigidly enforced?
A. Yes, sir.
Q. How long have been working at that mill?
A. About 15 years.
Q. At this same job?
A. Yes, sir.
Q. Have you ever seen any machinery brought upstairs?
A. Yes, sir.
Q. Ever use that elevator for machinery?
A. Yes, sir.
Q. Know of them taking an electric motor?
A. Yes, they have moved a motor, taken it up and brought them down."

That compensable injury must arise out of and in the course of the employment is fundamental. Injury arising out of but not in the course of employment cannot qualify for coverage. Injury in the course of but not arising out of employment is barred. Neither qualification is availing without its conjunctional constituent.

In *Christensen vs. Hauff Brothers*, 193 Iowa 1,084, we find this concise definition:

"An accident arises in the course of the employment if it occurs while the employee is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time."

In a number of Iowa cases this rule is stated without shadow of change in meaning and in practically the same language.

In *Fournier vs. Androscoggin*, 113 Atl. 270, is found interpretation by the supreme court of Maine, broad and distinct and in more of detail:

"If, then, the employee is in a place where he is prohibited from being by positive orders of his employer by reason of the danger, or has taken a certain course in going from one place to another which he is prohibited from taking by his employer for the same reason, notwithstanding it is within the period of his employment, and his purpose in going to the other place is to perform some of his duties he is engaged to perform, he cannot be said, while in the forbidden route or means, to be acting in the course of his employment within the meaning of the Compensation Act, because he is not in a place where he reasonably may be in performance of any of his duties."

It is commonly understood to be the right of the employer to prescribe rules and regulations directing and governing details of employment. It is as well understood to be the duty of employees to meet all reasonable requirements in this connection. It is entirely consistent with employment relationship to warn workmen against the peculiar perils thereof and to issue orders prohibiting said practices, which menace life or limb. The exercise of this prerogative is even more important to the workman than to the employer as the latter can better stand the loss of any expenses created by accident than the former can assume any burden created by industrial accident.

It is commonly held that when such orders are issued and consistently observed or enforced, workmen violate the same at their own peril.

The claimant frankly admits that he had observed the warning placards, that he knew it was against the rules to ride this elevator; that he had not known of any violation on the part of any other workmen. He cannot justify his arbitrary conduct in the violation of orders consistently enforced by giving as a reason his desire to save time. It is evident that the saving of time by riding instead of going up the stairs was comparatively slight. He cannot make reasonable his violation of the rule by the statement that it seemed necessary that someone should accompany the motor to keep it in place. He admits that the motor could have been made secure on the truck, "if we wanted to go to all that bother." But even if saving of the time had been much greater and the requirement as to hand steadying had been much more important, the claimant had no right to violate reasonable orders for the promotion of safety. Such time as might have been lost by the stairway route and any risk to the safe transit of the motor was at the expense of the employer, who willingly assumed the same in issuing the safety order.

The record tends to show in the testimony of the claimant and of a plant foreman that the order forbidding riding on the hoist was with understanding and approval on the part of the plant workmen and that a committee of such workmen posted the warning placards.

In view of this record it must be held that in conspicuously violating the rule well observed for years prohibiting all persons from riding on the elevator on which he was injured, claimant was not in the course

of his employment and therefore his claim for compensation must be denied.

The arbitration decision is affirmed.

Dated at Des Moines this 30th day of January, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Commissioner reversed District Court; pending on appeal.

FINGER INJURY INDIRECT CAUSE OF DEATH

A. C. Bye, Claimant,

vs.

Nevada Poultry Company, Employer,
Hartford Accident & Indemnity Co., Insurance Carrier, Defendants.
Welty, Soper & Welty, Lee, Steinberg & Walsh, for Claimant;
Thomas M. Healy, for Defendants.

In Review

In the employ of the defendant Poultry Company Carl Bye sustained finger injury October 28, 1927. Alleging that his death December 22, 1927, is due to this injury, A. C. Bye, father of the deceased, brings this action for recovery of dependency.

Defendants deny that the finger injury of October 28, 1927, has any relation whatever to the death of Carl Bye December 22, 1927; also that A. C. Bye was to any extent dependent on the earnings of his deceased son for support within the meaning of the compensation statute.

The record indicates that the injury was due to finger wound caused by a wire projecting from a battery or crate used in the poultry business, which the deceased was moving about on the premises of the employer. He kept on working until the 16th day of December, 1927, when his physical condition was such as to retire him from active duty, death ensuing six days later from proximate cause diagnosed as retro orbital abscess.

A mass of testimony submitted in arbitration and in review is carefully weighed in the endeavor to reach sound conclusion as to whether or not this death arose out of employment. The arbitration decision holding for the defense was not without support in the arbitration record, as it was carried in the mind of the sitting commissioner. In this situation it was impossible to follow case history as it may be better understood by scrutiny of the printed pages of the transcript available on appeal. Furthermore, evidence presented at the review hearing tends substantially to reinforce the arbitration record in favor of claimant.

Case history as follows seems fairly well established.

The finger wound was not such as to suggest serious consequence. It is shown that the workman kept steadily at his job for a period of some seven weeks. This bald statement is significant of failure in proof. A lot of case history, however, is made by the record. While there is some conflict in the statements of witnesses, the weight of evidence tends to support this conclusion:

After several weeks the wound gave evidence of outward healing, though two fingers and indeed the whole hand was swollen more or less even to the date of death. Only one dressing by a physician is reported, but a local druggist, Ralph Tipton, appears as a reliable witness with the statement that he dressed the wound a number of times. At these times says this witness, the hand was swollen and discolored. Was bandaged at least four weeks after injury. Carl complained of feeling rotten and was evidently a sick man. The testimony of at least half a dozen witnesses is to the general effect that during the period intervening between October 28th and December 16th there was a marked change in Carl Bye in weight, appearance, appetite, temperament, in shattered nerves and low fever and in evident working capacity.

Hypothetical inquiry based on indications related was submitted to John F. Moore, head physician, at the Iowa Sanitorium and Hospital at Nevada, to Dr. H. W. Bowers of Nevada, and to Drs. C. W. Harned and Ralph Parker, of Des Moines, the two latter being rather eminent in eye, ear, nose and throat specialties.

All these physicians strongly support the contention of claimant that through the wounded finger infection entered the blood stream resulting in localized abscess back of the eye which became the proximate cause of death. Admitting the possibility of other vital causes, since no evidence was submitted affording support to this possibility, it was assumed that the controlling factor in this fatal case was the finger wound.

The scientific theory as to cause and effect in this case is concisely stated by Dr. Parker. (Review Tr. page 61.) Asked: * * * * "what in your opinion is the most probable cause of his death." The reply was:

"I think the conclusion that I would reach is just as I stated that an infection in the fingers got into the blood stream, probably irritating or setting up a myocarditis, which means an ulceration of the valves, of the heart muscle, that flowed off from that through the blood stream, lodged in the large vein back of the eye known as the cavernous sinus, forming an abscess in it, produced these eye symptoms, ran into the meninges and caused his death."

In support of their own case defendants emphasize the fact that the deceased worked right along for some six weeks after his injury. The record indicates that he was a nervy sort of a young man, not given to complaining and that he repeatedly said he felt he must hold his job to help the family as his father was out of work. The doctors testify that this continuity of employment does not disturb their opinion that during the period he was working the infection was poisoning the blood stream and tending to fatality.

Not without semblance of consistency defendants point accusingly at the delay in calling for compensation benefits. This fact would be most significant but for the baffling situation as to cause and effect. Casual consideration of existing conditions was not reassuring. The comparatively slight finger injury, continuity of subsequent service, fatal development at a point remote from the site of finger injury are not convincing in superficial review. It is not at all strange that there should have been tardy indulgence of hope of recovery.

The burden was on the claimant, of course, to establish successful connection between the injury and the fatal head trouble. When the

requirement of inherent probability was met, however, it was to a degree incumbent upon the defense to submit some plausible affirmative theory that might tend conceivably to suggest some other cause of cumulative ailment and of final fatality. In the absence of any such submission the claimant's case is made by a preponderance of the evidence.

In Honnold on workmen's compensation on page 464 there appears legal interpretation giving definite support to award in this case.

"By a 'preponderance of the evidence' is meant such evidence as, when weighed with that opposed to it, has more convincing force and from which it results that the greater probability is in favor of the party on whom the burden rests. * * * Evidence conclusively showing an injury adequately accounted for by acts of the workman in the course of his employment is not overcome by the fact that the injury might by some possibility have resulted from some other cause not shown to exist. In such case the issue must be determined in the light of the greater likelihood."

As usual in cases of dependency on a contributive basis this situation is perplexing as to the measure of support supplied.

If it were held to be necessary to submit vouchers and other documentary evidence of contribution, recovery would be rare and then in very limited amounts. Equity demands, however, that conclusion shall be founded upon evidence of support, taking into consideration all facts and circumstances appearing in the record tending to establish inherent probability as to the measure of contribution made.

The record does not tend to confirm the argument of claimant that Carl Bye spent his own money and was quite a spender at that. He dressed evidently with very moderate expenditure and no statement appears indicating free spending. Deceased may not have personally and directly paid meat or bread bills, but it is shown that his wages were drawn by his father for family use and that family living accounts were paid by his earnings. It plainly appears that Carl Bye had substantial earnings as a laborer and nothing in the record tends to show that he expended these earnings on himself while it does appear that he was disposed to be and actually was substantially helpful in family support.

In the exercise of the usual rules, after careful study of the record as to support afforded, the conclusion is reached as appears below.

The arbitration decision is reversed.

Finding as follows is made:

1. That the death of Carl Bye December 22, 1927, was due to his injury as arising out of employment October 28, 1927.

2. That dependency award to this claimant for loss of support is fixed at the sum of $5.00 a week.

Defendants are therefore ordered to make this weekly payment for a period of 300 weeks; also to meet statutory medical and burial charges, and to pay all costs of litigation.

Dated at Des Moines this 11th day of March, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed District Court; settled.

FINGER LOSS BY AMPUTATION—MEASURE OF DISABILITY

George Bedian, Claimant,

vs.

Bettendorf Company, Defendants.

E. C. Willis, for Claimant;

Cook & Balluff, for Defendants.

In Review

This case was submitted in arbitration at Davenport, May 14, 1930, upon stipulation of facts, and comes to the commissioner for review without formal hearing.

It is stipulated that the workman sustained injury to the index finger of his left hand resulting in the loss of one-half of the distal phalange; that payment has been made to the claimant in the sum of $11.04 a week for a period of seven and one-half weeks.

Defendants claim this payment constitutes full statutory value of the portion of the member lost.

Claimant contends that the loss of said one-half phalange creates liability on the part of the employer to the extent of half finger value, requiring fifteen weeks of payment.

The Iowa statute declares that for the loss of one phalange of a finger payment shall be made for full half finger value.

The question in controversy is as to what constitutes in a statutory sense the loss of the first or distal phalange.

Section 1396 of the Code provides terms of settlement for a wide range of permanent partial disabilities. In order to make general provision for disability not practical to include in this definite list sub-section 20 of said section provides:

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

Now if an index finger is valued at thirty weeks of payment, what rule shall apply as to phalange loss? It has been absolutely established by the Iowa supreme court in *Starcevich vs. Central Iowa Fuel Company*, 226 N. W. 138, that the loss of any portion of the second phalange calls for payment in full finger value.

This decision definitely supports the assumption that in the settlement for finger loss adjustment is not to be made on the basis of linear measurement. The distal joint of the first finger is about an inch in length. Had this workman lost, say, an additional one-half inch he would without shadow of question be entitled to thirty weeks of payment. Obviously the additional half remaining is for the less valuable portion of the phalange in question. The end of the finger contains the sensory nerve, vital to the sense of feeling so important in finger function, and the loss of the terminal one-half of the distal phalange substantially affects the function of grasping or gripping. The workman is given a stump finger decidedly impaired in usefulness having lost the more valuable portion of the member.

This injury classifies among "other cases of permanent partial disability" and "the relation it bears to those produced by the injuries named in the schedule" must be considered. Comparison in such cases can be made only with schedule values kindred in nature. Where it is absolutely established that the loss of an additional one-half inch far less important in function to the loss he sustained would have required thirty weekly payments, is it possible the law will give him only one-fourth the amount due for little more than full phalange loss?

Because of the amount involved comparatively few cases have gone to the courts based upon finger phalange value. Compensation authorities have usually held that the loss of any substantial portion of the bone of the first phalange calls for half finger payment. In cases of very little loss of bone the courts have in some cases reversed these holdings. It will be very difficult if possible at all to find any case in which any court has held for less than one-half finger loss where the amputation of one-half the distal phalange has occurred as stipulated in this instance.

The decision In re Petrie, 151 New York Supplement 307 was probably the first to be recorded in this country dealing with this question. The ruling of the court upon a statute like our own is exceedingly convincing and peculiarly pertinent in this connection. 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 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 the loss of the entire 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 understood as to be 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."

H. K. Toy & Novelty Company vs. Richards, 117 N. E. 266.

Claimant lost by severance one-eighth of an inch of the first joint of the finger and the industrial board awarded compensation for a period of fifteen weeks under a "statute providing for the loss by separation of not more than one phalange of a thumb or not more than two phalanges of a finger * * * fifteen weeks."

In affirming the board holding the court says:

"While the loss by separation of only one-eighth of an inch in length of the distal phalange of a finger may appear to be a small fraction thereof, it should be remembered that the loss by separation of any portion in length of such phalange necessarily removes the muscular cushion on the end thereof, and thereby seriously interferes with the use of such finger. This fact may have had its influence with the legislature in wording the clause under consideration in such manner as to give 15 weeks' compensation 'for the loss by separation of not more than * * * two phalanges of a finger.'

"(2) The fact that the function of appellee's finger is not seriously impaired, if it be a fact, and that she was able to return to work within a short time after the injury, can have no influence on our interpretation of the statute in question. Its provisions may appear too liberal in some instances, and not liberal enough in others; but with this the Industrial Board and this court have nothing to do. The legislature in its wisdom did not see fit to limit compensation for 15 weeks to cases where substantially two phalanges were lost by separation, or where the function of the finger was seriously impaired, or the actual loss of time was for any definite period; and neither the Industrial Board nor this court has a right to read such provisions into the act. Appellant has cited a number of cases in support of its contention, all of which we have examined with care. Some of them are decisions under compensation acts, where the language is materially different from the act of this state and none are in serious conflict with the conclusions we have reached."

In these decisions the deductions of the courts are unanswerable. Nothing in the books may be found in successful opposition to this reasoning or to these conclusions.

Without any such support, however, substantial reliance is placed upon the holding of the Iowa court in interpreting the Iowa statute as meaning that the loss of any portion of the second finger phalange shall constitute entire finger loss. This holding applied to sub-section 20 of section 1396 relating to permanent partial disabilities surely cannot mean that the employer is meeting his obligation in full by payment for 7½ weeks when the taking of relatively an additional one-half inch absolutely creates obligation for thirty weeks of payment.

The arbitration decision is affirmed.

Signed at Des Moines, Iowa, this 11th day of June, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

LEG INJURY—EXTENT OF DISABILITY

Harry Mumey, Claimant,

vs.

Stephan Brothers, Employer,
Maryland Casualty Company, Insurance Carrier, Defendants.
O'Sullivan & Southard, A. J. Whalen appearing, for Claimant;
Tinley, Mitchell, Ross & Mitchell, J. Ralph Dykes appearing, for Defendants.

In Review

In the arbitration record appears the following:

"It is stipulated between the parties that the claimant, H. P. Mumey was injured on or about July 3, 1926; that said injury arose out of and in the course of his employment; that subsequent to said injury, claimant

was paid compensation from July 17, 1926, to December 3, 1926, in the amount of $14.40 a week, or a total of $316.80; that the sole question to be determined in this hearing is the nature and extent of the disability, if any, of the claimant."

Dr. John P. Rossie, chiropractor, testifies to permanent disability of the left leg to the extent of seventy-five per cent more or less.

Dr. M. A. Tinley, of Council Bluffs, in extended examination at the arbitration hearing insists that there was no permanent disability of the injured member at the date of his examination in March, 1927, some eight months after the accident. He testifies further that any painful or other abnormal condition that might possibly have continued is due to infected teeth appearing conspicuously in physical examination.

In deposition taken June 13, 1928, Dr. O. J. Fay, of Des Moines, testifies that he examined claimant under direction of the Industrial Commissioner October 28, 1927. His testimony based on this examination is to the effect that there is no permanent disability in the left leg, injured July 3, 1926.

The arbitration hearing resulted in an order

"To pay the claimant such additional compensation as will, with the compensation payments previously made, make a total of fourteen dollars and forty cents a week for forty weeks. Defendants are also ordered to pay the costs of hearing."

Both parties appealed but subsequently defendants withdrew notice of appeal and made cash deposit covering the arbitration award.

The accident in question resulted in an ugly flesh wound, but no bones were broken, and nothing in connection with the case would seem to suggest disability beyond the ordinary healing period.

In view of these facts and a preponderance of medical evidence, the claimant would seem to have been used with generosity when given forty weeks' compensation for disability resulting from this accident, and this record fails to support claim for further payment.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 28th day of September, 1928.

A. B. FUNK,

Iowa Industrial Commissioner.

Affirmed District Court; no further appeal.

DEATH OF MINER NOT DUE TO COMPENSABLE INJURY

Ida Wilson, Claimant,

vs.

Pershing Coal Company, Employer,
Bituminous Casualty Exchange, Insurance Carrier, Defendants.
Johnston & Shinn, for Claimant;
Havner, Flick, Huebner & Powers, for Defendants.

In Review

It is alleged by claimant that the death of her husband, Robert W. Wilson, June 13, 1927, was due to injury sustained February 4, 1927, as arising out of employment by these defendants.

The deceased was in the employ of the Pershing Coal Company as night foreman. As such he was in charge of operations in the night time in the making of preparations for mining operations the day following. Among his duties as foreman he was evidently subject to call from fellow workmen in need of temporary assistance.

Called by the defense, Ike Powers testifies that he was in service of the defendant coal company as bottom cage man. Early on the morning of February 4, 1927, he had taken down the shaft timbers for use below. Asked what happened in this connection, Brooks states:

"These timbers come down on the cage standing on end, if they are large we have help. This was a big collar. I took hold of it. It was too heavy. Mr. Wilson got ahold of it and when he started to lift he said, 'Ike, there has something happened,' and went down and sat on the bumper of a car."

Defendants contend that "if Robert W. Wilson sustained an injury as averred in claimant's petition and amendment thereto, the defendant denies that said injury caused or contributed to the death of the said R. W. Wilson."

In order to decide as to the merits of this claim it is necessary carefully to inquire into circumstances and conditions developed in arbitration.

Ike Brooks is the only living man who knows from personal knowledge anything about what happened at the time of the alleged injury. All through his testimony he adheres to his original statement that the deceased had "started to lift" when he gave up, saying something had happened. Don't remember whether or not "he got his end off the ground." He says the timbers to be moved from cage are 12 to 14 inches at butt end and 12 feet long. Usually he did this lifting himself but when an unusually large timber was to be moved he called for help. On this occasion he had found one such. After lifting it over an up-right projection four or five inches in height and setting the lower end down without the cage, he then called on Wilson to help him carry it to one side. Says he had frequently lifted timbers as heavy as this alone, and indicates that it was an ordinary lift for two men. This was the situation when the deceased "started to lift." This witness says when Mr. Wilson returned after six days, he worked regularly until the mine shut down April 1st, some six weeks later. Did not hear him make any complaint. Asked if he talked with Wilson as to how this accident occurred, says: "I don't think he mentioned it."

When Wilson gave up the attempt at lifting, Brooks called Douglas Simmons to help him. Simmons testified the timber lifted was "a third bigger than an ordinary bar." He says it was such as two men ordinarily lift. Wilson was sitting four or five feet away. He said nothing about being hurt. Testifies that usually Wilson "was a little pale, nervous and quick to get excited." Says when he came back "he looked about the same, maybe a little more so."

The record shows that Mr. Wilson after the lifting incident called on Dr. H. C. Porter, mine physician. This doctor in deposition says Wilson continued to discharge bloody sputum for about three days. He advised rest and "put him on internal hemostatics." Says hemorrhage "came from the lining membrane of the bronchial tubes."

After six days of rest at the advice of Dr. Porter, Mr. Wilson returned to work, continuing regularly in service until the mine shut down April 1, 1927.

While Mr. Wilson was home from Pershing following the incident of alleged injury he consulted Dr. C. S. Cornell of Knoxville. Dr. Cornell testifies Wilson called at his office February 7, 1927. He submits a report he made of this case which is admitted to the record and which reads as follows:

"Dr. Gutch, Albia, Iowa. Dear Sir: Enclosed is a report on R. W. Wilson employed by the Pershing Coal Company, also bill for services. He gives a history of a strain of the chest while helping move some heavy chunks of coal the afternoon of February 3, 1927. That night he had a hard coughing spell followed by a profuse pulmonary hemorrhage. At that time Dr. Porter of Pershing saw him. He returned home at Knoxville and saw me, or consulted me, on February 7, 1927. He gave me this history and at this time was still spitting up some blood. The lung findings were rather negative, although over the area marked on chart I thought perhaps the breath sounds a little impaired. I prescribed rest and a cough sedative and examined him again on February 9, 1927, at which time he showed marked improvement. It is rather an unusual case and what the pathology is or was is a debatable question. I take it that probably the strain caused the rupture of some small vessel. Respirations on both examinations were eighteen, pulse seventy-six, temperature 98.4. Anyhow he is back at work. Very truly yours, Corwin S. Cornell."

Dr. Cornell further testifies that on February 9th he discharged the patient assuming he had recovered from whatever the trouble was.

Dr. F. M. Roberts of Knoxville appears for claimant. He came into this case on June 12th, the day before the death of Wilson. The deceased then called at his office stating he was not well and had not been feeling well for some time, dating the origin of his trouble at the time of alleged injury at the Pershing mine. Appeared very sick. "Was suffering from heart trouble which I designated as mitral insufficiency, a mitral incompetency." About 12 hours later witness saw Wilson at his home and two and one-half hours afterward death occurred.

Transcript, page 34:

"Q. Now assume that R. W. Wilson had subjected himself to a heavy lift on February 4, 1927, or thereabouts, it is likely or unlikely that it might have produced a hemorrhage?

A. It might do that.

Q. Would it be likely or unlikely that such lifting might injure the heart so as to result in the trouble which he had?

A. It could do it or might.

Q. Assume that he did lift a heavy weight which required approximately all of his strength on or about that date and that we knew of no other cause for the condition of the heart, would you say it was likely or unlikely that the lifting produced this effect upon the heart?

A. Well, it would be a factor in bringing on this trouble that he had, or if he had a tendency of that kind before it would make the existing condition worse."

In the evidence of Dr. Porter it is shown that a year previous to the incident of February 4, 1927, this doctor had examined Robert Wilson professionally. Quoting from page 4 of deposition relative to this situation:

"Q. Now when you examined him before did you determine whether or not he had high blood pressure?

A. Yes, I warned him about his hypertension and blood pressure.

Q. What was your warning?

A. That it was dangerous to become over-exerted or too much excited on account of the condition of his heart and hypertension.

Q. Did you find anything in the nature of a neurotic heart?

A. That is what I told him he had, a neurotic heart.

Q. Was this neurotic condition in a mild or aggravated form?

A. In my judgment it had been there for quite a while."

On page seven of this deposition appears the following:

"Q. Based upon your examination of this man and the facts in the hypothetical question, what is your opinion as to whether or not this lifting or attempting to lift that I have described, was a material contributing cause to this man's death?

A. Well, temporarily I think it would contribute slightly in that connection."

The deposition of Dr. W. L. Bierring appears in this record. The witness treated this case hypothetically as he had not had personal contact with the deceased. Before replying to interrogation of counsel as to cause and effects, Dr. Bierring makes thorough inquiry relative to conditions, symptoms, developments and diagnosis. Upon the basis of this information the doctor states that the history of the last ailment of deceased Wilson "is like that of a failing heart in chronic heart disease."

Two important questions are suggested in this situation, to-wit:

1. Does the record show that Robert Wilson on the morning of February 4, 1927, did more than ordinary lifting, if he lifted at all?

2. Does the record show that this experience was a materially contributing factor to his death four months later?

Ike Brooks, fellow workman and friendly witness, testifying for claimant is not shaken in his oft repeated statement that "Wilson just started to lift" when he abandoned the process. He will not say that the deceased lifted his end of the timber off the ground or whether he lifted at all. Nobody else knows anything about it. The case of claimant is very weak at this point.

But if it were held that Wilson did actually exercise substantial strength, is there in the record substantial basis for the inference that this experience was the cause of death four months later?

Wilson was released by his doctor for service to begin six days after the alleged accident. For six weeks he worked steadily and without any complaint known to fellow workmen as to existing ailment. He did not then quit because of physical impairment, but for the reason that the mine work was suspended.

When operation at the mine ceased, Wilson went to his home in Knoxville. Members of the family testify that he came back in poor form and that he gradually failed until the end. There is no other testimony to this effect. Without assuming moral obliquity on the part of the testifying members of a family, in such cases it is always necessary carefully to weigh such evidence. If Wilson did actually give evidence of failing physical powers it would have been so easy to put the matter beyond question by calling on neighbors to verify the fact.

In this connection it may be noted that. Wilson consulted no doctors

from February 9th until June 12th, the day before he died when he went to the office of Dr. Roberts. This fact seems inconsistent with the family testimony. As a rule a man does not manifest rapidly failing powers for several months without seeking medical counsel. If he is disposed so to do his family over-rules him in this tendency.

The burden is on the claimant to prove by a preponderance of the evidence that the death of Robert W. Wilson June 13, 1927, was due to the alleged injury of February 4, 1927. The fact that this death cannot be fully accounted for on any other theory is not sufficient.

The deposition of Dr. Porter indicates that for more than a year prior to the lifting incident Wilson had been a doomed man from heart conditions. As to the day or the hour or the manner of dissolution the future would not, could not reveal. How far the progressive disease had developed when he "started to lift" cannot be known. He may not have more than tensed his muscles, without lifting substantially, when the warning came. If he had carried out his helpful intention he would not have borne any unusual burden as Brooks had already lifted this load himself and it could not be considered as more than an ordinary lift for two men. He rallied in a few days. It cannot be said the record shows any marked change during the six weeks he worked steadily until the mine shut down. He could not have felt himself steadily failing then or afterward or he would not have gone from February 9th to June 12th without consulting a doctor.

The defendants are not required to clear up this mystery nor are they to be held in obligation without a preponderance of affirmative evidence which does not appear in this record.

The counsel for claimant seems to assume that the decision of the industrial commissioner in *Lanning vs. Iowa Dairy Separator Company*, reported on page 125 of our biennial report for 1928, foreshadows holding in this case. Lanning had applied his full lifting capacity in two heaving attempts to move an impossible weight. After working two and one-half days he was unable to continue and serious heart and kidney trouble soon developed. He had worked steadily for years though it was manifest that his physical troubles must have been developing. He was unable to work any more. In the pending case the fact questions are substantially different. It may be admitted that the Lanning award held to the very limit of inference favorable to claimant and a case such as this, with less support as to conditions and circumstances, cannot justify a further extension of department rules, already exercised to the limit of legitimate flexibility.

The Iowa supreme court has frequently laid it down that award cannot be based upon surmise, conjecture or speculation. It has said that award cannot be made "upon a state of facts which are equally as consistent with no right to compensation as it is with such right."

In *Slack vs. Percival Company*, 199 N. W. 323, the claimant had sustained a smashing injury, requiring several very serious operations. After several months it developed that a cancer was at work upon the vitals of Slack. Cancer is a progressive disease, as is the heart trouble with which Wilson was afflicted. The commissioner believed himself justified

in holding that this progressive development was so accelerated by the injury, the operations and the change of living conditions as to cause the death at a time it would not otherwise have occurred. The court thought otherwise. In part the opinion follows:

"In other words, it was necessary for the evidence to show, and the commissioner to find therefrom, that the death of the decedent would not have occurred on August 5th, but for the injury received on January 21st. It was incumbent upon the claimant to produce sufficient evidence to sustain such a finding."

Ibid. "No one can tell that an injury of the character received by this workman hastened the ravages of the disease with which he was then afflicted, so that his death six and a half months after the injury was accelerated or hastened by the injury. The evidence shows that the rapidity with which cancer results in death varies greatly. Its progress may be more rapid in one victim than in another. No one can tell with any degree of certainty the number of months a person known to be afflicted with such a cancer may live. It is the merest speculation and conjecture to attempt to say that the workman who lived six and a half months after the injury, and who died of cancer, would have lived a day longer, had it not been for the injury which he received. How much longer might he have lived, had it not been for the injury? Who can even venture a guess? He was doomed in any event."

This and similar holdings of the court clearly point the way of department duty herein.

The arbitration decision holding for award is reversed.

Dated at Des Moines this 25th day of March, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

AWARD BASED ON DEATH DUE TO FALL ON SLIPPERY FLOOR—VALUE OF MEALS

Mary Jane Jones, Claimant,

vs.

Eppley Hotels Company, Employer,
London Guarantee & Accident Company, Limited, Insurance Carrier, Defendants.

Robert B. Pike, L. F. Brown, for Claimant;
Chandler Woodbridge, for Defendants.

In Review

Award was made to this claimant in arbitration on the basis of injury to her husband, James William Jones July 24, 1928, resulting in his death. Circumstances involved are substantially as follows:

As usual in his round of daily employment, the deceased began service at the Martin Hotel in Sioux City at 5:18 A. M. on the date of injury. Making milk delivery at the hotel, Wallace Lebeck, at about six o'clock that morning, discovered Jones lying prone upon a kitchen floor of the hotel in an unconscious condition. The house physician, Dr. Goebel, was notified. He ordered first aid attention and put the patient in the St. Joseph Hospital soon thereafter. The injured man resumed consciousness a few hours later, but in the forenoon of the second day he died.

Defendants contend that death in this case was due to cerebral hem-

orrhage, and was not the result of any injury arising out of employment.

It becomes necessary to decide as to whether or not this death was proximately due to spontaneous collapse or the result of injury sustained by accidental fall.

The last act of service performed by the workman was carrying a bushel basket of ice crushed or in small cube form from the basement of the hotel to the kitchen where the collapse occurred. The record shows that the basket had been emptied into an ice chest in the kitchen.

As part of the kitchen equipment there was a stand supporting one or more coffee urns. This stand was constructed of metal pipes about an inch and a half or two inches in diameter, and a pipe of this description formed a horizontal brace about six or eight inches from the floor. When found Jones was lying on his back with his neck, or the base of his cranium, resting upon this metal brace.

Jones was 57 years of age, evidently in good physical condition. Nothing appears in the record to suggest spontaneous collapse.

It is a matter of common knowledge that the sudden fall of a man with his neck striking a metal pipe an inch and a half or two inches in diameter would be distinctly suggestive of serious results.

It is contended by defendants that since nothing appears in the record relative to any accidental occurrence or incidental mishap it must be assumed that spontaneous apoplexy accounts for the position in which the deceased was found in an unconscious state.

If relief were denied in all cases of accidental injury where it is not possible definitely to account for all details involved, employment liability would be very much reduced. Frequently serious injury arises out of employment with no eye witness to the accident. Not infrequently, it is necessary to take into consideration circumstances plainly indicating substantial inference.

The man by whom the unconscious workman was discovered testifies that there was cracked ice scattered about on the floor of the kitchen. It requires no strain of the imagination to develop the very plausible inference that the fall of Jones was caused by slipping on a piece of this cracked ice on the tile floor. It is reasonable to assume that in cases of spontaneous collapse, there results a crumpling of the body in sort of a heap on the floor, and that the prone condition in which the body of the workman was found is more suggestive of a fall occasioned by a slip on a chunk of ice or otherwise. All things considered, in its physical aspects the circumstances of this situation justify inference that collapse was due to a fall rather than that the fall was due to collapse.

Dr. C. J. Goebel, the hotel doctor, testifies for claimant with qualifications admitted. He says that about eight o'clock the morning of the injury he examined Jones at the hospital and he was "apparently feeling pretty good"; that the patient was unable to remember just what happened to him at the time of the accident. Thorough examination on the part of this witness seems to have indicated that in all important physical particulars, the workman was at that time in a fairly normal condition. Late in the afternoon of July 25th, however, he again became unconscious, remaining in this condition until the early morning of the 26th, when

his breathing became very difficult, death resulting at 8:00 A. M. In direct examination Dr. Goebel testifies to the belief that the condition of the deceased was due to trauma. In cross examination he states "in this case there was no physical condition which would cause apoplexy without trauma"; "that the physical findings that were found on the patient, point more to the hemorrhage following trauma than previous." Dr. Goebel was present at the autopsy.

Dr. R. N. Larimer, who had been in practice two and one-half years at Sioux City and was previously on the medical faculty of the State University for four years, was called by claimant. After examining copy of the autopsy in this case and in response to hypothetical query setting out the circumstances involved in this situation the witness testifies to the belief that "trauma had some direct bearing on the patient's condition"; "that he must have had concussion of the brain, perhaps cerebral hemorrhage." Believes origin of conditions described to have been traumatic. In cross examination he says "my impression is, trauma was sufficient to make him unconscious."

Dr. A. C. Starry was called by claimant. After graduating from the University of Michigan and with three years of interneship and laboratory work there, he has been for the past six and one-half years connected with the St. Joseph Hospital at Sioux City, in the capacity of pathologist. A part of his specialty consists in making post mortem examinations. He performed this service upon the body of James William Jones a few hours after death. This witness is very conservative in his expression. He found a double hemorrhage which leads him to believe that the decedent "probably suffered an accident of some kind prior to his being found in an unconscious condition." "Found nothing to explain the hemorrhage." Couldn't find any evidence of aneurism. In cross examination the witness was asked "and the question of what would cause that rupture is purely conjecture and speculative, isn't it?" The answer was "that is true." In redirect examination, however, he explained this statement to the effect that he was not attempting to say positively what occurred, because he didn't know, but that his inclination to the belief as to the cause of death of the workman was based upon his findings in autopsy and upon his knowledge and experience as a physician, and not upon conjecture and speculation. This is the last question and answer in examination of this witness:

"Q. And in this scale we were talking about, if you put on one side the findings found by elimination as to advanced arteriosclerosis sufficient to cause apoplexy; and on the other side the hemorrhage to the brain and taking into account the history of the case, you would find that side would have the greater weight of evidence?

A. In my judgment, yes."

A careful reading of Dr. Starry's extensive testimony would seem to justify the conclusion that this answer represents his deliberate opinion as to the source of this fatality.

Dr. F. A. Ely of Des Moines, testifies for the defense in the review hearing. In hypothetical inquiry his evidence affords support to the theory of spontaneous collapse relied upon by the defendants. Some of

his statements, however, suggest substantial doubt due to post mortem developments.

It is established in the record that double hemorrhage was discovered in autopsy. In the evidence of Dr. Starry appears this conclusion: "Spontaneous apoplexy usually is not found in multiple area, usually found in one area." Asked for his opinion as to this conclusion, Dr. Ely says: "I don't want to disagree with that." Later: "I will say that one or more distinct and separate hemorrhages occurring in the brain are less apt to be of spontaneous origin."

Counsel all through this case assumes that its history as to the origin and development of causes and effects does not accord any basis for award. He contends that because there was no eye witness to the prostration of Jones who may definitely testify as to just why and how he was found flat on the floor in an unconscious condition, this claimant cannot recover. Without such testimony, he assumes that the required burden of proof cannot be sustained. The authorities are full of evidence to the contrary. Based on well established rules frequently laid down by our courts, Honnold on Workmen's Compensation on page 466 concludes:

"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."

Again on page 779, Honnold further announces important rules of evidence as follows:

"A prima facie case is made when it is shown that an employee was at his usual place of employment, at the usual time of day when he was expected and required to be there, and an injury of any character is shown. Where it is difficult to determine where the weight of testimony lies concerning a given state of facts, or condition or manner in which an accident happened, the legal presumption favors the payment of compensation. In other words, if the evidence, though slight, is yet sufficient to make a reasonable man conclude in the claimants' favor on the vital points, then his case is proven."

On the morning of July 24, 1928, the deceased workman was in his usual round of employment, where he was required to be and doing what he was expected to do. Something occurred to interrupt this performance. Defendants contend that, due to natural causes, he was put out of commission by a paralytic stroke. Nothing in the way of evidence is submitted in support of this purely conjectural contention. Claimant alleges that in the course of his labors, he fell. This fall in which his neck at the base of the brain came into violent contact with a metal brace placed horizontally some six or eight inches above the floor caused the collapse, resulting in death. No one saw the fall. How he came to fall is never to be known. A fall from an upright position flat upon the floor in such a way as to strike the base of the brain upon the metal brace described is surely suggestive of violence and trauma. True Jones might have had a stroke and happened to fall on this metal brace, but we submit that to the ordinary mind the theory of the claimant affords much better basis of logical inference. It is much more reasonable to assume that a workman in good health as was Jones, hustling about his work of handling ice, accidentally fell, losing his footing, than that he just up and collapsed, not by crumpling to the floor in a heap, but by falling at length upon his back and just happening to strike the metal peril.

This is all from the standpoint of physical developments involved in the circumstances of collapse. It is now necessary to consider the technical evidence given by doctors who express opinion based upon professional finding. The three doctors, introduced by claimant, are evidently well experienced and have good professional standing.

Dr. Goebel attended the deceased from the hour of injury until death came some fifty hours later. He also witnessed the autopsy. His testimony strongly supports the theory of traumatic origin.

After reading the autopsy report, Dr. Larimer in hypothetical inquiry practically agrees with this view.

Dr. Starry performed the autopsy. He is subjected to rigid inquiry. He declines to say positively whether the collapse was spontaneous or due to accident, in the evident purpose of avoiding arbitrary conclusion or over-statement. In very grilling cross examination, he seems at one point to discredit the theory of claimant. Doctors are frequently that way. They well realize the mystery of human organism and the need for caution in their expression of professional opinion. In the exercise of caution they sometimes unfortunately discard their own best judgment, formed upon findings developed. With all his caution and conservatism, however, Dr. Starry in his testimony a number of times makes it clear that he believes his findings were more favorable to trauma than to spontaneous collapse. In his last answer, he plainly says that in his judgment the theory as to trauma has the greater weight in the history and in post mortem development.

In the early morning of July 24, 1928, the hour of doom may have been about to strike for this workman due to fatal collapse from natural causes without anything in his condition or experience to suggest any such untimely event. It can never be definitely known exactly how he came to fall and why he came to die two days later. If definite proof beyond all reasonable doubt as to cause and effect were required, this claim must fail, but when doubt necessarily exists, as in this case, conclusion must be reached as to the elements of inherent probability, of greater likelihood. If the record justifies the conclusion, that in spite of doubt, and uncertainty the weight of evidence favors the theory that death was due to trauma, then the burden of proof has been discharged, preponderance of evidence is established and award must follow.

Pfister & Vogel Leather Company vs. Industrial Commission, 215, N. W. 815, is a case in which the elements of credibility and inference figure much as in the pending action. This expression of the supreme court of Wisconsin is very significant in this connection:

"The single question presented is whether there is any credible evidence which directly or by fair inference sustains the findings of the Industrial Commission. This depends largely upon the testimony of the three physicians who testified. As is usually the case when doctors are called by opposing parties, they do not agree. Yet there is substantial accord in their testimony as the fundamental facts involved. The differ-

ence in their testimony consists chiefly in the degree of certainty with which they testify to the basic facts which determine liability."

In our case the testimony of the three Sioux City doctors differ only as to "degree of certainty with which they testified to the basic facts."

In re Uzzio, 117 N. E. 349. A workman was found unconscious at about seven o'clock in the morning. Death resulted. There was no conclusive proof as to any fall or other accident, but the inference was indulged that his fractured skull was due to a fall from a trestle. In holding for award, the supreme court of Massachusetts says:

"(2, 3) Without reciting the evidence in further detail it seems apparent that the board could reasonably infer from the facts proved by direct or circumstantial evidence that the employee fell from the frost-covered and unguarded trestle to the ground 36 feet below, and thereby sustained fatal injuries. We cannot say that such a conclusion is based upon mere surmise or speculation; it is supported by logical reasoning from established facts. It was not necessary for the dependent to exclude the possibility that her husband's death might have been due to an apoplectic shock, as suggested by the insurer; but only to satisfy the board by a fair preponderance of the evidence that it was due to a fall from the trestle."

This decision is consistent with practically common holding in compensation jurisdiction.

Controversy exists as to the earnings of Mr. Jones, upon which weekly payment must be based. He was receiving $60.00 a month and his meals. In arbitration the value of the meals are estimated at $24.00 a month. On the basis of cost to the employer, as such help is usually served with food, this basis would seem entirely fair. The value of the meals to the workman was the cost of the same when at home, and on this basis the estimate is liberal. So the record does not support a claim above the arbitration allowance.

The arbitration decision is affirmed.

Dated at Des Moines, this 11th day of February, 1929. Record complete February 6, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed District Court and Supreme Court.

SCHOOL TEACHER KILLED WHILE ACTING AS CHAPERONE—AWARD

O. E. Quaintance and Mary Quaintance, Claimants,

vs.

Rowan Consolidated School at Rowan, Iowa, Employer,
Iowa Mutual Liability Ins. Co., Insurance Carrier, Defendants.
McCoy & McCoy, for Claimants;
Sampson & Dillon, for Defendants.

In Review

On the 4th day of May, 1927, Miss Lela M. Quaintance lost her life in an automobile accident. At the time of her fatal injury she was filling an engagement as a grade teacher in the Rowan Consolidated School, and this action is brought to establish claim for dependency on the part of O. E. and Mary Quaintance, parents of the deceased.

Defendants contend that the fatal injury did not arise out of the employment of Miss Quaintance in a statutory sense.

Circumstances involved are substantially as follows:

The school program at Rowan would seem to include certain social activities, usually planned by pupils with the approval and under the supervision of the superintendent. Accordingly it had been arranged that on the evening of May 4, 1927 high school members should go by automobiles to a resort at Lake Cornelia, some fourteen miles from Rowan for a skating party. Vehicles were supplied by parents and others. Departure was from the school grounds.

Under a general rule on such occasions, it was understood that every load of pupils should include at least one teacher. In preparation it was found that one car was without a teacher. Another car contained four teachers. The superintendent, R. W. Adamson, testifies "I went over to that car and asked if one of them would please get into Kenneth Whitten's car" (the one without a teacher). Miss Quaintance responded to the request, embarking in the Whitten car. After the party she returned with the group she had joined in the Whitten car going out, and on the way back to Rowan the fatal accident occurred.

Defendants insist that as a grade teacher the deceased did not belong with the high school party; that she was self-invited and entirely without employment relationship during the evening.

Superintendent Adamson testifies that quite usually all the teachers joined in these festivities. This is not material to the issue. She joined the party and in responding to the request of the superintendent to enter the Whitten car, she met a condition not of her own making or suggestion. Mr. Adamson had a right to make this suggestion consistent with his supervising program. Under such circumstances and in such relationship, orders are not issued. A request is as significant as a command. To ignore the same would amount to insubordination. The entire situation suggests reasonable solicitude on the part of the superintendent for the welfare and the conduct of pupils in his charge. In the arrangements necessary he needed the co-operation of his teachers, and in such consistent co-operation Miss Quaintance lost her life as arising out of her employment.

The second count of the arbitration decision recites:

"2. That the parents of Lela M. Quaintance, claimants herein, have failed to establish such degree of partial dependency as would call for greater dependency compensation from the employer than the amount they have received from the third party."

Payment was ordered only to the extent of burial charges and the cost of litigation.

Resistance on the part of defendants is registered against this holding, on the ground that recovery from the third party is in excess of all compensation benefits established in the record, including statutory burial charges of $150.00.

Claimants contend that the facts developed in arbitration justify award considerably in excess of the $1,000.00 recovered from the third party.

Mrs. Quaintance testifies that since the daughter began teaching some

years prior to her death, her contribution to family support " took about all she had." Pressed for more definite statement, she says: "I would think $300.00 or $400.00 a year." Later in direct examination the witness thought the amount would be "from $200.00 to $300.00 a year."

Mr. Quaintance testifies to the belief that the contributions of the daughter for family support "would amount to $400.00 a year."

In the record appears numerous exhibits in the form of vouchers evidencing payment by the deceased for various family purposes covering a period of some seven years, sums amounting in the aggregate to $1,239.29.

Claimants contend that these exhibits tend merely to show the nature of contributions and the general helpful intentions of the deceased, and that herein, and upon the basis of claimants' testimony, is established a claim for dependency to the extent of one-half of total or about $1,800.00.

Defendants insist that vouchers submitted show payment for purposes not consistent with a claim for family support, and award should be in a sum less than $1,000.00, including statutory burial charges.

It is always difficult to reach definite conclusion as to dependency due on a contribution basis. In the nature of the case circumstances developing this situation are always unforeseen and unexpected. In the giving and taking of family relationship books are not kept and evidence of contribution are almost inevitably difficult to produce, even where absolute good faith is intended. If in such cases it were the rule to confine the limit of contribution to amounts for which vouchers may be produced, gross injustice would be done and employers would have comparatively little to pay in meeting statutory obligation.

Realizing the justice of indulging the element of probability and of consistent inference in such a situation, it nevertheless becomes necessary carefully to scrutinize the record developed and to exercise conjecture only to a reasonable extent.

The record shows that Mr. Quaintance some years ago sustained a loss of nearly, perhaps all, of his substantial property accumulation. The need of assistance from members of the family able to contribute is plainly seen. The record of contribution for more than a year prior to the fatal injury is immaterial except as it tends to demonstrate a family condition and relationship. Exhibits submitted and transcript evidence strongly indicate a tendency on the part of this daughter to help out in family emergency. She carried two insurance policies of $1,000.00 each for the benefit of these parents. She left debts for borrowed money to the extent of several hundred dollars. She had an income from her teaching somewhat in excess of $1,000.00 a year. She is shown to have been careful in personal expenditures. These facts and circumstances tend to indicate contributions to family support in excess of definite proof.

The claim of counsel that these contributions amounted to one-half or even one-third of earnings cannot be accepted. Contention of opposing counsel that award should be based on the meager figures established by legitimate vouchers submitted is no more reliable.

Out of this maze of perplexing detail and circumstance as to contribution, it seems reasonable to conclude that contribution made by the deceased daughter to family support should entitle claimants to the award made by the arbitration decision and no more.

Claimants are therefore entitled to receive as compensation the sum of $1,000.00 already paid by the third party, and the defendants are ordered to make full settlement by payment of statutory burial charges and the cost of litigation.

Dated at Des Moines, this 22d day of February, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

SCHOOL BUS DRIVER—STATUS UNDER DRIVING CONTRACT

Ruby Arthur, Claimant,

vs.

Marble Rock Consolidated School District, Employer,
New York Indemnity Company, Insurance Carrier, Defendants.
R. W. Zastrow, for Claimant;
Carl Jordan, for Defendants.

In Review

Driving a school bus under contract with this employer, Harry Arthur, husband of this claimant, was fatally injured at a railroad crossing near the town of Marble Rock, March 8, 1928.

Defendants resist this claim for compensation payment on the ground that Harry Arthur was an independent contractor with the Marble Rock Consolidated School District and as such he was without compensation coverage.

In this record marked exhibit "A" appears the contract of employment between the school district and Harry Arthur. Herein the Board of Directors agrees to pay to Harry Arthur the sum of $95.00 a month. It reserves the right to change the terms of employment and to terminate the contract at any time. Arthur agrees to a wide range of direction and control as to details of service, including these specifications:

He must drive on the route as directed by the board, arriving at the school house not earlier than 8:30 or later than 9:10.

He is bound to return the pupils to their homes, leaving the school house at 3:45 or later as the board may determine.

He agrees to refrain from the use of profane language in the presence of pupils.

He promises not to use tobacco in any form while conveying the pupils.

He must avoid fast driving and stop before crossing the railroad.

He promises to keep order among the pupils and report any improper conduct.

The terms of this contract plainly indicate compensable relationship. Rarely are the conditions necessary to ordinary wage earning more distinctly expressed. Little is left to the choice of the workman. He is required to do his work at hours unalterably fixed and by methods distinctly dictated in detail by the employer. He is circumscribed as to personal conduct and personal habits. His work is cut out for him, not

only as to where he shall drive, but when and how he shall drive, even to his manner of negotiation at railway crossings. He is constituted the moral guardian of the pupils in his charge.

Surely such contractual conditions are not in the least suggestive of independent employment.

Counsel insists Arthur was merely subject to necessary rules and regulations of service. It might be consistently stated that rules and regulations have no place in the program of independent employment, which provides only for the delivery of a finished product or ultimate result.

It is further urged in support of defendants' contention that the workman supplied part of his transportation vehicle. Workmen may and frequently do furnish their own working equipment without disturbing the usual wage relationship. The fact that a carpenter uses his own saw and plane and chisel and hammer is not at all suggestive of independent employment.

The commissioner is familiar with the Pace and Norton cases cited by counsel. He thinks he understands their import and application and if he does they afford no support whatever to the contention of defendants. In these cases the court plainly indicates that when a workman is in his employment subject to supervision, direction and control as to the methods employed he is not an independent contractor. It is difficult to conceive how, not only the right to supervise, direct and control, but the exercise of such right, could be more distinctly indicated than in the contract of employment introduced as Exhibit A.

The award of compensation as ordered in arbitration is affirmed.

Dated at Des Moines, this 22d day of February, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed District Court; reversed Supreme Court.

EYE INJURY AS BASIS OF AWARD

Fred O'Day, Claimant,

vs.

U. S. Button Company, Employer,
Employers Mutual Casualty Co., Insurance Carrier, Defendants.
Bush & Bush, for Claimant;
Lane & Waterman, for Defendants.

In Review

Total loss of vision of the left eye is alleged by claimant as result of injury in the employ of this defendant on or about July 8, 1927. He states that while filing a saw used in his work, something flew and hit him in the eye. He testifies that previous to this injury, he had full vision.

Testifying for claimant, Dr. W. F. Bowser says that in July of 1927 he removed a piece of rust or scale from the left eye in which existed an ulcer. In cross examination states he discovered a condition which seemed to suggest congenital impairment. This trouble might be expected to affect the vision. Possibly it might have caused the condition

of the eye at the time of his examination. In an examination a month after he first treated him, vision was entirely gone. Would hardly expect normal vision to have existed at the time of injury due to the congenital impairment.

Dr. G. F. Hartness was called by defendant. He made examination of the injured member along in April. Thought the conditions existing were of congenital origin. Does not believe he ever saw with his eye. If O'Day was able to go hunting and shoot accurately with the left eye, he might have to admit that the condition he describes did not exist at that time.

The claim of O'Day that he did shoot with his right eye closed and was an excellent shot is corroborated by his brother, Bert O'Day and also by Otto Valley, both of whom testify to personal knowledge as to this manner of shooting and as to accuracy of aim.

Without contradiction the testimony of both doctors called might be considered as damaging, if not fatal to the case of claimant. It is evident from the record, however, that the conditions to which they testified as to congenital impairment and as to lack of vision previous to the accident was based upon conjecture which must be discarded if normal vision existed in the eye previous to the injury of July, 1927. The fact of normal vision at this time seems so well attested as utterly to discredit medical evidence. Conjecture necessarily yields to established fact.

Here we have a situation where a workman gives perfectly consistent history as to injury. While filing a saw a hard substance flew into his eye. He reported the case to his employer who sent him to a doctor. The finding of this doctor as to the immediate cause of injury is entirely consistent with history given. Reliance must be placed upon the record as to normal vision existing at the time of injury.

Defendants contend that the record of wage payment does not justify the fixing of the weekly compensation rate at $9.00. Defendants' exhibit "A" shows that in the thirty weeks of labor preceding the date of injury, the average earning was a little in excess of $15.00. To this record it is not possible to apply the statutory rule as to earnings "on the average of those days when he was working," but the detailed showing necessary would be more apt to favor the claimant than the defendant.

Upon the record it must be held that there is no error in the arbitration decision, that in the injury of July 8, 1927, Fred O'Day lost the full vision of his left eye, which fixes the obligation of defendants at one hundred weeks of payment at the rate of $9.00 a week, together with statutory medical, surgical and hospital benefits and the costs of litigation.

The arbitration decision is affirmed.

Dated at Des Moines this 28th day of December, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

GLAUCOMA, NOT AMMONIA FUMES, CAUSE OF BLINDNESS

Chas. Brasch, Claimant,

vs.

Rose Tenenbom, Employer,
Iowa Mutual Liability Ins. Co., Insurance Carrier, Defendants.
Lane & Waterman, James J. Lamb and John Weir, appearing for Claimant;
Sampson & Dillon, for Defendants.

In Review

In arbitration at Davenport April 10, 1923 award was denied.

In the arbitration application filed December 20, 1922, it is alleged that on August 6, 1922, claimant was so affected by exposure to ammonia fumes as to develop loss of vision, within a few weeks culminating in total blindness.

The case was submitted in review February 8, 1929.

Claimant recites in evidence circumstances of injury and its effects substantially as follows: In the refrigerator equipment of the defendant employer is an ammonia plant. On a certain day the senses of hearing and smelling announced the escape of ammonia gas at this plant. Shutting his eyes and holding his breath, as he says, claimant went to the basement to shut off the pipe at the point of escape. He came out for breath and went down a second time to effect his purpose. Says he opened his eyes while in the basement for an instant in which he received a charge of the gas vapor. Claimant says he worked for a while and then went home, distress from this exposure continuing. Did not work again for few days. Eye trouble rapidly developed so as to interfere with useful vision, and about August 15th following he was practically blind.

Dr. L. Ostrom, of Rock Island, came into the case September 23, 1922, and was still treating claimant at the date of arbitration hearing. While he does not testify positively that the glaucoma discovered in the examination was due to the ammonia incident, he gives rather substantial support to the contention of claimant.

Defendants contend that loss of vision is due to a disease of the eye known as glaucoma, and that no injury in employment was the source of developing blindness.

One witness, a fellow employee, testifies definitely in support of evidence given by claimant as to circumstances in connection with the alleged exposure. Another fellow workman thoroughly discredits this testimony. The evidence of neither is particularly reassuring.

Drs. Lee Webber and J. E. Rock, eye specialists, and Drs. P. A. Bendixen and R. S. Taylor, in general practice, strongly negative the probability that loss of vision is due to ammonia exposure. All these doctors testify from professional contact with the case.

Dr. W. W. Pearson, of Des Moines, in deposition testifies to utter disbelief as to ammonia exposure being the source of the loss of vision. In exhaustive inquiry the doctor comprehensively discusses all phases of the situation as recited to him in case history, giving substantial reasons for his conclusions herein.

While counsel is loath to admit, in fact is rather disposed to deny, the existence of glaucoma at the time of alleged injury, the record clearly shows this to have been the cause of blindness. This fact alone, however, does not necessarily work foreclosure against award if it were shown that any incident of employment definitely contributed to the disaster to such a degree as to make it clear that, but for such incident, earning would have continued indefinitely. Weighing the evidence carefully, it by no means appears that this fact is established.

There is little disinterested evidence tending to corroborate the story of claimant as to anything of a serious nature having happened to him on the date of alleged injury.

In fact the fixing of this date is not reassuring. In the application for arbitration filed December 26, 1922, it is given as August 6th. In an amended application filed February 24, 1923, the date is changed to July 23. At the arbitration hearing the claimant in direct examination testifies that on August 18th or August 19th he told Coleman, representing the insurer, that the ammonia exposure was August 6th. It is noted that the date when he admits he made this statement to Coleman was less than two weeks after August 6th. The "mistake" Brasch alleges as to fixing the date suggests either that it was changed for a purpose, or that nothing serious could have happened on either date if claimant did not then remember whether injury occurred two weeks or four weeks before his talk with Coleman.

Medical evidence and common knowledge suggest that intensity of irritation from this gas exposure sufficient to destroy vision in eyes closed, except for an instant, would have left serious evidence of such exposure on the eye lids, in nostrils, and on all exposed skin surface. Claimant testifies that on a number of occasions, as many as a dozen times any way, he had been exposed to these gas fumes from the ammonia plant in question without trouble.

The fact that five out of six doctors testifying bear witness against this claim is significant. The tendency of doctors to disagree is well known and when there appears in the record anything like an equipoise of medical evidence it becomes necessary to supplement such evidence with practical judgment, common knowledge and consistent inference. Where scientific expression is overwhelming, however, it is difficult to get away from such weight of evidence.

This grievous loss of vision may be due to circumstances alleged in behalf of claimant, but the record fails to justify such conclusion, even with the liberal exercise of all consistent inference and conjecture to which the courts are inclined to give favorable consideration.

At the review hearing claimant's counsel sought to introduce into the record several depositions. The motion of defendants to suppress these depositions, made a part of the review proceeding, was sustained by the

industrial commissioner. To this ruling claimant takes exception which is hereby duly noted.

The arbitration decision denying award in this case is affirmed.

Dated at Des Moines this 15th day of February, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

HERNIA HELD NOT ARISING OUT OF EMPLOYMENT

W. A. Morey, Claimant,

vs.

Three Minute Cereal Company, Employer.
United States Casualty Company, Insurance Carrier, Defendants.
E. J. Dahms, for Claimant;
Carl Jordan, for Defendants.

In Review

Claimant seeks to recover for hernial development due to injury alleged to have occurred about November 1, 1926. He gives this explanation, transcript page 3:

"Well, I had a box about a foot or fourteen inches high and got those sacks upon my right knee and there would be a man holding them for me, you know, and I would pick them up and rest them on my knee, like this, and while I was doing that I got a pain in my side."

Claimant further testifies that he had been going through this lifting process many times covering a considerable period. In cross examination on page 11 of transcript appears the following:

"Q. What I mean to say, you didn't put on any extra strain when you were doing it that day?
A. O, no, no.
Q. There wasn't anything unusual in the way you were doing it?
A. No."

Compensable injury must arise out of employment. It must have its origin in some accident or incident out of the usual course. It cannot occur while the workman is doing his usual work in the casual way without circumstances suggestive of casualty. It must be due to some fortuitous event, some untoward, some unlooked for mishap.

In this case Wm. Morey by his own statements defeats his claim for compensation. In the first place he is not certain as to the date of alleged injury. He relates circumstances definitely inconsistent with compensation obligation. He was performing a task very common to his employment. He says emphatically that he did not have any strain. There is no history of fall, slip, stumble or other untoward incident. His own testimony does not support contention that he sustained anything like an injury arising out of employment in a statutory sense.

The arbitration decision is affirmed.

Dated at Des Moines, this 27th day of March, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA—AWARD DENIED

Jesse Smith, Claimant,

vs.

Henry County Soldiers' and Sailors' Memorial Hospital, Employer,
U. S. F. & G. Company, Insurance Carrier, Defendants.
McCoid, McCoid & McCoid, for Claimant,
H. B. White, Clifford Vance, for Defendants.

In Review

This action is brought to establish compensable hernia due to alleged injury January 10, 1929. In arbitration finding was for the defense.

By agreement this case was submitted in review on written briefs and arguments without oral hearing.

Jesse Smith was in this hospital service as janitor and man of all work.

The only question in controversy is as to whether or not the double hernia from which claimant was found to be suffering on January 11, 1929, in a legal sense arose out of his employment by this defendant.

In the transcript of evidence appears the testimony of Mr. Smith, that on the date of alleged injury he was shoveling snow from cement walks; that rough ice and frosted snow caused difficulty in shoveling; that "when I would shovel and hit these chunks it would jar me up some." (tr. 9)

"Q. Just tell the court in what way it would jar you?
A. Well, really, the worst one was when I was scooping across the crossing at the alley. I was pushing it along in front of me and it hit me in the side and that is the only time I remember of it hurting me so bad, and that is when I took sick, right there on that crossing."

In cross examination (tr. 16) appears the following:

"A. Well, I was just scooping along with the snow and of course whenever I would hit them bumps, it would jar me up some, but when I was going across the crossing, then was when I got the worst bump of it all, the handle hit me on the side when it slipped there."

With this testimony uncontradicted by fact or circumstance the case of claimant is made.

In this record as defendants' exhibit 1 appears a signed statement of Jesse Smith made February 10, 1929. In this statement it is related:

"As I returned to the hospital I felt sick at my stomach but did not feel any pain. The following morning I felt sick at my stomach and also felt pain in my lower abdomen. I felt two lumps at the lower part of my abdomen."

Further along in the statement claimant says:

"While shoveling the snow I did not strain myself by shoveling but I do remember slipping several times. There was ice and packed snow on the walk underneath the loose snow which I was shoveling off. Of course I was not taking the ice off but merely the loose snow. I did not slip and fall to the ground but merely slipped around while shoveling. Other than this slipping around there was nothing that could be classed as an accident. I did not have any pain until the morning of January 11, 1929."

At the arbitration hearing claimant admits the signature of this statement as his own. Admits the statement was read to him, but that he "couldn't tell anything that was in it." Denies saying he did not, in ac-

cordance with the statement, say he felt no pain until the next morning. Denies other material statements.

L. Kious, the insurance adjuster who wrote the statement, testifies that it accurately relates the history of the shoveling incident just as given him by claimant.

R. C. Campbell, a local insurance dealer, testifies he was present when this statement was taken; that it is a faithful report of incidents as related by claimant. Is very positive claimant made the material statements as to no pain and no accident which he now denies.

It is necessary to take judicial notice of important contradiction between the signed statement and the sworn testimony. The former was made just a month after the alleged injury. No one who has experienced the sting of hernial development will feel there could have been any failure at this early date to distinctly remember its sensation. It is significant that in the statement no mention whatever is made of the shovel handle contact upon which this claim must rest if it be approved. In his replies to the interrogation as to these discrepancies the claimant is evasive and insincerity is strongly suggested.

There might be basis for some measure of prejudice on the part of the adjuster, Mr. Kious, but this cannot be urged with any color of consistency as to the evidence of Mr. Campbell. His interest is in common with that of the defense. He sells insurance and it is a matter of common knowledge that it helps the sales end of the insurance business to have claims paid and the local sales agents are commonly inclined to sympathize with claimants for this reason. So when this man Campbell, evidently a man of standing and a neighbor of the claimants, testifies positively as to the statement subscribed being in practical accord with history given by the claimant in his presence, this evidence must be seriously considered.

Testifying in support of this claim of her husband, Mrs. Smith, says (tr. 3) that in the evening of the day of alleged injury claimant came in making complaint that he "didn't feel a bit good." That he retired earlier than usual. No mention at this time is made of any injury or distress at the site of hernial development. In reply to the query (tr. 10) "was anyone there when you came in and went to bed?" Smith says "no there wasn't."

Claimant introduces as Exhibit A a letter written by the Industrial Commissioner March 19, 1929. Counsel declined to state for what purpose this exhibit is submitted. The important paragraph in this letter follows:

"I say to you frankly, however, that unless it may be shown that the hernial development was distinctly due to some definite incident or accident occurring at a particular moment during his day's work, it is unwise to waste his money in litigation, for he cannot possibly establish a case. The mere fact that he did a hard day's work shoveling snow and that he afterwards discovered he had a hernia will not make a case."

It would be difficult to improve on this statement in the interpretation of holding in this state and generally elsewhere as to the burden to be discharged by a claimant in the establishing of a claim for hernia. It seems to have been accepted by counsel as sound and controlling in

view of his subsequent endeavor to meet these requirements in testimony submitted at the arbitration hearing.

Appearing herein as Exhibit 2 is a letter dated March 1, 1929, from claimant's counsel to the defendant insurer insisting on settlement, in which it is stated:

"Among a great number of hernia cases, this one to my mind is very clear as to cause of this thing. It did not occur in bed, being a direct hernia might not produce any pain at hernial site, but did occur at work the day previous. Pain showed up next morning on awakening."

This statement admits that no pain was experienced by claimant the day of the shoveling just as announced by Smith in his signed statement and strongly denied by him in arbitration. This letter of counsel was written several weeks prior to that of the commissioner in which appears as quoted, specifications for compensable hernia.

Counsel submits a mass of citations, the last of which is numbered 83. The outstanding feature of these decisions is the common holding that by preponderance of the evidence the claimant must prove disabling injury, having its origin in some incident or accident of employment occurring at a certain time and place and in a definite manner.

This is a holding common in compensation jurisdiction. Under its intelligent exercise Iowa workmen in hernia cases every year receive thousands of dollars in compensation benefits. Departure from this rule, or juggling with its terms would inevitably lead to confusion and instability of administration.

Hernia may exist as a result of occupation without compensation liability. Its development may be due to previous exercise of energy. In cases, however, where it is not shown to have its origin in some specific incident with reference to time and place or circumstance, within hours of service, coverage cannot be established. Otherwise imposition would be comparatively easy. Tendency to hernia in most men is well understood. Hernia often occurs with little provocation. A stumble, a trivial fall, a slight strain, a cough or a sneeze has been known to bring the intestine through the inguinal ring. If coverage be not confined to accident or incident immediately connected with the work of the moment, such development not due to employment might easily be charged to it and award wrongfully made. So the rule in this as in other compensation situations must insist upon hooking up injury immediately with employment origin and the further common rule that conjecture or surmise cannot be exercised in such a situation makes plain the duty of administrative and judicial procedure.

In *Miller vs. Gardner & Lindberg*, 180 N. W. 742, the Iowa supreme court declares: "It will not do to say that the commissioner may not consider the weight and credibility of the evidence in the light of all the circumstances." Frequent expression of the court indicates that it devolves upon this tribunal in case of compensation controversy carefully to consider evidence submitted because of the importance it gives to his conclusion as to questions of fact.

It therefore becomes necessary to hold that because of conflicting and contradictory evidence, Jesse Smith has failed to discharge the burden

of proving by credible testimony that this case comes within the rule of compensation coverage.

The arbitration decision is affirmed.

Dated at Des Moines this 26th day of September, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Commissioner reversed District Court; commissioner affirmed Supreme Court.

HERNIA CAUSED BY STRAIN WHILE PULLING WEEDS—AWARD

Harold F. Birkholz, Claimant,

vs.

Sherman Nursery Company, Employer,
Employers Liability Assurance Corporation, Ltd., Insurance Carrier, Defendants.
Jens Grothe, for Claimant;
Larson & Carr, for Defendants.

In Review

In arbitration at Charles City, April 15, 1930, the defendants were ordered to pay to claimant the sum of $83.04, representing eight weeks of compensation at $10.38 per week, together with statutory medical, surgical and hospital benefits.

Without formal hearing the case is submitted in review upon written argument.

On the part of claimant it is alleged that a right inguinal hernia was sustained as arising out of employment by the Sherman Nursery Company.

Harold F. Birkholz testifies that on August 19, 1929, he was pulling weeds on the premises of this employer. These weeds were of unusually rare growth, requiring the exercise of much strength in the work of removal. He says that in pulling one of the larger weeds he "gave it all he had" in the way of lifting power, and in this effort "something snapped" and he "felt weak and dizzy."

The record shows that it was necessary for him to rest and to go slowly with lighter work the remainder of the day. In the evening medical examination disclosed hernial development. Subsequently claimant was unable to work. Sometime in September he started wearing a truss and later drove a car in the employment of the nursery for about six weeks, receiving his board as pay for his services. Operation was performed in January of 1930.

The testimony of fellow workmen, of the employment foreman and of the attending physician tends substantially to support the statements of claimant relative to circumstances of inquiry and of its physical effect.

The only evidence submitted on behalf of defendants is that of Dr. Griffin, of Charles City. He testifies that he has made a special study of the subject and declares that "traumatic hernia would be hernia produced by some sharp instrument an individual falling on the instrument and tearing sufficient opening through the abdominal muscles to allow the protrusion."

The doctor further indicates that hernia developing under other circumstances is congenital in origin. Says the tendency to congenital hernia is more or less a normal condition of the human structure that the majority of people have it.

The argument of counsel in resistance of this claim is based chiefly upon the theory and conclusions submitted in evidence by Dr. Griffin. Counsel quotes liberally from the medical profession in the endeavor to show that there is no such thing as compensable hernia except as the result of local violence.

This theory, quite commonly held by physicians, has been no less commonly repudiated by compensation authority and the courts throughout the country. Predisposition to hernia on the part of many persons is well understood. Protrusion has been produced by a comparatively slight jolt, even by a cough or a sneeze. In compensation jurisdiction great care is exercised in determining as to whether or not claim for hernia as an injury is based on some definite accident or incident of employment, occurring at a particular place, in a definite manner and at a definite point of time. When circumstances square a case by this rule obligation on the part of the employer is held to be established.

Regardless of predisposition or tendency when disability is due to some specific incident of employment but for which a workman would continue indefinitely in earning, industry must contribute to the personal loss sustained as the law provides.

Award to Harold F. Birkholz for injury sustained as arising out of and in the course of his employment involved no error on the part of the arbitrators.

The arbitration decision is affirmed.

Dated at Des Moines this 17th day of June, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA NOT ARISING OUT OF EMPLOYMENT

Simon Collingwood, Claimant,

vs.

John Morrell & Company, Employer,
Fidelity and Casualty Company of New York, Insurance Carrier, Defendants.
Elmer K. Bekman, for Claimant;
B. O. Montgomery, for Defendants.

In Review

Arbitrated at Ottumwa August 17, 1928, it was held in this case that claimant failed to establish liability on the part of defendants.

The transcript of evidence taken at the arbitration hearing is submitted for review to the Industrial Commissioner without argument.

Testifying before the Deputy Industrial Commissioner, Simon Colling-

wood states that on March 14, 1928, he sustained injury resulting in left inguinal hernia. He alleges that this injury was due to service in tending doors in which he strained himself while meeting the requirements of this service. He says, "I got awful sick and went in to my foreman and told him I had to go home, that I had to go and see a doctor, that I hurt myself on those doors."

The doctor, he states, told him he was ruptured and would have to go to the hospital, which he did on the thirty-first day of March, 1928. An operation was performed April third succeeding. Admits he had a hernia on the right side many years ago, which had been cured by treatment, as he says.

In matters of case history, the recital of claimant was considerably disturbed in cross examination. Confronted with the statement alleged to have been made by him while in the hospital, Collingwood verified the signature. In this statement appeared the following: "I could not say the exact date which my hernia came out the last time. I did not slip or fall or stumble nor was I struck by anybody. I think it was just hard work that I was doing that caused the hernia to come out the last time." Claimant answered, "I should say I didn't tell him that."

Called by claimant, Dr. H. A. Spilman says he assisted in operation April 3 or 4, 1928, which consisted in "repair of hernia, both sides, inguinal hernia."

Called by defendant, Dr. McElderry testifies that on the thirtieth day of October, 1925, he examined Collingwood at Morrell's First Aid Department. Furthermore:

"Q. You may tell the commissioner what you found at the time of that examination in the abdominal region, the inguinal region.
A. At that time Mr. Collingwood had a double inguinal hernia, one on each side.
Q. Were they small or large or easily detected?
A. They were large enough that I could see them as he walked toward me; when he was standing with his clothes off I could see them without examination.
Q. They were visible to the naked eye without examination?
A. They were."

G. R. Halgren, department foreman in the employ of the defendant employer, states that in January or February, 1928, claimant came to him and said "he wanted to go home to see about his rupture." Further: "as I remember, on that day Mr. Collingwood asked me to get off, said his rupture was bothering him and wanted to go and see the doctor." Testifies he knew claimant was ruptured "couple of years ago, probably."

It is observed that the workman says he promptly told his foreman of the alleged injury March 14th, 1928; also that Foreman Halgren testifies that in January or February, a month or so prior to the date given, claimant said "he wanted to go home to see about his rupture", and the foreman persists in the statement that he knew about the rupture as having existed for a considerable length of time and did not know of any injury of March 14th, as testified by Collingwood.

While claimant states he was operated on for left hernia only, Dr. H. A. Spilman says he assisted in operating for double hernia.

It appears furthermore that Dr. McElderry testifies that in the First Aid Department of the employer he examined claimant October 30th, 1925, and found a very pronounced double hernia. This was more than two years prior to the alleged injury of March 14th, 1928.

Obviously the record justifies denial of award and the arbitration decision is hereby affirmed.

Dated at Des Moines, Iowa, this 27th day of October, 1928.

No appeal.

A. B. FUNK,
Iowa Industrial Commissioner.

HERNIA DUE TO HEAVY LIFTING—AWARD

Ernest Johnson, Claimant,

vs.

Lytle Construction Company, Employer,
Employers Mutual Casualty Company, Insurance Carrier, Defendants.
Van Ness & Stillman, for Claimant;
John Hynes, for Defendants.

In Review

This compensation claim is based upon hernial development in employment, September 17, 1928.

Arbitration hearing at Algona, October 24, 1928, resulted in finding for claimant.

It is the contention of the defendants that the claimant, Ernest Johnson, has failed to establish his claim by preponderance of competent evidence.

It appears from the record that on the 17th day of September, 1928, and for some time previously, claimant had been in the service of the defendant employer in the work of highway construction. He testifies that on this date, he was handling steel forms used in connection with the laying of concrete paving. These forms weigh about 160 pounds. In the act of raising one of these forms, with the assistance of a fellow workman, claimant says he felt a distinct pain in the left groin. Kept on working but within the course of about thirty minutes, it became necessary for him to quit because of excessive pain and the tendency to intestinal protrusion.

The fellow workman to whom reference has been made, as assisting in the lifting of the steel form, substantially corroborates the testimony of Johnson as to facts and circumstances in connection with the lifting and its results on September 17, 1928.

Defendants deny obligation upon these grounds.

1. That injury alleged was not due to any specific incident of employment.

2. That in medical evidence claimant at the time of his alleged injury is shown to have been definitely susceptible to hernial development because of open inguinal rings.

In order to establish compensable injury, it is not necessary to prove such injury to have been developed out of any spectacular or sensational accident. The word accident rarely occurs in our statute and on these rare occasions it is used only in the most incidental way. It is only neces-

sary to show that some incident of employment deprived the workman of further earning capacity. Of course it is expected that this incident shall include something in the nature of a fall or strain or shock tending to produce disability, and but for such incident of employment the workman would have continued in earning capacity.

In this case occurs the characteristic medical resistance to the inclusion of traumatic hernia as a compensable industrial injury. Doctors have gone so far as to state that such injury can occur only in connection with some act of violence immediately in contact with the part affected. This medical contention has been generally discarded in compensation jurisdiction. It is held in this jurisdiction that in every case where an able-bodied workman is incapacitated from earning and that such incapacity would not have resulted but for some definite strain or casualty of labor performance, there is no escape from compensation obligation.

It is shown in this case that claimant Johnson was particularly susceptible to hernial development because of open inguinal rings. This susceptibility cannot be successfully plead in defense, as it is a well known principle in compensation that the employer takes the workman as he finds him and that pre-disposition to break down shall not serve to defeat a compensation claim if something happens as arising out of employment, but for which earning capacity would indefinitely continue.

On the part of this department, great care is exercised in dealing with claims based upon hernia. It so happens that all hernia cases, four in number, which have gone to the Supreme Court have been decided adversely by this department and these decisions have been uniformly affirmed by the court. It is well understood that no such case shall have the support of the commissioner where hernial development is obscure in origin or without corroboration as to fact and circumstance.

In this case the evidence of the workman bears the imprint of inherent probability. This evidence is definitely corroborated and supported by Herbert Weise, the only person in contact with the situation at the time of injury.

In arbitration it was ordered that the defendants shall "at once offer the claimant a cure by operation at their expense and to pay the claimant at the rate of $10.80 a week for the convalescing period following the operation," or "as alternative, in the event the claimant should not desire to submit himself for an operation, the defendants shall pay the claimant a lump sum of $189.80, in lieu of the cost of an operation, and compensation for six weeks, which is the usual healing period in such cases."

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 15th day of November, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

HERNIA SHOWN TO ARISE OUT OF EMPLOYMENT

John Penniwell, Claimant,

vs.

Sodin & Bacino, Employer,
Standard Accident Insurance Co., Insurance Carrier, Defendants.
J. V. Gray, for Claimant,:
Maurice V. Pew, for Defendants.

In Review

This action is brought to recover for disability on account of double hernia alleged to be due to injury of October 11, 1928, arising out of employment.

It appears from the arbitration record that on the date aforesaid claimant did some heavy lifting of candy boxes in the elevator of the employer. He alleges that in one such lift he strained himself producing pains in the groin on both sides. After resting fifteen or twenty minutes he returned to work. Pain did not both him long. He was working alone.

At home in the evening he discovered lumps on both sides. A day or two later, as soon as he conveniently could, he submitted himself to examination of his father, who testifies in support of this claim.

Operation was later performed by Dr. J. W. Laird, assisted by Dr. W. A. Sternberg. The testimony of both these doctors tend to support the contention that this hernia development was of recent traumatic origin.

Defendant's Exhibit A is a statement signed by the claimant November 24, 1928. Counsel contends this claim is discredited by discrepancy between statements by the claimant in this exhibit and on the witness stand.

There is some such discrepancy, it appearing that John Penniwell made a little better case in the signed statement. Usually where such discrepancy appears, the more favorable account is given in arbitration evidence when the claimant may better understand the statutory requirement.

It may not be surprising that the insurer entertained doubt in this case. It is not established beyond all question of doubt. This, however, is not necessary. Careful scrutiny of the evidence tends to show good faith on the part of the claimant. The conclusion is justified that he was injured as he states and that subsequent developments are consistent with such injury.

Compensable hernial injury has no definite program of development. It sometimes comes with much distress and an immediate breakdown. Sometimes it is of slower culmination and incapacity may not immediately occur though the source of injury may be well understood from case history.

The manifest good faith of claimant, the circumstances recited, the evidence of attending physicians, together with the award of the deputy

commissioner, in close contact with those testifying, all tend to support this claim.

The arbitration decision is affirmed.

Dated at Des Moines this 20th day of May, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

ELECTROCUTION ESTABLISHED AS TO CAUSE OF DEATH OF LINEMAN

Adelaide M. Rodgers, Claimant,

vs.

Iowa Railway & Light Corporation, Employer,
Standard Accident Insurance Company, Insurance Carrier, Defendants.
Baker & Doran, for Claimant;
John H. Hull and Maurice V. Pew, for Defendants.

In Review

It is the contention of claimant that her husband, Frank Rodgers, came to his death July 18, 1928, by electrocution in the service of this defendant employer.

Defendants deny that this death was due to electrical shock or to any injury arising out of employment.

At the time of this disaster the Iowa Railway & Light Company was rehabilitating its transmission equipment on the streets of the town of Slater. Frank Rodgers was on a pole 45 feet high, doing work in connection with the transfer of light and power wires to new poles. Some time after going up the pole he gave evidence of distress, and was observed slumping down in his safety belt attached to a convenient cross arm, which prevented his fall to the ground. Death was instantaneous.

As appears in evidence examination of the body disclosed bruises or contusions on the body of the deceased near the left nipple, under the right arm and on each shin. Garments introduced indicate that holes in the shirt and in the bib of the overall worn by Rodgers were directly over the bruise or contusion near the left nipple. Testimony seems in substantial agreement that the holes in these garments give evidence of scorching and the exhibits introduced seem strongly to support this conclusion.

A crucifix submitted, which was carried by the deceased in a little pocket near the point of skin contusion and the burnt holes in the covering garments, strongly suggests electric treatment. The features of the figure give evidence of heat application, and discoloration further suggests presumption as to inherent probability.

Defendants contend that without actual physical contact with the transmission wire, electrocution cannot occur and that since such contact is not established in evidence this death is due to some natural cause.

In arbitration and in review a pole with cross arms and wires was introduced in evidence as an exact reproduction of the construction situation at the point where death occurred. At the review hearing George Smith, for many years line foreman of the employer, assumed the position occupied by Rodgers. It is developed in examination of Smith that about 18 inches in front of the workman and about waist high was a wire carrying 6600 volts of electricity. At each side of the workman at a distance of about 20 inches from his body, and about 4 inches above the knee were lines of wire also of 6600 voltage. Down near the feet was a wire carrying 220 volts.

If it were necessary to show to a dead moral certainty that the death of Rodgers was due to an electrical shock, this claim must fail. This would be true as to a good many compensation claims for industrial injury, for absolute certainty is often impossible of establishment. It is only necessary, however, to meet the requirements of the burden of proof under the usual rules of jurisprudence. These rules are thus interpreted on page 466 of Honnold on Workmen's Compensation, an authority of high standing:

"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 from which it results that the greater probability is in favor of the party on whom the burden rests."

This widely accepted interpretation affords substantial basis for the intelligent consideration of this record.

The weight of evidence shows that Frank Rodgers, in the years preceding his death was a man in good health and evidently able-bodied. There is nothing to indicate that he collapsed and died in a lineman's harness from natural causes. On the other hand circumstances attending his death are strongly suggestive of electrocution. The demonstration by foreman, George Smith, on the pole and among the cross arms and wires in a position assumed to have been occupied by Rodgers by no means served the purpose of convincing the commissioner of the improbability of electrocution. On the other hand it tended to emphasize imminent existing peril and inherent probability as to the cause of death. On three sides of the workman 20 inches or less distant, were power wires carrying 6600 volts of electricity. Down toward his feet was another wire with a voltage of 220.

The defendants contend that insulation afforded safety. This wire coverage had for more than ten years been exposed to weather conditions, which substantially reduced its current control. Attempt to establish the alleged fact of complete covering with no abrasion was not successful. It is a matter of common knowledge that neither the scientist nor the practical expert has been able to reduce the action of electricity to anything like orderly process. Great risk is challenged without disaster while out of conditions believed to be and usually are without peril have many deaths occurred. It is also well understood that death may occur from electrical shock without physical contact with the wire conductor. The process of arcing, or the jumping of the current, from the wire conductor with fatal results is an experience well established. Peril is greatly increased if the human body under more or less of exposure is wet or moist. Rodgers had been working for hours in the rain a short time previous to his collapse, and the showers were followed by temperature tending to promote rather than to reduce humidity.

With this outline of circumstance the case of claimant is strong but other developments substantially add to the weight of affirmative evidence.

The testimony as to bodily injury, the bruise on the left breast, which closely fits into the holes in the shirt and overall bib plainly show the effect of scorching, and the significant condition of the crucifix carried on the person of the deceased at the point of this bruise and the garment abrasions afford substantial support. The weight of medical evidence also favors award.

Orderly exercise of the rule of inherent probability, of greater likelihood, easily brings this case within compensation coverage.

In *Wasson Coal Company vs. Industrial Commission*, 129 N. E. 786, the supreme court of Illinois affirms award upon case history significant in this connection. Frank Smith died suddenly in his mine room. He had just returned to work after several days absence on account of flu. Said he was not feeling well. An electric wire carrying voltage of 120 to 175 ran along near the roof of the mine room which was about six feet high. The workman might have come in contact with this current but this fact could not be established. There was very flimsy evidence as to any show of electrical injury on the person of the deceased. The court held it to have been much more probable that the death resulted from electrocution than from disease, and that it was only necessary to show that "the reasonable inference to be drawn is that it arose out of employment."

Brigham Mines Company, et al. *vs. Allsop*, et al., 203 Pacific 644. This is a Utah case. A mine foreman was found in a dying condition in a mine tunnel. On the side of the tunnel was a live wire carrying about 450 volts. It seemed improbable that the deceased had physical contact with this wire. It was so situated that the workman "could not come in contact with it by accident unless he stood on something or unless he raised his hand or carried something in his hand which would extend above the head." The court held that death was not due to over-exertion or to natural causes; that it was a fair inference from the circumstantial evidence that death was due to electrocution.

A late decision of the Iowa supreme court is *Beaman vs. Iowa Electric Company*, 218 N. W. 343. In this case a workman while engaged with a crew at pile driving met instant death. He was a considerable distance from any transmission wire. Pile driving machinery at no time came within eighteen inches of contact with such wire. Claim was made of the employer for this death on the theory that it was due to electrocution. The defense strenuously denied obligation on the ground that the deadly current could not have made the jump necessary to afford contact with the deceased with the steel hoisting machine as conductor. The supreme court, however, said it could and did do this very thing, causing the death of this workman.

Careful examination of these case histories and court conclusions thereon serves substantially to strengthen the conviction that this widow is entitled to all the relief afforded by the Iowa compensation statute.

It is therefore held that Frank Rodgers came to his death July 18, 1928, by electrocution arising out of and in the course of his employment.

The arbitration decision is affirmed.

Dated at Des Moines, this 7th day of June, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

MINE GAS AS CAUSE OF DISABILITY—AWARD DENIED

C. H. Williams, Claimant,

vs.

Central Iowa Fuel Company, Defendant.

John T. Clarkson, R. U. Woodcock, for Claimant;

Sargent, Gamble & Reed, A. B. Howland appearing, for Defendant.

In Review

Claimant alleges that, arising out of employment February 24, 1927, he sustained serious disability owing to exposure to noxious gases in No. 4 mine of the defendant employer.

In arbitration at Chariton January 16, 1928, award was denied.

Claimant Williams testifies he had been in the employ of the defendant as a miner for nine or ten years. Along about the 24th of February, 1927, he says "I just got that weak I had to give up. I couldn't do no more." "I was done that was all." Didn't bother his stomach much nor give him much headache. Describes various symptoms of dizziness, trembling, burning sensations in his throat, etc. Worked till noon and afternoon until "something after two o'clock." He worked no more that day. On the 25th the mine was shut down. On the 26th he worked part of the day. He worked in the forenoon, mining being suspended as usual in the afternoon, it being Saturday. States the fumes or odor were a mixture of black damp and sulphur, the odor being somewhat the same.

Some distance from the mouth of the mine was what is known as a dump, such as is found in the vicinity of all mining operations. This dump is composed of mine refuse including sulphurous substances together with particles of fine coal. The presence of this latter substance develops at times in various parts of the dump smoldering fire due to spontaneous combustion. It appears in the record, and is admitted by the defendant, that when the wind was in a certain quarter, smoke more or less charged with sulphur fumes entered the mouth of the mine promoting discomfort among the workmen if in considerable quantities. On rare occasions miners had kept out of the mine or left their work because of this annoyance.

Claimant evidently seeks to establish the fact that disability alleged to exist since February 24, 1927, is due to a combination of causes involved in the presence in his working quarters on February 24, 1927, of noxious gases arising from sulphur fumes entering from the dump and black damp developed within the mine area.

At the original review hearing December 5, 1928, Evan Jenkins testified that, owing to the offensive condition of mine atmosphere due to

smoke from the dump, the mine in which Williams was engaged shut down at two o'clock, February 24, 1927. He says he went out at this time. At the adjourned review hearing December 12, 1928, it was conclusively shown in the record that on the 24th day of February, 1927, this witness produced more coal than on any other day in the last half of this month, and that his production was far in excess of his average daily output, indicating no shut down as alleged.

This utterly destroys what seemed to be important evidence as to condition of the atmosphere in the mine at the date in question. On the stand the witness admits that his recollection of circumstances to which he testified was somewhat hazy and to this fact is doubtless due his conspicuous error as to the shut down, alleged to have been due to bad air.

Prof. C. N. Kinney, for thirty-one years professor of chemistry at Drake University, testifies at length. He had occasion to make chemical analysis of samples of air taken from this mine in the early part of April, 1927. He says that air from these sample bottles were not found to contain anything harmful to a human being in the contents appearing. The record discloses evidence of taking in good faith of these samples from the Williams' room in mine No. 4 on March 9, 1927, and with proper identification of sample bottles submitted. Dr. Kinney describes symptoms developed in the human system by the inhalation of carbon dioxide or black damp and sulphur dioxide arising from burning sulphur. He shows the influence of each to be distinctively different in its effect upon the human system. In the case of sulphur fumes he tends to show that the effect upon exposure is such as to drive the victim to fresh air before permanent injury can occur; that the influence of fresh air in a comparatively short time tends to avert injurious consequences. Witness does not seem to think that exposure to sulphur gas would be serious in its effect upon the bronchial area if the workman was in fair state of health. With all other possibilities excluded, the fumes may have served as bronchial irritant, though no previous impairment is shown. Queries in cross examination seem to suggest weak lungs or mining asthma as pre-existing and the witness was asked to take the same into consideration.

February 27, 1927, Dr. S. L. Throckmorton was called by claimant. At the arbitration hearing he says at that time Williams had "a cough and he also complained of his chest and breathing." Says his lungs were practically clear and his heart was O. K. The doctor does not seemed to have called again but says claimant "was up to my office, though, after some—tablets which I had had him on and sat around there and chinned awhile, but that was after this"—these visits are said to have been "just one or two occasions." Witness was of the opinion that his condition was not such as to disable him long from following his normal work.

In this record appears the deposition of Dr. D. J. Glomset taken October 24, 1927. The witness had examined Williams during the month of March, 1927. He recites at some length history given by claimant at that time. Says he found what he took to be chronic bronchitis. Says breathing of sulphur fumes would aggravate this trouble. Found him deficient in red cells. The breathing of impure air could cause

this. Seemed to think a rigid spine and limitation of head motion, due to ailment long previous to February, 1927, might have contributed to his condition at the time of his examination. Quoting:

"Q. And there is nothing in the symptoms or conditions which you found that necessarily indicate the presence of the disability, weakness, as the result of the character of the air the patient had breathed.

A. No, except the story; the story he gave me.

Q. So that in giving the opinion that you have given us here that this might have been one of the exciting or contributing causes, the breathing of bad air or sulphur fumes, you have accepted the patient's story as to the absence of other causes, I take it.

A. Yes, sir."

Found the bronchitis and the findings in the lungs indicated that he had had trouble there for some time. "The whole thing could not have been caused by an injury that occurred at one time." The doctor says, also that from an exposure of a day and an atmosphere where it was not sufficient to produce choking or interfere with the patient continuing his work, he would not expect any ill effects then of a permanent nature.

Cross Examination:

"Q. And in inhaling sulphur fumes, it having an irritating effect, in a party suffering from defective lungs, what is your opinion whether it would or would not have a tendency to very materially aggravate that?

A. Certainly would; the weaker the lungs the greater the aggravation.

Q. And bring on immediate trouble?

A. Yes, sir.

Q. And that would be true of a bronchitis?

A. Yes, sir."

Deposition page 13:

"Q. But say an exposure of a day and an atmosphere where it was not sufficient to produce choking or interfere with the patient continuing his work, you would not expect any ill effects then of a permanent nature.

A. Not if he was well before he started.

Q. Well, supposing that he had an anemic condition, something that way, you would not expect any particularly permanent ill effects there would you?

A. Not unless he was weakened before."

The witness several times emphasizes the fact that his testimony as to causes and conditions due to exposure in the mine is based entirely upon the story of claimant.

No medical evidence showing the condition of claimant based upon examination within much more than a year past appears in the record.

This is probably the largest record of evidence ever submitted to this tribunal. It covers a very wide range of inquiry producing a mass of technical detail relative to mine development, working conditions, air currents, noxious gases, physical impairment, etc. Out of this mass conclusion must be reached as to whether or not disability as alleged on the part of C. H. Williams is due to mine experience February 24, 1927.

The claimant evidently assumes to show that he was at the date named exposed to twin perils in the nature of carbon dioxide and sulphur dioxide. In his testimony he seems not to emphasize the

former as definitely responsible for his impairment, though he by no means dismisses the black damp as a contributing factor. His testimony is not reassuring. His statements as to exposure on the day of alleged injury and also as to symptomatic development are very loose and speculative. In the endeavor to cover the whole range of plausible possibility he fails to invite confidence as to alleged fact or inherent probability.

In the deposition of Dr. Glomset there seems little reference to black damp and much emphasis on the sulphur fumes. The witness is held to the theory that the sulphur effect was especially serious because of pre-existing bronchial conditions. This theory is not consistent with the statements of claimant. On pages 29-30 of the main transcript appears the following:

"Q. Now what was the general condition of your health Mr. Williams for the year or so prior to February, 1927?
A. How did I feel?
Q. How was your general health?
A. I felt pretty good, was working right along and felt all right.
Q. You were working right along were you?
A. Yes, sir.
Q. Did you miss any time from the mine when the places were working?
A. Over sickness you mean?
Q. Yes.
A. No."

We again quote from direct examination on page 53:

"Q. So that when you began working in No. 6 room on the 10th north were there any ill effects hanging over from any bad air experienced at that time, so far as you were able to determine?
A. No, I couldn't tell it any, just at that time.
Q. And were you at that time able to do your ordinary and normal work?
A. Yes, sir.
Q. As you had been say for years past, several years past?
A. Yes, sir."

Quoting further from page 70 where claimant testifies in response to query of his counsel:

"Q. When in your normal physical condition before February 25th were you able to and did you operate your drilling machine with the crank on the end of the thread bar?
A. Well, it just depends—
Q. Whenever you could get to it?
A. Yes, when I could get on the end I would get on the end; done most of the drilling on the end.
Q. Yes. And were you always able to do it so far as your physical condition was concerned?
A. Yes, sir."

So claimant fails successfully to contend that disability upon which his case is based is due to any extent to susceptibility because of bronchial or other physical trouble pre-existing and this fact takes most of his support out of the testimony of Dr. Glomset and Professor Kinney.

The record seems to show that there is distinct differences between the effects of exposure to sulphur dioxide and carbon dioxide. The influence of the latter is insidious and sneaking, as it were, frequently inflicting serious conditions without detection of its presence. With sulphur the effect of exposure is usually more sensational than serious, and the rush of impulse to seek fresh air tends to forestall continuing impairment. It seems to be understood that such effect as may be produced by sulphur fumes is usually of a temporary character.

Testimony of a number of workmen is submitted to prove the existence of bad air in this mine of defendant. It is as asserted herein that the air was more or less tainted in the working quarters, some witnesses alleging damp encroachment while others feature sulphur fumes, and some claim both noxious elements were more or less in evidence. As to dates and effects testimony is quite indefinite, at least two witnesses admitting they testify out of hazy recollection, and hazy recollection does not tend substantially to support an affirmative case.

The record would seem to disclose that defendant's mine No. 4 is in equipment and in general working conditions of the usual order existing in the better mining plants of the state. The plat of premises submitted as "exhibit P 2" shows the usual situation as to shafts, rooms and passageways. The ventilating system is of the usual character in modern mining operations. The offending dump is a necessary adjunct of all mining plants and there is nothing unusual about its character or situation.

Conditions and circumstances submitted do not justify the opinion that unusual mining hazard existed on the 24th day of February, 1927, or upon any other day. While miners testify to experience at indefinite dates when they felt the effect of one or both of the dioxides, no evidence appears as to any other occasion during the many years of the operation of this mine when any workman lost time because of disability due to bad air. While this is not conclusive, it is significant.

Scrutiny of this entire record is not convincing as to contention of claimant. As result of exposure February 24, 1927, such disability as he alleges might or may have developed, but it is impossible to reach the conclusion that C. H. Williams has by a preponderance of the evidence established liability on the part of the defendant employer.

Wherefore the arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 20th day of December, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

HAND INJURED—AWARD LIMITED TO MEMBER VALUE

Frank Pendley, Claimant,

vs.

Cook & Stucker, Employers,
Travelers Insurance Company, Insurance Carrier, Defendants.
Heindel & Hunt, for Claimant;
E. R. Vincent, for Defendants.

In Review

In the employ of Cook & Stucker, September 4, 1924, Frank Pendley sustained serious injury to his right hand in handling hot asphalt in paving operations.

Arbitration finding was for the defendants on the ground that payment

had already been made to an amount in excess of the statutory provision for hand injury.

Counsel for claimant has submitted statements and affidavits tending to show that the loss of function in the impaired member has resulted in disability and loss of earning power substantially in excess of the legal schedule value. It is alleged by the claimant that existing incapacity makes it difficult if not impossible to find work he is able to do.

Drs. W. A. Butt and C. W. Donellson of Carroll county, Arkansas, upon the basis of professional contact with the case, state that the hand has been disabled to the extent of 75 per cent and that in view of this impairment of earning capacity, settlement should be on the basis of 75 per cent to total permanent disability of the entire physical structure.

Dr. W. L. Watkins of Boone county, Arkansas, declares that he finds hand disability amounting to 75 per cent of member loss and that on account of its bearing upon earning power, the degree of permanent disability is 90 per cent of total.

It is therefore contended by counsel that the payment made by the insurer in full settlement is wholly inadequate. It is further contended that if it shall be necessary to confine obligation to loss of hand function in addition to the extent of permanent disability allowance as temporary total should be made on the basis of time lost.

The denial of award in arbitration is in strict accordance with the statute as interpreted by the Iowa supreme court in *Moses vs. National Union Coal Mining Company*, 184 N. W. 746.

Alfred Moses had sustained injury to a foot resulting in incapacity for a period considerably in excess of 125 weeks. It was therefore contended that compensation settlement should not be confined to the legal schedule value of a foot. It was also contended that if this rule could not be adopted the workman should have payment for time lost from earning in addition to the legal member value.

Both of these contentions were negatived by the court. Quoting from the court opinion as expressd by Justice Stevens:

"Appellant suffered but a single injury to the ankle. The ankylosis and sinuses, with resulting suppuration, are due to this injury alone. As the right to compensation is based upon disability producing impairment or loss of earning capacity, the schedule specifically fixing the amount to be paid on account of disability resulting from a single injury must be construed as exclusive of all other provisions of the act. The compensation fixed and allowed under subdivision (h) is for injury producing temporary disability, and that allowed for the loss of a member, or of the use thereof, is for disability partial in character and permanent in quality, and compensation under one clause precludes compensation under the other. * * * Appellant is entitled to compensation either under paragraph 18 of subdivision (j) or under subdivision (h). In no event is he entitled to compensation under both. The statute contemplates but one compensation for the severance of, or the loss of the use of a single member."

This decision seems definitely to settle the issue in this case. The injury of Pendley is shown to have been confined to the hand and there is therefore no escape from the conclusion that consideration can be given herein only to the extent of impairment existing in such member.

The statement of Dr. O. J. Fay in this record estimates loss of function at 30 per cent disability of the hand. The estimate of Dr. Wolcott as to loss is 50 per cent. The Arkansas doctors fix member impairment at 75 per cent.

The deputy commissioner was well within the record in finding that hand incapacity does not exceed 66 2/3 per cent. In review it was alleged by counsel for the defense that there was error in the arbitration record in the showing of payment for 105 weeks which was in fact 115 weeks. Confining calculation to the record, however, payment far in excess of legal liability is clearly shown.

Therefore the arbitration decision denying further award is affirmed.

Dated at Des Moines this 28th day of October, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

INDEPENDENT EMPLOYMENT—HOUSE PAINTING JOB

E. A. Allard, Claimant,

vs.

T. R. McNeal, Employer,
Federal Surety Company, Insurance Carrier, Defendant.
Halligan, Fountain & Stewart, P. H. Cless appearing, for Claimant,
Parrish, Cohen, Guthrie, Watters & Halloran, D. C. Nolan appearing, for Defendant.

In Review

The defendant is engaged in real estate and building operations. In August of 1928, he engaged A. L. Brady to paint a new house. This work was definitely done on a contract basis. Mr. Brady painted a second house under like conditions. He then continued painting house after house for McNeal without specific contract, figuring his charges on requirement as to material furnished and time employed at $1.00 an hour, which is evidently the basis of the contract work.

Defendant made payment to the painter on statements submitted. He kept no time record and Brady was free to do the work as he pleased and when he pleased, being held in obligation only as to the character of his work and its completion so as not to interfere with plans of delivery on sale of the building.

On two or three occasions McNeal suggested the employment of additional help, evidently in order to carry a job to early completion. Brady would then put on extra help, fixing the price at $0.75 an hour and charging McNeal at the rate of $1.00 per hour.

Under this arrangement Brady put the claimant to work March 20, 1929, subsequently paying him for the time he served, which was but for a few hours because of serious injury sustained by Mr. Allard in falling from a ladder.

The record plainly shows that Brady was an independent contractor in his relations with McNeal who was contracting for completed service—for accomplished results. McNeal's connection with the employment of claimant was only to the extent of expressing a desire to Brady for faster

work than he could himself accomplish, whereupon Brady increased painting capacity by securing extra help in the person of this claimant.

There is nothing in this record tending to show any responsibility on the part of McNeal for the employment of this unfortunate claimant. Brady was an independent contractor without authority from McNeal to place any person on the McNeal payroll for services rendered on this painting job.

Hence it becomes necessary to affirm the arbitration decision finding for the defendant.

Dated at Des Moines this 9th day of September, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

COAL MINING WHICH CLASSIFIES AS INDEPENDENT EMPLOYMENT

Lafe Walton, Claimant,

vs.

Smith & Robison, Defendants.
Stanley & Stanley, for Claimant;
Lee R. Watts, for Defendants.

In Review

Action is brought to secure compensation benefits based on the loss of an arm alleged to have occurred in coal mining October 16, 1928.

Defendants deny that at the time of this injury employment relationship such as would bring this case within compensation coverage existed between this claimant and Smith & Robison.

Arbitration finding is for the defendants on the ground that on October 16, 1928, the claimant was engaged in the capacity of independent contractor and was not in the employ of Smith & Robison.

This record discloses a unique industrial situation. In the vicinity of Carbon, Adams county, exists coal deposits in veins less than two feet in depth. It seems impracticable to operate mines here on the usual commercial or shipping basis, but for many years a number of mines have been operated to serve the wagon trade of a limited territory which has called for the service of workmen to a number frequently in excess of one hundred.

In the earlier years of this mining development the coal dug by each miner was deposited in a pile separate and the workman was active in promoting sales from his own dump. This arrangement became very unsatisfactory to all concerned, for the reason that it resulted in the more or less disastrous cutting of sales prices.

Evidently by agreement between the miners and operators it was subsequently arranged that all coal coming to the top should be thrown together, book account being kept as to the amount produced by each workman.

As theretofore each miner was permitted to dig for his own consumption all coal required and to give orders against any credit he might have on the books kept at the mine.

Under this arrangement the sales responsibility devolves chiefly on the owners of the mines. While there is a Saturday pay day, it seems to be understood that payment is made substantially on the basis of coal disposed of rather than of the amount produced. When the demand is good full payment is made. When it is slack only partial payment occurs on pay day, distributed pro rata among the men. Then when the clean up comes full settlement is made. It is evident that under this rule a considerable balance often accumulates in favor of the miner. One workman testifies that at one time there was due him a sum in excess of $90.00, all of which he received in the "clean up."

The coal bushel is the unit of measurement at these mines. The current sale price is fifteen cents per bushel. Of this sum the miner receives ten cents, the operator four cents, and the lessor or titleholder the remaining one cent as royalty.

Careful consideration of this record leads to the conclusion that this mining enterprise at Carbon is not conducted on anything like an ordinary wage earning basis. There is no escape from the impression that coal production and sale proceeds on a co-operative plan. By well established rule the workmen are not entitled to cash wage payment until the product of their labor is marketed, though as a matter of accommodation the operators make partial payments on coal not yet sold.

All through the evidence in this case it appears that miners applying are seeking a place to work out an income rather than a job on fixed earning basis. No mine operated on a strictly commercial basis ever allows miners to dig coal for their own use without cost other than their own labor. No mine employer on a usual wage paying basis ever allows his workmen to give orders for coal or cash against his individual coal output.

Under the old rule of segregating the product of each miner sales were made by either operator or workman, each party being accorded his distributive share of proceeds. The later rule would seem to have made no change in working plans except as to the keeping of books showing the share of each miner in the common dump and imposing upon the operator the chief responsibility as to the sale and distribution of proceeds. Pointed inquiry in cross examination seems to have well established the general understanding prevailing from the claimant's own witnesses and this understanding is not consistent with ordinary wage earning.

It is alleged that under their working agreement with the miners Smith & Robison exercise the right of hiring and firing men at will. This is true only in a limited way. The workmen are given a mine room in which to work when a vacancy occurs or when a new room is opened. In the work of mining the men are given no orders as to methods to employ in production. They are held in obligation only as to the requirement of keeping their working quarters in order, in making reasonable use of the opportunity afforded for output and limited as to over production when the accumulation of coal on top is too much in excess of

sales demand. Such authority as is exercised is not inconsistent with independent employment.

The arbitration holding that at the time of his injury Lafe Walton was an independent contractor is hereby affirmed.

Dated at Des Moines this 23rd day of September, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Commissioner affirmed District Court; no further appeal.

INDEPENDENT EMPLOYMENT—AWARD DENIED—WORK ON ROOF

Lola A. Vaverka, Claimant,

vs.

Castone Products Company, Employer,
Fidelity & Casualty Company of New York, Insurance Carrier, Defendants.
Edward J. Dahms, for Claimant;
Carl F. Jordan, for Defendants.

In Review

In arbitration it was found

"That the deceased as a member of the partnership of Dvorak and Vaverka was engaged in the capacity of an independent contractor at the time of his fatal injury and was not an employee of the defendant company within the meaning of the compensation law."

The record discloses these facts and circumstances:

The Castone Products Company of Cedar Rapids contracts to put on tile roofs of material of its own manufacture. The Ideal Tin Shop represented at the time of this fatal injury a business conducted as a co-partnership by Frank Dvorak and Leo Vaverka. In June, of 1927, George T. Wilhelm as manager of the defendant employer engaged with these parties to do the construction work on the roof of a dwelling in Cedar Rapids.

On the 18th of June, 1927, due to the failure of scaffolding, Frank Dvorak and Leo Vaverka, at work on this job, fell a distance of some seventeen feet, the fall resulting in the death of the latter eleven days later.

Defendants contend the deceased at the time of his death was engaged in independent employment.

The Iowa supreme court is on record in a number of cases in the interpretation of the distinction between independent employment and ordinary wage earning. These conclusions are cited:

Pace vs. Appanoose County, 168 N. W. 916:

"(7) The test oftenest resorted to, in determining whether one is an employe or an independent contractor, is to ascertain whether the employe represents the master as to the result of the work or only as to the means. If only as to the result and himself selects the means, he must be regarded as an independent contractor.

"(8) The mere fact that the owner may have an overseer or architect to see that the work complies with the contract or that the work is to be to the owner's satisfaction does not change the character of the contract if it meets the test stated.

"(10, 11) Whatever the other conditions of the contract may be, if in its essential features it provides that the employer retains no control over the details of the work, but leaves to the other party the determination of the manner of doing it, without subjecting him to the control of the employer, the party undertaking to do the work is a contractor and not a mere employe. * * *"

Norton vs. Day Coal Co., 180 N. W. 905:

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

"6A It is elementary doctrine, and it would fill many pages to cite the support it has, that one is not an employe if he may choose his own method of working—the mode and manner of doing the work. * * *"

"It is not enough that there be power to see to it that the work is done to the satisfaction of the one who gives it. This power is control over ultimate results and not over methods, means and details. * * *

"The mere making of suggestions as to the methods of work to be pursued will not establish the relationship of master and servant, even though the suggestion be as to details or as to the co-operation necessary to bring about the larger general result."

The record in this case cannot be made to bring it within these plain rules of law. Manifestly here was a roofing concern with construction to let. Here was also the Ideal Tin Shop in the market for such jobs. Defendant's Exhibits A and B consist of statements made almost immediately after this accident by Frank Dvorak and George Wilhelm, men who knew all there was to know about this working relationship. On the witness stand both of these men verify the signatures to these exhibits and testify to the truth of the same. These statements doubtless recite the actual situation existing and they clearly indicate independent employment. It is not necessary, however, to rely on these exhibits, as the transcript of evidence after excluding them fails to afford adequate support to the claim of this dependent widow.

Dvorak testifies that the day this roofing job was begun he took with him to assist in construction work a man regularly in the employ of his firm. This incident is not at all significant of time work on the part of the construction firm. The second day the extra man stayed in the shop and the two partners pursued the work together, until later in the day when the fatal injury occurred There has been no understanding as to hours or as to any details of the construction process with this exception: It is alleged that the manager of the products company suggested that the work begin at a certain point on the roof. This suggestion need be considered only as a necessary requirement for ultimate satisfactory results. Dvorak testifies as to these suggestions, "we followed them as far as we were able." In testimony, however, Dvorak and Wilhelm are in disagreement as to the particular point of the roof to which this suggestion applied. Dvorak admits his firm had never before worked with the kind of tile used on this job and that with this material it was necessary to start at the place indicated by Wilhelm. This incident, unimportant in fact, is all there is in the record in any possible degree indicating that the deceased partner might not have come to his death through independent employment.

The price agreed upon for laying the tile was $5.50 a square. Counsel stresses the assumption that this price afforded no profit to the workman

as being significant of the ordinary wage earning. It does not appear of record who fixed the price. So far as is known for our purpose it may or may not be suggestive of profitable returns. The fact that a job is taken at a price affording no margin does not tend to make ordinary wage earning out of independent contracting.

The arbitration decision denying award is hereby affirmed.

Signed at Des Moines, this 8th day of March, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

EMPLOYMENT, INDEPENDENT, OF PAINTER LETTERING A TRUCK

C. S. Carothers, Claimant,

vs.

C. T. Durand, doing business under the name and style of National Furniture Movers, Employer,

Iowa Mutual Liability Ins. Co., Insurance Carrier, Defendants.

Holt & Albee, for Claimant;

E. N. and M. C. Farber, for Defendants.

In Review

Claimant is a painter by trade. During the month of May, 1928, he lettered a van or truck for C. T. Durand, employer herein. After working several days and when the job was nearly complete, the workman sustained physical injury resulting in incapacity from earning.

The defendants contend that at the time of this injury, C. S. Carothers was engaged in independent employment and therefore he was without compensation coverage.

Claimant testifies in arbitration that he did this work by the hour, furnishing his own materials and working equipment. Says Durand "told me how he wanted it done and I did it as he suggested." That "he suggested at different times how he wanted it done." There was no arrangement as to price or as to how many hours a day he was to work.

Testifying for the defense, C. T. Durand says he gave the job of lettering this truck to claimant. He had a number of times given such commissions to him, and in all cases the work was done by the job. Didn't keep track of hours put in. Didn't ask claimant how much this job would cost, for the reason that he had done another similar job of truck painting for $20.00 which seemed to afford a basis for the charge.

In cases following, the Iowa supreme court has given clear and cogent expression of opinion important herein:

Pace vs. Appanoose County, 168 N. W. 916:

"(7) The test oftenest resorted to, in determining whether one is an employe or an independent contractor, is to ascertain whether the employe represents the master as to the result of the work or only as to the means. If only as to the result and himself selects the means, he must be regarded as an independent contractor.

"(8) The mere fact that the owner may have an overseer or architect to see that the work complies with the contract or that the work is to be to the owner's satisfaction does not change the character of the contract, if it meets the test stated.

"(10, 11) Whatever the other conditions of the contract may be, if in its essential features it provides that the employer retains no control over the details of the work, but leaves to the other party the determination of the manner of doing it, without subjecting him to the control of the employer, the party undertaking to do the work is a contractor and not a mere employe. * * *"

Norton vs. Day Coal Co., 180 N. W. 905:

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

"(6a) It is elementary doctrine, and it would fill many pages to cite the support it has, that one is not an employe if he may choose his own method of working—the mode and manner of doing the work. * * *

"It is not enough that there be power to see to it that the work is done to the satisfaction of the one who gives it. The power is control over ultimate results and not over methods, means and details. * * *

"The mere making of suggestions as to the methods of work to be pursued will not establish the relationship of master and servant, even though the suggestion be as to details or as to the co-operation necessary to bring about the larger general result."

By no process of comparison can the circumstances of this case fail to bring it within the rule of exclusion so plainly stated in these citations.

When construction work is ordered, the man who wants the work done has in his mind a plan he has developed. This plan finds expression in specifications which may be printed, written or oral. All instruction to men who carry into effect these specifications necessary to secure definite results in complete performance, is entirely consistent with independent employment. In order to establish the relation of employer and employee within the meaning of the statute it is necessary for the workman to be held in obligation as to hours of service, as to methods employed in producing results and other important details of service.

This claimant insists Durand told him how he wanted the work done and he accepted his suggestions. Counsel assumes this to mean such supervision, direction and control as to bring the work within the statutory requirement in usual wage earning. This view is not tenable. The record plainly shows that supervision and direction exercised was only such as was necessary to results satisfactory to Durand. The workman chose his own hours, furnished his own materials and equipment, used his own methods, and was responsible only for results.

On page 11 of the arbitration transcript appears the following:

"Q. But he had no control of what hour you should come or what hour you should leave, did he?

A. Nobody does when you work for anybody."

Evidently claimant has no understanding as to the requirement of compensable relationship, doubtless due to his common experience as a contracting painter. In the record appears a poster introduced as defendant's exhibit 1. This poster solicits commercial sign work giving a place of business and naming many business patrons. The record shows this exhibit to have been ruled out, but the record is evidently in error, as both parties later refer to same in query and argument, as being live matter, and moreover, it would seem to be competent testimony. This evidence, though not controlling, is significant as to claimant's general

relations with the painting trade and consistent with his view that "nobody" controls hours of service "when you work for anybody." This conclusion is consistent with job painting and independent employment.

Evidence submitted at the review hearing adds no support to the contention of claimant. It simply emphasizes the allegation that Durand told the workman how he wanted the work done. The "how" plainly relates, not to ways and means of performance, or to hours of service, but merely to ultimate results required by Durand of Carothers.

The arbitration holding that at the time of his injury claimant was working as an independent contractor is hereby affirmed.

Dated at Des Moines, this 24th day of February, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

EMPLOYMENT, INDEPENDENT—OPERATING ROAD GRADER BY CONTRACT

R. L. Preston, Claimant,

vs.

Adams County, Iowa, Employer,
Iowa Mutual Liability Insurance Company, Insurance Carrier, Defendants.
Meyerhoff & Watts, for Claimant;
Sampson & Dillon, for defendants.

In Review

This claimant sustained serious injury, December 8, 1927, while engaged in operating a road grader on a county highway near the town of Corning.

It was held in arbitration that at the time of his injury, R. L. Preston was engaged in the capacity of independent contractor, and was not an employee of Adams county, within the meaning of the compensation law.

Claimant testifies that he first began to work for Adams county about ten years ago; that "about the forepart of February, 1927" he entered into a verbal agreement with a Mr. Saum, at that time county engineer; that this verbal contract included in its terms that Preston and a Mr. Cooper were to jointly engage in performing various services during the year 1927, upon a section of highway covering a distance of 6¼ miles. These services were to be performed on the hour basis and each man was to keep his own record of time employed and make settlement with the board of supervisors.

Claimant states that on December 8, 1927, he was operating a road grader drawn by four horses owned by himself. Becoming frightened, the team ran away, resulting in injuries as described.

The petition for arbitration filed February 22, 1928, recites that claimant was employed by Adams county as a patrolman and in argument counsel refers to him as serving in such capacity at the time of his injury.

Chapter 243 of the Code declares that the Board of Supervisors shall appoint patrolmen, and no other provision is made for their appointment. It is also declared that "said patrolmen shall give bond for the faithful performance of their duties," etc.; furthermore that each road patrolman

shall devote his entire time to his duties, personally inspecting roads once a month and oftener if notified as to defects on roads assigned to him.

R. L. Preston was not appointed by the board, but engaged by the county engineer. He gave no bond as patrolman as required by statute. His work was intermittent and occasional; by no means continuous, as he gave a large part of his time to farming operations, and in other respects he failed to classify as a patrolman within the meaning of the statute. Therefore, it is not necessary in this connection to decide as to employment relationship of a county patrolman to the county in which his services are performed.

It is necessary, however, to decide as to whether or not at the time of his injury, R. L. Preston was in the service of Adams county in usual employment relationship or as an independent contractor.

Contract of service, involving the ordinary relationship between employer and employee, implies that the workman shall be held in obligation to the employer for certain hours of service; that he shall be subject to the direction, supervision and control of the employer as to the means of performing such service. While not conclusive the method of payment is suggestive as to whether or not this relationship exists.

Contract for service is held to imply that the workman is obligated merely as to results of his work, that is to say, his finished job is what he contracts to deliver rather than any particular period of service. Where the workman himself decides as to when and how he will do his work, as to means employed, and as to regularity of hours of service, independent contracting is indicated. This situation is emphasized where the workman is paid by the hour, keeping his own account as to hours engaged and entirely at liberty to do his work as he pleases and when he pleases, provided he meets the usual requirement of good workmanship and as to reasonable dispatch in performance.

The Iowa supreme court has repeatedly expressed opinion bearing on this situation.

In *Pace vs. Appanoose County*, 168, N. W. 916, it is held that "the mere fact that the owner may have an overseer or architect to see that the work complies with the contract or that the work is to be to the owner's satisfaction does not change the character of the contract." * * * "Pace, in fact, determined the days on which the hauling should be done and what portion of each day it should proceed. Practically, he was merely to furnish and apply the power by which the scraper was hauled, and all this in the manner to be determined by himself."

In *Storm vs. Thompson*, 170 N. W. 403, the Court further interprets a contract for service: Speaking of claimant, it is stated: "He was not limited in the time for the performance of the work except as the law implied a duty to complete it within a reasonable period. He controlled his own time, and was in all essential respects his own master, being answerable to the defendant for nothing except the accomplishment of the promised result."

In *Norton vs. Day Coal Company*, 180 N. W. 905, the Court says as to independent employment: "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.' * * * It is not enough that there be the power to see to it that the work is done to the satisfaction of the one who requests it. This power is control over ultimate results and not over methods, means and details. * * * "The mere making of suggestions as to the methods of work to be pursued will not establish the relationship of master and servant, even though the suggestion be as to details or as to the cooperation necessary to bring about the larger general result."

It would appear that the chief service to be performed by Preston under his agreement with Adams county was road dragging. It further appears, however, that the rather loosely constructed agreement involved the performance of much other work in the way of ditching, culvert building and repairing, and such other service as might be required, each task, however, being apparently separate and distinct from other jobs performed or necessary.

From this record it is reasonable to assume that all engagements of R. L. Preston with Adams county will classify as independent employment. We are most concerned, however, with the situation which developed the injury December 8, 1927. Preston was then operating a grader in the removal of snow from the highway. As was his custom, he decided the use of the grader to be necessary. He had no instruction as to means to be employed. He selected his own hours. It was for him to decide how the work was to be done. He drove his own team. He was only held in obligation to Adams county as to the character of his completed work.

In brief and argument reference is made to department decision in *Harn vs. O'Brien County*, filed January 5, 1925, and appearing on page 156 of our biennial report for 1926. In this case of road grading, employment was held to be independent. The case very closely resembles the one under consideration in its details of employment relationship. In the former case, however, there was a written contract, while in the latter, the contract was verbal.

The county engineer who made the engagement for 1927 with Preston is not testifying. His successor, Engineer McClintock, assumes to give this contract very broad interpretation as to the exercise of supervision and control on the part of Adams county under its indefinite terms. Much of his evidence on this point is inconsistent with the nature of this employment and its usual pursuit. The testimony of claimant in his own behalf clearly indicates the employment relationship and definitely classifies him as an independent contractor at the time of his injury, December 8, 1927.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 20th day of November, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

GRAVEL HAULER—INDEPENDENT EMPLOYMENT

John Mowatt, Claimant,

vs.

Wm. Beu & Sons, Employers,
Fidelity & Casualty Company, Insurance Carrier, Defendants.
Geiser & Donohue, for Claimant;
C. W. M. Randall and Carl Jordan, for Defendants.

In Review

Arbitration finding is for the defendants on the ground that at the time of his injury claimant was working in the capacity of independent contracting.

In the month of September, 1929, Wm. Beu & Sons had a road grading contract with Cerro Gordo county. Gravel haulers in their service furnished their own trucks, their own gas and oil and repairs and were paid on a yardage and mileage basis.

Regular hours of service were not required, except that the trucks must be in readiness to take the gravel from the conveyor when in operation. No work was required of the drivers except handling the truck in receiving the load, driving the same to the point of delivery and working the dumping device.

As the work was quite a distance from the public supply, the contractors kept an oil station near the loading plant where haulers as a matter of convenience had their tanks filled at their own expense. They were at liberty to purchase gas elsewhere.

John Mowatt was injured September 13, 1929, a few days after he had joined the truck procession. He had hauled his last load for the day. He needed more gas to meet the requirements of the day following. It was getting dark when he went to the oil station. Uncertain as to the stage of gas in the tank as filling was in process he made inspection with a lighted lantern when explosion inflicted very serious bodily injuries.

The defendants contend that at the time of his injury John Mowatt was in independent employment. They further contend that if his service relation was that of ordinary wage earning at the time of his injury, his day's work was done, and the injury did not arise out of employment.

In support of his contention as to employment obligation, claimant relies strongly upon *Root vs. Shadbolt & Middleton*, 133 N. W. 634. When decided and ever since this case has been regarded as near the border line of independent employment. Claimant insists his claim is much stronger but his reason for this assumption is by no means clear. Evidence as to direction and control of Root was not particularly strong, but much more definite than herein. The exercise of control in loading, hauling and dumping was more substantial. The requirement as to keeping the pit in order was significant of control and it was in this part of the work that Root lost his life in a cave-in. The right of discharge had recently been actually exercised because of persistent violation of pit rules.

It is a matter of common knowledge supported by evidence in this case that the team drawn vehicle has been superseded by the motor truck.

Loading is done by machinery and most of the process of gravel hauling is automatic. It is further understood that when word goes out that a big job of grading is to be done in a given locality, without call or notice, haulers flock to that point for employment. Hiring simply consists in appearing on the job and going to work until the number of trucks is equal to the loading capacity of the plant.

There is on the part of the contractor little concern as to continuity of service so long as there is a truck at hand to take the place of one dropping out of the procession. It has to be understood, of course, that when this expensive machinery is in operation there is waste in lost motion if capacity production is not hauled away. Insistence on the part of the contract or that there shall not be such irregularity in reporting for service on the part of the haulers as to reduce the necessary truck supply and consequent waste of power and plant use is natural, and this seems to have been the only concern of the Beus as to whether or not haulers worked steadily. To insure practical conservation of plant resources it is necessary to insist on some measure of punctuality and continuity in service.

This situation would not tend to show that supervision, direction and control of the workman is exercised to the extent of classifying the employment as ordinary wage earning and not independent contracting. Given a place to load and told by someone other than the contractor where to unload is not suggestive of ordinary wage earning. It relates to results rather than to methods of performance.

In the interest of the public, by ranking authority the Beus, father and sons, were told where to dig and where to dump; also as to how, when and where to build the highway grade, yet no one claims they were other than independent contractors.

Assuming, however, that these parties were under contract of service on the part of the workman, there is yet another vital question to consider. Claimant had completed his day's work when he dumped his last load and quit the grade for the day. The act of filling his gas tank was wholly self-serving. It was up to him to furnish and to keep in order for service his truck equipment. Gasoline was kept by the contractors evidently for their own use in the first place, and furthermore for the accommodation of their haulers and, perhaps, for such profit as might accrue to these sales. Buying gas of these contractors is not at all significant of working relationship. Without gas supply and a fit outfit Mowatt could not qualify either for service or to serve. It was necessary for him to present his equipment at the conveyor ready for practical use as it is for the man who works with his hands to present himself for duty in form for its requirement.

The case claimant submits of a man given award for disability sustained in caring for his own team out of working hours is an outstanding example of unique judicial opinion. Had Oscar Root in Shadboldt & Middleton employ been killed by one of his horses away from his field of employment, it seems certain that here in Iowa his widow could not have recovered for his death.

It is fundamental everywhere in compensation jurisdiction that the workman cannot recover for injury sustained going to or returning from his working place. The employer is not held for injury to his person in any self-serving performance apart from his employment. In order to meet service requirement it was necessary for this claimant to put gas in his tank. It is also necessary for the laborer, selling only his personal service, to buy clothing for protection and food for consumption, but in their purchase he is not under compensation coverage.

Upon this record it is held that:

1. At the time of his injury September 13, 1929, John Mowatt was in independent employment; furthermore that

2. If his working relations were found to be as of ordinary wage earning his injury did not in a statutory sense arise out of employment.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 26th day of June, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed District Court.

GRAVEL HAULING—INDEPENDENT EMPLOYMENT

Elsie M. Woods, Claimant,

vs.

Bumgardner & Schroeder, Employers,
Employers Mutual Casualty Company, Insurance Carrier, Defendants.
Morrison & Morrison, and L. J. Kehoe, for Claimant;
Miller, Miller & Miller, for Defendants.

In Review.

From an arbitration decision denying award, filed October 26, 1929, action in review is brought by claimant. By agreement case was submitted upon arbitration record without argument.

J. R. Woods, husband of this claimant, sustained fatal injury September 1, 1928, while hauling gravel on a contract between these defendants and the state highway commission.

Defendants allege that at the time of this injury the employment relations between Woods and Bumgardner & Schroeder were not such as to impose compensation liability.

The record shows that for some time prior to his death the deceased had been hauling gravel on highway work in charge of these defendants. He owned the truck he was using in this service. He was duly charged with gas and oil and truck repairs furnished by these contractors. He was paid by the yard for all gravel he delivered in this highway construction.

Claimant features the fact that the truck used by Woods had been sold to him by the defendants who seem to have had sort of a string tied to its possession, but these circumstances simply imply a security precaution rather than any right of ownership further than that existing between a mortgagor and a mortgagee. Since supplies furnished by the contractors were all paid for by the workman, they cut no figure at all significant of employment relationship.

The loading of the trucks from the cars was scheduled to begin at 7:00 A. M. While it was evidently desirable that a full force of haulers equal to the capacity of the loading equipment should appear at that time, Schroeder, one of the contractors, testifies that no arbitrary rule was applied. It further appears that the haulers were at liberty to drop out at their own convenience or pleasure for an hour, or half a day or day at a time. The only detail as to employment direction was that the hauler was to locate his truck conveniently for loading and to dump the load at a point designated on the developing grade.

Decisions of the Iowa Supreme Court clearly define the boundaries separating independent employment from ordinary wage earning.

In *Pace vs. Appanoose County*, 168 N. W. 916, the Court lays down these rules:

"The test oftenest resorted to, in determining whether one is an employee or an independent contractor, is to ascertain whether the employee represents the master as to the result of the work or only as to the means. If only as to the result and himself selects the means, he must be regarded as an independent contractor.

"The mere fact that the owner may have an overseer or architect to see that the work complies with the contract or that the work is to be to the owner's satisfaction does not change the character of the contract, if it meets the test stated."

As shown by the record these conditions were duplicated in the performance of J. R. Woods.

From *Norton vs. Day Coal Company*, 180 N. W. 905, the following is quoted:

"It is elementary doctrine, and it would fill many pages to cite the support it has, that one is not an employee if he may choose his own method of working—the mode and manner of doing the work.

"It is not enough that there be power to see to it that the work is done to the satisfaction of the one who gives it. This power is control over ultimate results and not over methods, means and details.

"The mere making of suggestions as to the methods of work to be pursued will not establish the relationship of master and servant, even though the suggestion be as to details or as to the co-operation necessary to bring about the larger general result."

This record seems conclusively to show that the working relations of these parties were well within the diagram of independent employment developed in these decisions, which are strictly in line with judicial opinion generally in other jurisdictions.

Further exemplification of industrial employment is payment on a commission or piece basis, and the manifest right of the workman to come into and go out of service for any day or part of a day at his convenience. The existence of these additional conditions in the working situation at the time of this fatal injury seems clearly to identify the employment as distinctly independent and not subject to compensation coverage.

Wherefore the arbitration decision denying award is affirmed.

Dated at Des Moines this 6th day of December, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

INDEPENDENT EMPLOYMENT—INTOXICATION—FAILURE TO ESTABLISH

J. C. Heissler, Claimant,

vs.

Strange Bros. Hide Company, Employer,
Employers Mutual Casualty Company, Insurance Carrier, Defendants.
Henderson, Hatfield & Wadden, for Claimant;
Jepson, Struble & Sifford, for Defendants.

In Review

In an automobile collision occurring February 16, 1929, this claimant sustained rather serious hand injury.

After paying compensation for a period of six weeks the defendant insurer denied all obligation alleging that injury did not arise out of employment.

Arbitration at Sioux City, December 5, 1929, resulted in award in the sum of $416.25 together with statutory costs and charges in addition to compensation payment already made.

Defendants contend that at the time of injury claimant was not in the line of his employment; also that his injury was due to intoxication.

Case history is substantially as follows:

In his engagement with Strange Bros. Hide Company, J. C. Heissler is on the road as a buyer of products handled by his employer. He travels out of Sioux City. On the day of his injury he had been among the farmers in the vicinity of Battle Creek. At about six o'clock in the evening he started for Sioux City. About an hour later at or near Moville his car collided with another going in an opposite direction and hence the injury.

In support of the intoxication defense, it is alleged that at the time of the accident claimant was on the wrong side of the street; that he gave other evidence of being seriously in liquor. A number of witnesses testify that claimant was and that he was not in a state of intoxication. He states himself he was on the left side of the street for the reason that it appeared to him the oncoming car was about to turn into an oil station. Says he was not intoxicated. He did telephoning and was otherwise busy soon after the accident in a way not indicative of drunkenness. While the evidence on this point is conflicting, from the record it seems likely that claimant had been drinking. It is not conclusively shown that he was drunk and if he was it must be further shown that the injury occurred with intoxication as the proximate cause. Evidence at this point is insufficient.

The other defense requires more serious consideration. Claimant testifies that he was going to Sioux City for the week end. He was at that time unmarried and was making his home, in so far as he had a home, with his parents on a farm six or seven miles out of Bronson, some seventeen miles southeast of Sioux City.

The fact that it does not appear that claimant intended to go to the farm of his parents and that he did not go to Sioux City for the purpose of turning in a report that night is emphasized by the defendants

in the endeavor to show that at the time of his injury he was going to the city for reasons personal and therefore he was without the scope of his employment.

A traveling salesman or canvasser is assumed to be under coverage after the completion of his work for the day or for the week when he shall have reached his home or a place that may be reasonably regarded as his headquarters. In the usual sense this man had no home, though he put in odd time with his parents and his boy on the farm. It was not unreasonable that he should spend the week end at his business headquarters in the city. Sioux City was the practical end of his route. The record shows that since his injury he has married and now consistently has a home in Sioux City.

In his testimony the claimant seems exceedingly frank and candid. If disposed to trifle with the truth he might have removed any possible doubt as to coverage at the time of his injury. Under such circumstances it is not unreasonable to apply the terms of the statute without too much of technical precision.

Finding as follows is recorded:

1. At the time of his injury February 16, 1929, J. C. Heissler was in the scope of his employment.

2. Said injury did not occur with intoxication as the proximate cause.

The arbitration decision is affirmed.

Dated at Des Moines this 12th day of March, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

INDEPENDENT EMPLOYMENT NOT ESTABLISHED

Marvin Benson, Claimant,

vs.

Polk County, Defendant.
R. R. Nesbitt, for Claimant;
L. S. Forrest, Assistant County Attorney, for Defendant.

In Review

Award was made in arbitration February 21, 1930, in the sum of $37.71 and for other statutory relief.

This claim is resisted on the ground that at the time of his injury Marvin Benson was without the scope of his employment.

The record tends to show that for a considerable period prior to the date of this injury, E. B. Benson had been in the employ of Polk county as road patrolman. This is a position created by statute and its duties are quite comprehensive. While a patrolman is chiefly a highway caretaker, he may under the law perform a variety of service. Under the broad terms of this relationship with Polk county Benson was by the Board of Supervisors authorized to serve the employer in phases of highway construction.

Consistent with this program in connection with work on Highway No. 5 near the town of Campbell, for some time previous to this accident, this patrolman had in charge the building of detours, filling around culverts, the moving of tile, etc.

For several years this claimant had been engaged by the patrolman, who was his father, and worked under his direction at anything that turned up as sort of a man of all work.

On the day of the injury Marvin Benson was filling in around a culvert during the forenoon. At noon he says he told his father he had been asked by the tilers to plow across the road where digging was difficult. Says his father told him to do the plowing as requested. The father in direct examination says he told him to do it. In cross examination he is not sure as to just what he had said as to the plowing, but his evidence tends to show that by arrangement similar work had previously been done on at least two occasions and that the statement of the son as to direction at the time is not inconsistent with working policy.

Defendant denies that E. B. Benson had anything to do with county work aside from road maintenance; that hauling tile, plowing or other work necessary to construction was entirely outside his line of duty or responsibility. The record plainly shows that Benson had right along been attending to such matters and for many months the son under his direction had done such work, that the county had paid many bills for such services with full knowledge from statements submitted and through its authorized agents as to what was being paid for.

It does not clearly appear whether the plowing work in which claimant was injured did or did not devolve upon the county. It does appear, however, that such work had previously been done, as it was done that day, under direction of one authorized to direct and control on the part of Polk county. Obviously it was undertaken by the workman in good faith as county service and in accordance with working arrangement he was consistently within the scope of his employment.

It is possible so to interpret this situation and to construe the law as to deny relief to this workman, but in so doing there would be distinct departure from the direction of the Iowa Supreme Court in its holding that the compensation statute "is to be liberally construed so as to get it within the spirit rather than within the letter of the law."

The arbitration decision is affirmed.

Dated at Des Moines this 14th day of March, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Commissioner affirmed District Court.

INDEPENDENT EMPLOYMENT—HOUSE PAINTING JOB

E. A. Allard, Claimant,

vs.

Allen L. Brady, Defendant.
C. W. Harvey, for Claimant;
Jos. F. Smith, for Defendant.

In Review

Claimant sustained injury resulting in substantial disability while in service as a painter March 20, 1929.

This action is brought to recover under the compensation statute for such resulting disability from A. L. Brady as the employer.

T. R. McNeal was doing quite an extensive business in the building and selling of houses. In August of 1928, he entered into engagement with this defendant which resulted in the painting by Brady of some sixteen houses.

Claimant Allard was injured while working with Brady on one of the McNeal houses.

It is alleged by the defense that in all his painting work on these houses Brady was an employee of McNeal and that he set Allard to work for McNeal and not on his own account. This record must disclose whether or not Brady was working in the capacity of an independent contractor and whether or not as such he employed this claimant to work for him.

The testimony of A. L. Brady in cross examination tends clearly to establish the employment relations of McNeal, Brady and Allard. Witness says he started painting houses for McNeal August 16, 1928. McNeal told him that whoever he (Brady) hired would do the painting. There was conversation about painting a certain house. Brady told McNeal he would paint it for $225.00, furnishing material and labor. McNeal said he would pay $210.00 and then Brady went ahead with the work. Says same arrangement was made for painting the next house and there was no different arrangement as to other houses. Says McNeal kept no track of the time worked. Brady gave his personal check for material and labor. Never turned in any time sheets on additional labor employed.

This record tends to show that McNeal exercised no authority as to the method of painting performance. He seems to have visited the work frequently in the capacity of inspection rather than of direction. He exercised no more supervision than would seem to have been necessary in order to secure satisfactory service. He was looking to results in finished work, not as to the details of working method. He wanted painting so to proceed as not to interfere with sales of the houses, so he would send Brady from one job to another to facilitate delivery without in any manner interfering with the process of independent employment.

Employment relationship must be established by conditions and circumstances developed in case history. It is well said by high authority that "it is not possible to lay down a hard and fast rule or to state definitely facts by which the status of men working and contracting together can be definitely defined in all cases as employee or independent contractor. Each case must depend on its own facts."

It appears to be fundamental, however, that in cases where a workman contracts to do a piece of work according to his own method without being subject to the control of the employer, save as to the results of his work, he is an independent contractor. Our own high court has said "the power to direct must go beyond telling what is to be done—to telling 'how it is to be done'"; also "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 well understood that employment relationship "may depend entirely upon the conduct of the parties."

Case history herein indicates that the time method was used merely as a basis for arriving at cost conclusion. It appears from the testimony of Brady that he agreed to paint the first house for $210.00, a sum suggested by McNeal, and that this method was pursued in the later relationship. In all consideration as to labor, it was understood that $1.00 an hour should be the basis, whether or not the work was done by Brady or by another engaged by him, regardless of the price paid for additional help. In settlement there was no accounting on a time basis, a fact strange to ordinary employment. All material used in painting was furnished by Brady and paid for by him. All additional labor was paid by check of his own issue. Evidently McNeal felt no concern as to how, when or where Brady or any other painter on these jobs worked, so long as the work was up to standard and his plans for delivery on sale of houses was not interfered with.

So in this case developments point with emphasis to this defendant as an independent contractor and "the conduct of the parties" plainly indicate that McNeal cannot be identified as the employer of Allard and that Brady easily qualifies as such employer at the time of injury, March 20, 1929.

It therefore appears that the arbitration board did not err in its holding. Its decision that E. A. Allard is entitled to receive from the defendant, A. L. Brady, the sum of $15.00 a week for a period of 50 weeks and that the defendant is charged with costs as ordered is hereby affirmed.

Dated at Des Moines this 3d day of January, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

BOY SCOUTS UNDER THE LAW—EMPLOYMENT NOT CASUAL

Ray C. Stiles, Jr., a minor, by Ray C. Stiles, his father and his next friend, Claimant,

vs.

Des Moines Council of Boy Scouts of America, Employer,
Federal Insurance Company, Insurance Carrier, Defendants.
Miller, Kelly, Shuttleworth & McManus, for Claimant;
Parrish, Cohen, Guthrie, Watters & Halloran, D. C. Nolan, appearing, for Defendants.

In Review

As appears in defendants' Exhibit 1, the Des Moines Council of Boy Scouts of America is organized to promote the boy scout program. This program includes physical and other development through the maintenance of boy scout camps.

The arbitration record shows that Ray C. Stiles, Jr., was employed for service at a camp located near Woodward, in June of 1928, by men duly

authorized. On June 8th, under specific direction by one in authority, he was required to take out a horse for working out in order to make him safer for scouts at camp training in horsemanship. During this working out process a horse ridden by another boy in like service kicked claimant on the leg, inflicting serious injury resulting in substantial disability.

Upon this record the Deputy Industrial Commissioner in arbitration held Ray C. Stiles, Jr., entitled to statutory compensation benefits.

Defendants contend that the employment was purely casual and not for the employer's trade or business, a statutory bar to recovery. This contention is evidently based on the assumption that the Des Moines Council of Boy Scouts of America has no trade or business and is engaged in no industrial or gainful occupation. This is true in a technical sense only, but no more definitely true as to the defendant employer than as applying to employment sponsored by the state, a county, a city, or a school district, neither of which has in a technical sense any trade or business, or is engaged in any gainful occupation.

It is further contended that as a charitable organization the defendant employer is not in compensable relationship with its employees. Decisions of the supreme court of Massachusetts are submitted in support of this contention. So far as is understood no other state has announced this peculiar doctrine. To adopt it here would be seriously to disturb the spirit and purpose of, and protection under, the Iowa statute and the Industrial Commissioner declines to follow this unique leading.

The record is held to show that:

1. The Des Moines Council of Boy Scouts of America qualifies as an employer within the meaning of the Iowa compensation statute; that

2. Claimant was duly employed by men authorized to make contracts of service for the defendant employer; that

3. The disability sustained by Ray C. Stiles, Jr., arose out of and in the course of this employment.

The arbitration decision is affirmed.

Dated at Des Moines this 22d day of July, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Commissioner affirmed District Court; Commissioner reversed Supreme Court.

DROWNING AS ARISING OUT OF EMPLOYMENT

Marie K. Gee, Claimant,

vs.

C. R. Crabb, Defendant.

L. L. Duke & R. R. Ramsell, for Claimant;
Jaques, Tisdale & Jaques, for Defendant.

In Review

C. R. Crabb has for many years been operating a boat house and resort near the city of Ottumwa. June 19, 1928, George W. Gee, husband of this claimant, lost his life by drowning in the Des Moines river while in the employ of this defendant.

Circumstances immediately preceding this drowning are substantially as follows: In connection with his boating business, Crabb invited bathing patronage. He rented bathing suits, checked clothing, furnished towels and other usual conveniences. It was also understood to be an important feature of the business to safeguard bathers from river peril while in the water. This appears to have been especially important because of the existence of a dam across the river not far below the bathing grounds, which constituted an additional menace.

Miss Beatrice Freeman, who had recently entered the water, called for help as she was suffering from cramps. In a boat near at hand was Gee who responded to this call. In his endeavor to lift Miss Freeman into the boat the craft filled with water, Gee fell into the river and according to evidence he was drowned almost without appearing on the surface.

On the part of the defense obligation is denied, chiefly on the ground that at the time of his death George Gee was without the scope of his employment in disobedience of express working orders, and therefore his untimely death did not arise out of and in the course of his employment in a statutory sense.

In support of this contention it is alleged that the deceased workman was employed "for work around the boat house and grounds in connection with keeping the ground clean and keep boats clean, and do general chores in connection with said boat house and grounds." Furthermore it is alleged that he was not employed as a life guard, but in fact was forbidden to act as such.

As to the circumstances preceding the drowning: Crabb testifies that he and Gee were working on a boat near the boat house. Called away, as he says, to wait on customers, he instructed Gee to keep on at the boat work in his absence and to keep away from the water. It was early in the season and business was so light he could not, as he says, afford to and did not have in service one or more regular life guards as in the busy season. Crabb says it was his purpose and practice at this time to act as life guard himself. He declares that Gee had rarely been on the water in one of his boats and never authorized as a guard. Assuming to act in this capacity at a single time, he was threatened with discharge if this offense was repeated.

As has appeared herein Crabb testifies that at the time he left Gee working on the boat he instructed him to stay by this job and not to go on the water. There is some support to this statement, but much more to the effect that he gave no such instructions and as tending to show that he told the workman to watch the bathers, which must have meant that he go on the water as this is the way the watching is done.

There is evidence tending to show that Crabb went to supper. He says he had no supper that night and this statement is corroborated by his wife. It seems he vanished from view when he left the boat work until the commotion was raised by the tragedy. Just how much time had elapsed does not appear, but the customers he served must have been off his hands quite a while before he reappeared. He says he was

to do the guarding himself that day but the people were in the water and he was not in commission as guard.

Meanwhile Gee had gone to the river and rowed out on the water. Testimony appears to the effect that he was called to the other side by Miss Freeman and Miss King, both in the position of patrons, who had gone over on a trolley provided for such purposes.

At the time of serving and saving Beatrice Freeman, was Gee without the scope of his employment in a statutory sense? This is the real question to determine here. In this connection it is necessary carefully to consider the nature of his employment, the conditions under which his work was required and performed and all circumstances attending the drowning.

This record contains more than 700 pages of evidence. Much of it is irrelevant and immaterial. Some of it is incredible. Comparatively very little of it is of value in reaching a conclusion. In this mass of testimony, that of Miss Beatrice Freeman seems most consistent, definite and convincing. Asked to recite briefly and slowly just what happened at the time of the accident, on page 133 of depositions taken on behalf of claimant, Miss Freeman states:

"I started across the river and Mr. Gee was in a boat ahead of me and he was going to go across with me to help me across because I didn't know how to swim well enough to go over and we started out with the boat and I was hanging on the back end of the boat. I would swim four or five strokes and then hang on. I was out about fifty feet from the shore and I was seized with cramps and I called to Mr. Gee and told him I had cramps and for him to come get me, and he started to row back toward me and I told him not to pull me into the boat but to take me over to the shore but instead he arose in the boat and tried to pull me in over the back end and he threw his weight to the right side of the boat and tipped it so the boat shipped water and he did pull me into the boat, though, and we were both in the boat when it went down."

Witness further states she understood Gee was rowing among the bathers on that occasion for the purpose of affording protection to persons who might get cramps. She understood he was acting as life guard. She feels that if Gee had not come to her rescue she might have drowned. She had on two other occasions a few days earlier seen the deceased rowing among the bathers and she felt he was acting as a life guard. Said on these occasions she saw Crabb when he could see what Gee was doing.

Miss Freeman testifies further that on the evening of the drowning "there were three of us started across the river and Mr. Crabb told Mr. Gee to take the boat as he was going in to supper and told him to watch us;" also "Mr. Gee got into the boat and followed us across the river. We went over on the trolley."

The witness was accompanied on this visit to the resort by Miss Everts King. Miss King testifies on page 196 of claimant's depositions: "We went across on the trolley and I asked Mr. Gee if he would tow me across in the boat and Bee said for him to tow her across because she could not swim, so he took her across." That is, he towed her from the south shore toward the boat house or north shore. Miss King further testifies she did not hear what Crabb said to Gee while at the boat work.

Edwin Anderson was in the swimming party with Miss Freeman and Miss King. Called by the defense on page 2 of defendant's deposition he says: It could not have been more than five or ten minutes after he first saw Gee on the river when he saw Miss Freeman hang on the back end of the boat that was being rowed by the deceased. On page 14 he says he supposed Gee at the time of the accident "was a life guard there."

The Crabbs and the Gees are copiously in evidence in this record. Counsel on each side cast reflections upon opposing witnesses, perhaps with more or less of foundation in fact or plausible inference. If the Gees are moved to color their statement by the dire need of the dependents, the Crabbs would seem to be just as desirous of avoiding compensation obligation, in both cases, perhaps, without the finest discrimination as to the exact facts. It is possible, however, to reach a decision without attempting to weigh and evaluate this conflicting and self-serving or prejudiced testimony.

It is impossible to fit into the frame work of this case much of the testimony of C. R. Crabb. He insists he had given George Gee absolute instruction to keep off the water. That only once had Gee appeared in a boat among the bathers, and then he was told that he would be discharged if he again so disobeyed. Further he declares that in leaving the boat work to wait on bathing customers, as he explains, he told Gee to stay by the work and keep off the water.

Gee had moved his wife and baby into quarters on the Crabb premises. He was in destitute circumstances. His job, even with its meager pay, was vital to present subsistence. But if the story of Crabb is true, when the employer had his back turned Gee dropped his tools and sneaked down to the river for his own amusement as the defendant says, and took out a boat, all unmindful of the impending discharge, which would have meant disaster to his wife and baby. The story is absolutely incredible.

Sound inference cannot be exercised in support of this story, but there is more definite denial. In support of the statement of Mrs. Gee, claimant herein, that she heard Crabb tell her husband, as he left the boat work, to watch the bathers, Miss Freeman definitely says she heard the same instruction to Gee by Crabb. Counsel says Miss Freeman is contradicted by her friend, Miss King. The record does not so indicate. Miss King merely says she did not hear such instruction. This may have been due to contact more remote with the situation or to having her attention otherwise attracted or to other cause. But in the case of Miss Freeman, she actually heard this instruction to Gee or she is guilty of conscious perjury and nothing appears in the least to suggest such violent assumption.

Moreover the record affords substantial support to the statement that on a number of occasions Gee had appeared in a boat among the bathers and on at least one occasion Crabb is shown to have been a witness to this situation. Gee's appearance on the water just before the tragedy was evidently natural and necessary. While Crabb says he was that day

acting as guard himself, he had vanished, either to get his supper or for some other reason. People were going into the water with no guard other than Gee in sight. The peril of the situation has been described. Appearing on the river both Miss King and Miss Freeman appealed to him to come across the river and tow them back after they had gone over on the trolley. Crabb was out of commission, though he claimed to be doing guard work. He remained out of sight until he came out of some building when the drowning commotion aroused him. Who but Gee could have been expected to do the most necessary guard work?

Futile emphasis is given to the manner in which Gee conducted the rescue of Miss Freeman. It is contended that he was drowned because he pulled Miss Freeman into the boat; that he might have survived if he left her to cling to the rear of the craft. This may or may not be true, but the matter is of no importance. Workmen are never penalized for errors of judgment or for miscalculation in emergency service. Manifestly Gee met this emergency in good faith and purpose. He may have paid with his life for faulty management, but even if this is true it cannot figure in this dependency case.

The employer has failed in his endeavor to show that George Gee was acting contrary to express order in going on the water just prior to his drowning.

Equally futile is his determination to prove that in the service of saving from drowning a patron of the business Gee departed from the scope of his employment. This is a question of law as well as of fact. The Iowa supreme court has in a number of cases submitted such interpretation of the meaning of "arising out of and in the course of the employment" as to afford no support to this defense on the part of defendant. In this connection attention is expressly directed to:

Young vs. Mississippi Power Co., 180 N. W. 986.

Grant vs. Fleming Bros., 176 N. W. 640.

The evidence of C. R. Crabb at the review hearing consists chiefly in giving emphasis to his very improbable story of the employment relations involved, and in further attempts to discredit all statements and all witnesses of the claimant.

The arbitration decision in favor of claimant is affirmed.

Dated at Des Moines this 26th day of March, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

NOTICE OF INJURY IRREGULAR BUT SUFFICIENT

Newton Cross, Claimant,

vs.

Economy Coal Company, Employer,
Bituminous Casualty Corporation, Insurance Carrier, Defendants.
John T. Clarkson, for Claimant;
Havner, Flick, Huebner & Powers, for Defendants.

In Review

This claim is based upon injury alleged to have occurred on or about March 12, 1928.

Pleadings indicate general denial on the part of defendants as to any injury arising out of employment and in arbitration there was much controversy as to details of injury and its consequence. The record, however, establishes by a preponderance of the evidence that due to injury as alleged, Newton Cross was deprived of earnings for a considerable period. At the review hearing this fact is not seriously controverted.

In opposing this claim defendants rely chiefly upon the contention that the claimant failed to comply with the requirements of section 1383 of the code relating to notice of injury.

As Exhibit A appears in the record the following notice:

"The Office,

"Mr. Newton Cross got hurt in mines lifting a car the 12th of March and laid off until the 20th of March and then went back to work and tried to work and was only able to work five days or more."

This notice was written by Helen Guinn, daughter of the claimant. She testifies that she wrote it within the week following Easter Sunday which occurred last year April 8th; that she gave the note to a neighbor named George Woodfork for delivery at the office of the employer. At the review hearing Woodfork testifies he received the notice as stated and delivered it to Clifford May, in the absence of F. O. Ewing, bookkeeper and cashier, who usually handled compensation cases for the employer.

Mr. Ewing was at this time in the hospital. Says in evidence that in his absence Mr. May was to handle such matters requiring attention. After Ewing returned he says he found on his desk with other accumulation the note of claimant heretofore appearing. Indicates that conversation with May at the time disclosed that the latter had knowledge as to the alleged injury. He may have told Ewing he found note deposited under the office door. Employers' notice of injury appearing as Exhibit C-6 together with the note from Cross was sent by Ewing to the defendant insurer, by whom it was received, as appears in evidence, May 28, 1928.

Defendants contend that the note relied upon by claimant as sufficient notice of injury does not in fact constitute notice within the meaning of the compensation law; that it is unsigned "and does not advise the employer that the claimant's alleged injury was received in the course of the employment at or near a certain place."

Section 1384 declares "no particular form of notice shall be required but it may be substantially as follows:" Here is inserted, evidently merely for the convenience of parties interested, suggestions as to words and figures that may be used. This suggestion is followed by this injunction:

"No variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place."

This qualification plainly means a final safeguarding of the workman

against injustice that might occur through too strict construction or technical requirement.

Exhibit A, the notice sent to the employer as notice of injury, is conspicuously wanting in grace of expression and in technical diagram as to all details involved. It does, however, get over to the employer all needful information as to facts and circumstances necessary to his reasonable protection which the statute assumes to afford. It plainly indicates that on or about March 12th Newton Cross "got hurt in mines lifting a car." It was not essential to full justice to defendants that any particular mine be specified or that claimant was in regular employment, as these facts were obviously in their possession. The note was unsigned, but when it was received no doubt existed in the minds of these defendants as to the who and what and where and why of the situation.

It is commonly understood that the statutory provision of section 1383 relating to notice of injury is for the protection of the employer against possible imposition. The terms of the statute, however, makes clear the legislative purpose to guard against possible injustice to the workman in the exercise of this process. This section indicates that the employer should be notified of injury within fifteen days, but that failure to obtain knowledge or to receive notice for a period of thirty days shall not be a bar to compensation payment unless the employer shall show that he was prejudiced thereby, and then only to the extent of such prejudice, but a further limit of sixty days is still given under a wide range of statutory indulgence.

Evidently the note written by Helen Guinn was sent to the employer not later than April 12th, a month after the injury. Just as evidently it had for weeks laid unopened on the desk of Ewing. With Mr. Ewing in the hospital, this compensation service had broken down temporarily, as Clifford May, the man who would seem to have been designated by Ewing to attend to such matters, failed to function. In spite of this office dereliction the notice reached the eye of Ewing well within the ninety-day limit, and under the record prejudice may not be successfully plead.

In arbitration it was held that claimant is entitled to payment in the sum of $12.52 a week for a period of ten weeks, together with medical, surgical and hospital benefits, as well as costs of this action.

Defendants contend that:

1. As opportunity was not afforded for defendants to furnish medical, surgical and hospital service, this charge cannot legally be assessed to them.

2. Under the law the paying period cannot begin before the date notice was given.

It was the fault of defendants that knowledge of this injury was not sooner obtained, but when it was no move was made to assume obligation or even to investigate. Furthermore it appears that defendants were not prejudiced by developments in this connection, therefore they are not relieved from this medical, surgical and hospital charge.

There may be force in the contention as to the beginning of the paying period, but since there is evidence that the disability period extended beyond the date to which award was made, the award will not be disturbed.

It is therefore held that the notice of injury as set out in Exhibit A practically meets statutory requirement, and that the Deputy Industrial Commissioner did not err in the arbitration decision which is hereby affirmed.

Dated at Des Moines, this 15th day of April, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

HEAT EXHAUSTION IN IRON FOUNDRY CAUSE OF DEATH

Elsie Schueler, Claimant,

vs.

Hart-Parr Company, Employer,
The Fidelity and Casualty Company of New York, Insurance Carrier,
Defendants.
J. W. Kintzinger, for Claimant;
J. C. Campbell, for Defendants.

In Review

As a result of arbitration hearing at Charles City November 21, 1927, award was made on the basis of fatal heat exhaustion arising out of and in the course of employment in the sum of $15.00 a week for three hundred weeks, together with statutory burial benefit and cost of litigation.

Hearing in review occurred at the department September 21, 1928.

Defendants deny that the death of George Schueler was to any extent due to conditions or circumstances of employment. A number of the Hart-Parr Company employees testify that working conditions at the Hart-Parr plant were not at all suggestive of heat prostration. They insist that the temperature of the large room in which the deceased was working was not conducive to collapse based upon heat exhaustion. They allege that the atmosphere in these working quarters was to practical intents and purposes comparatively pure.

Case history in this connection is substantially as follows:

At eight o'clock in the morning of February 3, 1925, George Schueler began work as a molder in the plant of the Hart-Parr Company. As is usual in working plans of the defendants, he put in his time until about 3:30 in the afternoon in preparation for the pouring of molten steel into casting molds.

This work of preparation would seem to have been rather more than ordinarily strenuous, considered in connection with usual labor requirement. At about the hour of 5:30 in the afternoon he suddenly collapsed while in his round of duty. Taken into an adjoining room, he was pronounced dead in less than thirty minutes.

The deceased was thirty-nine years of age. It is contended that he was a particularly able-bodied man, for years without any disabling ailments, and that on the morning of February 3rd, when he began his

last engagement, there is good reason to believe he was sound in health and in every way physically fit, except that he had not been strenuously engaged for some months last past and was not inured to the heavy service required of him as a molder. This contention is nowhere disturbed by record evidence.

About an hour previous to his death the process of pouring began. This consisted of the conveying of truck ladles filled with molten metal along the platform or floors occupied by the molders, this metal being poured into hand ladles in the hands of the molders.

These hand ladles, according to claimant's testimony, weighed when filled about ninety to ninety-five pounds. The defendant's witnesses give this weight at about sixty pounds. This ladle has a handle of gas pipe about four feet in length. Upon filling this receptacle, the molder conveys its contents to the particular molds he desires to fill.

The record shows that the molten metal handled is at a temperature of about 3,000 degrees Fahr. The opening in the truck ladle is about twenty inches across and the molder must face this opening when his ladle is being filled.

A number of witnesses, most of whom are familiar with general conditions at this plant, testify to seriously vitiated atmosphere. They say the molding room is partially heated by steam pipes but that in cold weather it is necessary to supplement the steam heat. Therefore four salamanders had been installed for this purpose. The salamander, it would seem, is made by the bending of heavy sheet iron into circular form. Fires are kindled with wood and upon this wood is placed quantities of coke for heating purposes. These fires are connected with no chimney and such smoke and fumes as are generated are discharged in the working quarters, as a matter of course.

It is also in evidence that the quantities of sand used in the molding process is necessarily wet by the sprinkling of water on the same and in the process of molding much steam is created.

Claimant's witnesses further testify that on February 3, 1925, ventilators provided in the roof of the molding room were closed as were the outside windows. Testimony for the defense says the ventilators were open.

Claimant's witnesses also testify to very excessive heat created by the ladling process which grows exceedingly intense in the vicinity of molding operations as the process proceeds. It is several times stated that this intense heat sometimes burns the hair from hands and arms of the molders and produces blisters thereon.

They uniformly testify to personal experience as to the depressing effect of temperature and atmosphere in this Hart-Parr molding room while pouring is in progress.

Testifying for the defendants, Drs. W. L. Griffin and C. W. McQuillen state that they are absolutely unwilling to express any opinion as to the cause of this workman's death and record the belief that medical science is necessarily unable to give any valid opinion relative to such cause.

Called by the claimant, Dr. Schrup, of Dubuque, in response to hypothetical query outlining conditions precedent and existing, definitely expresses the opinion that this death was due to heat exhaustion.

Dr. Loizeaux, also of Dubuque, definitely coincides with this opinion.

It is impossible to reconcile to any practical extent the conflicting testimony in this record as to facts and circumstances and conditions involved. The defense would have us believe that the molders' work is comparatively easy and agreeable and that the usual working situation in the Hart-Parr plant leaves little to be desired, and that there was absolutely nothing in temperature or atmospheric conditions that might suggest impurity or excessive heat.

Witness after witness called by claimant testify from long experience and actual contact that the molders' work is severely strenuous, that it calls for the full strength of stalwart manhood, that the heat is so excessive as frequently to drive him to seek relief from its intensity, that on the day of this death gas fumes, smoke and steam tended to make working conditions particularly trying.

Evidently exaggeration has been indulged on both sides and it is impossible to give full credence to either line of testimony. It seems necessary, therefore, in reaching conclusion to exercise the element of inherent probability. In such exercise the weight of evidence as to credibility and consistency favors the case of claimant.

After scrutinizing every page of this bulky record, this impression exists:

On the morning of February 3, 1925, George Schueler took on this work of molding. It was inevitably a trying job, particularly to one who had not been recently engaged in strenuous employment. When the work of pouring began at about four-thirty P. M. he was weary and with lowered resistance. He had to connect with the truck ladle in its regular round of supplying the molten metal to the molders. In the distribution of some fifteen tons of this red hot metal in a considerable area the heat must have been excessive and in the close proximity necessary to the filling of the hand ladle and carrying its contents was sorely trying to a weary man. After an hour of such exposure he collapsed and passed out of life.

Here we have on our hands a dead workman, the support of a wife and four small children. Industry must be protected from imposition but it must be held in obligation to these dependents if its labor requirement deprived them of support.

There is no attempt to discount the claim that the deceased workman began the day an able-bodied man, a man without organic ailment but in what might be considered a "soft" condition because of recent lack of contact with heavy work. The requirement of the situation was a severe strain upon his physical resources not inured to such demand.

It is easily conceivable from the record that the atmosphere was vitiated to a greater or lesser extent from burning coke in the salamanders and from steam rising from the moist sand in contact with the hot metal.

It is impossible to conclude that this death did not arise out of employment. Is it presumable that this workman would have succumbed as he did under working conditions of the average laborer of the com-

munity? Is it at all likely that had he been husking corn or doing ordinary shop work or using a shovel under usual conditions, he would have been deprived of his life at that time? Is it not reasonable to assume that he would have gone on indefinitely in earning capacity but for the unusual stress of labor requirement that day?

The medical testimony as to the cause of this death is also seriously conflicting. It has been shown that the two doctors testifying for the claimant positively express the definite opinion, based upon recital of all conditions and circumstances involved, that the deceased came to his death as a result of heat exhaustion due to working conditions.

It also appears that the two doctors called by the defense utterly refuse to express an opinion as to the cause of death and assert the practical impossibility of any physician being able intelligently to decide this question. They do not say it could not have happened and did not happen as contended by claimant, but merely that they do not know and it may not be known how this death was caused. This attitude is not acceptable nor reasonable in view of experience not at all uncommon. In cases similar to this in many states of the Union awards are made to dependents of workmen losing their lives under similar conditions.

All through this medical testimony and in its consideration, it is manifest that counsel seeks to establish the contention that without post mortem examination no diagnosis of value could have been made. It nowhere appears that there was any effort on the part of the defense to secure such examination, though claim for compensation was made upon the employer within a few weeks after this death. It is evidently the thought of the defense that post mortem would have developed some organic ailment and in such development would vanish the right of claimant to recover.

This is erroneous assumption. Had such examination developed organic impairment, it would have made recovery all the more certain for the reason that the physical strain and enervating conditions would have been successfully emphasized as a contributing factor to the death of a workman manifestly unable to meet strenuous requirement.

In this record the claimant has fairly met the burden of proving that the death of her husband arose out of and in the course of his employment. The case of claimant is established by a preponderance of evidence as this term is clearly defined in Honnold on Workmen's Compensation, page 467. Quoting:

"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."

While the burden is on the claimant, it is not necessary to prove beyond all possibility of doubt that heat exhaustion was the cause of this death. In the absence of absolute knowledge as to such cause, it is only necessary to establish inherent probability. It is not enough to say that the workman may have died from some other cause.

As Honnold further states on page 471:

"Evidence conclusively showing an injury adequately accounted for by acts of the workman in the course of his employment is not overcome by the fact that the injury might by some possibility have resulted from some other cause not shown to exist. In such case the issue must be determined in the light of the greater likelihood."

Consistent with case history and with holdings of the courts, the arbitration decision must be and hereby is affirmed.

Dated at Des Moines, Iowa, this 27th day of September, 1928.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed District Court; no further appeal.

FREEZING OF FINGERS DUE TO EXTRA HAZARD—AWARD

Oscar W. Gehlen, Claimant,

vs.

Hurd Creamery Company, Employer,
Maryland Casualty Company, Insurance Carrier, Defendants.
Tinley, Mitchell, Ross & Mitchell, for Claimant;
J. Ralph Dykes, for Defendants.

In Review

This action is for recovery due to disability from the freezing of fingers.

Arbitration holding is for award in the sum of $79.97 representing eleven weeks of compensation payment; also for medical, surgical and hospital benefits and for costs of litigation.

In cases of compensable injury by freezing it is a common rule that a workman shall have been exposed to hazard not common to workmen of the community. The degree of temperature must be unusual and exposure must be distinctly suggestive of hazard.

The official weather report appearing in the record by stipulation shows that at noon on January 17th mercury registered thirteen degrees below zero.

The record shows that on the 17th day of January, 1930, Oscar Gehlen was engaged in harvesting ice on an artificial pond in the vicinity of Council Bluffs. His particular task was floating ice with the pike pole. He was wearing two pairs of gloves. Continually gripping the pole interfered with the circulation and increased exposure of the fingers. The working premises were such as to afford no protection from such wind as might be blowing. There was no opportunity to seek relief from the cold during the working hours of the day. Claimant testifies there was no chance to warm himself within a distance of a half mile.

Gehlen began work about seven-thirty in the morning. He quit about three o'clock in the afternoon, when he says the foreman said to him "Go home and see if you can get these fingers thawed out."

This entire situation would distinctly indicate a measure of hazard not common to workmen of the community.

The fact that other workmen on the hazardous job sustained no freezing injuries does not serve to bar this claimant from recovery. He may have been more susceptible to such misfortune, but in freezing as in other sources of disability susceptibility cannot be successfully plead in defense.

Citations submitted by the defense would seem to afford substantial

support to the arbitration holding for claimant. In these cases it quite uniformly appears that under circumstances analogous to these the courts are disposed to sustain award. One of these cases is

State ex. rel Nelson vs. District Court, Ramsey County, Minnesota, 164 N. W. 917.

In this case the freezing of a big toe resulted in the loss of a leg by amputation. In connection with his work as janitor the claimant was required to clear a sidewalk of snow and in this service the freezing occurred. The district court denied compensation. In reversing this decision the supreme court of Minnesota so far exhausts citation resources as to say "we find no other freezing cases." In this case the temperature is not given but even if mercury ran lower the workman was much less exposed to frost danger than was Gehlen in the case at bar. Nelson's duties as janitor required him to go inside occasionally during his snow shoveling to attend to furnace fires, while it was impossible for Gehlen to relieve himself all day because of the remoteness of his work from any heat supply.

It is therefore held that in the freezing of his fingers on January 17, 1930, this claimant sustained injury in a statutory sense arising out of employment.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 20th day of June, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

OFFICIAL OF COMPANY NOT UNDER COVERAGE

Nell Dawson, Claimant,

vs.

Pratt-Mallory Company, Employer,
American Mutual Liability Insurance Company, Insurance Carrier, Defendants.

L. B. Forsling, for Claimant;
Havner, Flick, Powers & Huebner, for Defendants.

In Review

The Pratt-Mallory Company is a wholesale grocery concern in Sioux City. After some ten years of employment relationship with this defendant, Roy E. Dawson, husband of this claimant lost his life in an automobile accident.

Circumstances of injury are thus related: On the 8th day of July, 1928, Dawson was proceeding to Sioux Falls by automobile to attend a meeting of salesmen, such meeting having been scheduled to occur on each and every Saturday.

Defendants deny obligation under the compensation statute on the ground that at the time of his injury the deceased was holding an official position and was also standing in a representative capacity of the employer.

Records of the corporation show that at a meeting of stockholders held January 17, 1927, Roy E. Dawson was duly elected a member of the board

of directors. Nothing appears in these records to indicate any change in this relationship at any time prior to the death of Dawson.

On the part of the claimant, it is alleged that in order to qualify Dawson for election as director a single share of stock was transferred to him by L. W. Mallory, president of the corporation, and upon his election the said stock was re-conveyed to its former owner. Upon this allegation it is contended that the directorship of Dawson was fictional in character, and, therefore he cannot be considered as one holding an official position.

The evident purpose of Mallory in electing Dawson to his board was to meet the requirements of his articles of incorporation, made a part of this record. If there was no payment for the stock and the certificate was returned, these facts are not of record in any way tending to disqualify Dawson for board membership. Evidently this was not the intention of the president. The motive that prompted this election could not have been served by the immediate voiding of said election. No one was elected in his place. Furthermore, whatever may now be stated in this explanation is without force for the reason that the corporation record attests a regular election and it contains no statement, even suggestive of failure in payment for the certificate nor of its reconveyance to Mallory, and hence it must be understood that at the time of his death, Roy Dawson was a director of the corporation for all purposes contemplated by law or otherwise and no secret understanding may now be plead in nullification of this controlling record.

It is further contended by the defendants that at the time of his fatal injury Roy Dawson was standing in a representative capacity of the employer and was therefore without the range of compensation recovery.

Claimant resists this contention. Witnesses testify that the deceased was at all times subject to the direction and control of Mr. Mallory. While he was the head of a department and authorized to make purchases for the same and to direct selling agencies, all such exercise of authority was subject to the approval of the president. For this reason therefore, it is urged that Dawson did not stand in a representative capacity of the employer.

The arbitration record indicates that the Pratt-Mallory Company was a good deal of a one-man concern. This is usually true of all successful commercial and industrial enterprises. The action of subordinates, even those exercising large discretion in matters of management, is of course subject to revision and change by the head of the business. Because Roy Dawson did not go it alone in ordering goods and directing sales—that he was to a degree subject to the leadership and direction of Mallory—cannot obscure the fact that he did to an important degree represent the employer in the performance of his regular duties. It was not necessary that he act independently of Mallory in the buying, selling and directing. In minimizing the relationship of the deceased it is exploited as a fact that the right to employ and discharge did not reside in Dawson. It is shown, however, that this function was exercised by men subordinate in rank to Dawson. Merely a matter of administration organization.

The secretary of the company testifies that the duties of Dawson were

those of "buyer and department manager;" that his salary was $250.00 a month. L. W. Mallory, president of the corporation, says Dawson was "a department manager and that his duties as such were to purchase goods on the market for supplying the needs of the departments which were in his hands; also to sell, after making the proper addition for profit, through the efforts of our salesmen." The importance of this position is further indicated by the fact that the business of the tea, coffee and spice departments annually amounted to $300,000.00, and this and other departments were under the supervision and direction of Dawson.

The arbitration decision finds for the defendants on the ground that at the time of his fatal injury, Dawson was holding an official position in the Pratt-Mallory Company. This decision is affirmed.

It is held further that at the time of his fatal injury, Roy E. Dawson was standing in a representative capacity of the employer.

Under the provisions of the statute as interpreted by the Iowa supreme court in *Kutil vs. Floyd Valley Manufacturing Company*, 218 N. W. 613, it is necessary to deny relief to this claimant.

Dated at Des Moines, this 14th day of March, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

DEATH DUE TO HEAD INJURY—PRE-EXISTING SYPHILIS NOT CONTRIBUTING FACTOR

Laura Wells, Claimant,

vs.

Kelly-Atkinson Construction Company, Employer,
U. S. Fidelity & Guaranty Company, Insurance Carrier, Defendants.
Carl H. Lambach, for Claimant;
Cook & Balluff, for Defendants.

In Review

Edward Wells, husband of this claimant, died January 27, 1927, due, as alleged, to injuries sustained December 14, 1925.

At the latter date the deceased was engaged in connection with the reconstruction of a viaduct in the city of Davenport as a structural iron worker. A fellow workman, Carl A. Martin, thus relates circumstances attending this injury:

"Q. What occurred at that time, just describe?

A. Well, we was putting in new floor beams, one of them I beams that goes underneath the railroad to hold the ties up and we was up on a scaffold and Eddie Wells was on one side and I was on the other side with this fellow named Davis, was pushing the work. He was in a hurry, fidgety and very nervous, and he told the engineer to go ahead, and we had the beam on a single weight line pulling it up with just one line. He holload to go ahead and the beam got caught in between there and he holload, "go ahead with it," and just then he yanked the beam, shoved the beam and it hit Mr. Wells in the chest and caught his head in between the top of the beam and the ties, and the engineer stopped before it crushed his head all the way out and the blood was oozing out of his ears, nose and mouth and we took him down off the scaffold and took him to the hospital."

After about two weeks in the hospital and a few weeks at home, the workman was pronounced able to resume labor.

The record justifies the assumption that before this injury, Ed Wells was an able-bodied man with a steady working reputation. It also supports the conclusion that never afterward was he able to work continuously and that he was ailing continually until his death about eighteen months later. He seemed gradually to lose flesh and vigor during this time.

Defendants contend that evidence as to traumatic impairment and the long period intervening do not indicate causal connection between injury and death.

Arbitration award is justified by the record. A sound man—a man who had worked steadily for years with hardly a break in his health sustained what is shown to have been a serious injury. Though he returned to work within perhaps a month, he was never again the same man physically. He complained continually of distress at the site of injury and no explanation or suggestion is offered as to his failing powers and untimely death.

At the review hearing a new defense is introduced. Some six months after death autopsy was performed upon the body of Wells by Dr. E. R. LeCount, an eminent pathologist of the University of Chicago. He appears in evidence to relate the post mortem findings. These are outlined in detail and thereupon Dr. LeCount reaches the conclusion that this workman died of "syphilis of the central nervous system."

This is an interesting development. Other doctors assisting in the autopsy seem doubtful as to the conclusion of Dr. LeCount. This doctor has had to do with more than ten thousand post mortems and his diagnosis must be given substantial weight. But this testimony by no means disposes of the case of claimant. Assuming that Wells died with syphilis as the proximate cause, this fact, taken with circumstances of injury and subsequent developments, must be considered in practical relation to compensation obligation.

In this connection it is interesting to consider the case of *Hanson vs. Dickinson, Receiver, etc.*, 176 N. W. 823. In the employ of the Rock Island Railway Company at its shops at Manly, Hanson sustained what seemed to be a rather trivial injury. Extended disability resulting was evidently due to syphilitic infection. The defendant contended that he could not be held for incapacity due to a cause so evidently extraneous. Award followed which on appeal was affirmed by the courts. In its decision the supreme court makes this convincing observation.

Quoting as to Hanson:

"The disease with which he was afflicted might have been found to have been dormant since dried up by treatment about six years previous and awakened into activity shortly after the injury. That its activity during the two months following the injury was such as to infest the knee joint and prostate gland with gonococci bacilli does not obviate this conclusion. Dr. Powell expressed the opinion that anything that would devitalize tissue would cause gonorrheal trouble such as experienced by the plaintiff, and Dr. Graham was of the opinion that "hidden gonorrheal trouble can be lighted up by a bruise." Though both physicians indicated that there might be other causes, the record is void of any evidence

suggesting any other than the injury, and, as we think, was some evidence sustaining the industrial commissioners' conclusion that the disease was lighted up or accelerated by the accidental slipping of the hammer from the chisel and striking complainant."

Furthermore, says the court:

"The claim is not based on disease but what the bruise did to the disease."

Dr. LeCount testifies that in the instant case the workman "might have been treated and fancied he may have been cured. He may have had it as a young man."

In the Hanson case there had been no recent evidence of the presence of infection but a flare-up was evidently producd by the injury. So it may well have been with Wells. There is nothing whatever in the record to show that at any time previous to the injury he was struggling with malignant germs. Deduction in the Hanson case has even more logical basis herein as to the process of lighting up dormant infection by traumatic experience.

Upon the record before the deputy industrial commissioner award was plainly justified. In this case as so frequently occurs it was impossible absolutely to establish causal relation between injury and death, but inference strongly favors award. In view of all the circumstances it is much more reasonable to assume that the injury was than it was not the cause of death.

If further explanation were needed more definitely to account for this causal connection, the contention of the defendants as to the presence of venereal infection seems further to fortify this claim.

It is therefore held that, due to injury of December 14, 1925, the death of Edward Wells January 27, 1927, arose out of and in the course of his employment by the defendant construction company.

The arbitration decision is affirmed.

Signed at Des Moines this 21st day of June, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

MINER FAILED TO CONNECT INJURY WITH EMPLOYMENT

Tony Turk, Claimant,

vs.

Adelphi Coal & Mining Company, Defendant.
John T. Clarkson, for Claimant;
R. R. Nesbitt, for Defendant.

In Review

Claimant seeks to recover for disability alleged to have been sustained in the mine of the defendant on or about September 22, 1927. He testifies that on this date he was wedging down coal from the roof of a mine entry and a large segment fell on his left leg injuring the knee.

Claimant says this incident occurred shortly after noon; that after a brief rest he resumed work for awhile; that he worked in the mine the next day about six hours and on the day following which was pay day

he worked four hours. He then quit this job. Whether this quitting was or was not due to incapacity does not appear. His buddy, Andrew Vidmer, at review hearing, testifies he quit at the same time because the working situation was not satisfactory.

On the 29th of September, a week after the alleged injury, Turk went to Dr. H. J. Marshall who testifies in claimant's Exhibit A. From this date forward there is substantial proof of actual disability as alleged.

This case is weak in its history of disabling injury. Claimant testifies that the chunk of coal wedged down was about four feet wide, five feet long and eight inches thick. He says it weighed 500 or 600 pounds. The testimony of the defense shows that a chunk of coal this size would weigh more than a thousand pounds. In arbitration Turk says this mass fell on his knee. He does not indicate he had any difficulty in extricating the leg upon which the mass lay. At the arbitration hearing nothing whatever is said in explanation of this strange fact or of the further fact, even as remarkable, that the leg was not absolutely crushed.

At the review hearing claimant testifies volubly in explanation. He says that piles of coal and refuse on each side had left sort of a trough for his leg, shielding it from disaster. He does not claim nor does it anywhere appear that there was on the knee any abrasion whatever or evidence of any sort of bruise.

In the arbitration record there is little evidence in corroboration of injury as alleged or otherwise. At the review hearing appears Andrew Vidmer, who for a few days prior to September 22, 1927, had been working as a buddy of Turk. This witness testifies to rather intimate knowledge of the incident of September 22nd and stresses a second injury two days later to the same knee. Of this second injury claimant makes no mention either before or after he hears the testimony of Vidmer. Turk does not remember seeing his buddy the day of the injury but thinks Vidmer must have been there because he says so.

It is within the range of possibility that claimant truly relates his experience with the falling slab of coal. Perhaps this huge mass fell, as he relates at the review hearing, just so as to permit him to withdraw his leg without difficulty. Furthermore this fall may have so occurred as to be the source of substantial disability without breaking or bruising the skin and to permit him to work in the mine on the two succeeding days. It may be that the only witness testifying to anything like definite knowledge of any such accident was with him and talked with him at the time without any recollection of the circumstances on his part, and that he relies on this witness, Andrew Vidmer, because he said he was there at the time. Surely all these things may have happened as appear in this record, but to rely on this evidence as sustaining the burden of proof in support of this claim requires exercise of conjecture to an extent not permitted in established jurisprudence.

Due allowance should be and is made on account of the broken speech and imperfect understanding of this foreign claimant, but with such allowance it cannot be made to appear that Tony Turk has by a preponderance of the evidence shown that disability for which he seeks

to recover is due to injury sustained in the mine of this employer September 22, 1927.

The arbitration decision denying award is affirmed.

Dated at Des Moines, this 8th day of May, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

DEPENDENCY NOT ESTABLISHED ON SHOWING OF CONTRIBUTION

Alex Mendina, Claimant,

vs.

Scandia Coal Company, Employer,
Bituminous Casualty Exchange, Insurance Carrier, Defendants.
John T. Clarkson, for Claimant;
Havner, Flick, Huebner & Powers, for Defendants.

In Review

This action is brought to establish a claim for dependency due to the death of Tony Mendina, September 11, 1928, in the employ of the Scandia Coal Company.

The defendants deny that claimant was wholly or partially dependent upon this son for support in legal sense at the time of his accidental death.

In order to establish legal dependency in this case it is necessary to show that:

1. The deceased son contributed of his earnings to family support; that

2. Such contributions were necessary to the maintenance of the family in a manner befitting its class and position in life.

Minor members of the family of Alex Mendina were a son in his eighteenth year and a daughter almost fifteen. The mother died years ago and these minor children were living with a married sister, Mrs. Sophia Nelson, in Novinger, Missouri. At the time of the death of the mother this married daughter assumed charge of the family in a domestic sense, continuing in the family home after her marriage in 1926.

It appears in evidence that the daughter was to receive from the father after her marriage $5.00 a week for the care of the two minor children. It is stated furthermore, though with much less emphasis, that the father was also to furnish provisions for these children and the married sister, and also for the son-in-law and his child. Though frequently interrogated witnesses declined to make any estimate as to the cost of these provisions.

At the date of this untimely death, the father and the deceased son had for some nine months been in the employ of the defendant coal company near Madrid, Iowa. During this period they had been "baching" paying $7.00 a month rental which with table board and other household expenses amounted to between $50.00 and $60.00 per month, as testified by this defendant.

It is alleged that during his minority and since reaching his majority, Tony had turned over to claimant his entire earnings and that all these

earnings were expended by the father in the support of members of his family in accordance with arrangement heretofore stated.

During a period of eight months prior to this death, the joint net earnings of the father and the son were in excess of $1,700.00. It is alleged by the father and daughter that this entire sum was so inadequate for such support as to make it necessary to incur family indebtedness during this period.

In reaching a conclusion as to the legal merit of this claim, these questions arise:

1. In view of common knowledge and experience in these later days, it taxes credulity to accept the statement that any young man well past his majority and in possession of ordinary intelligence and independence of spirit delivers all his substantial earnings over to his father, depending upon him for every element of support and for spending money. All evidence in this connection is self-serving as well as unreasonable.

2. The record contains the positive statement of the father that the $5.00 a week received by the daughter was the entire sum paid for the food and keep of the two minor children. Later he and the daughter both seem to say that the father supplied provisions, not only for these children but for the daughter, her child and the son-in-law. It seemed impossible to get from these witnesses any estimate whatever as to the cost of these provisions or of the expense of clothing William and Helen.

3. In his eighteenth year should a young man sound and strong be included among those dependent in a statutory sense? At the age of sixteen years children are by law excluded from among those legally dependent upon a parent in case of the death of the latter under compensable circumstances. William had earnings which are shown to have been expended toward his own support.

4. The statement that the entire joint net earnings of the father and the deceased son amounting to more than seventeen hundred dollars were spent and that more was needed in family support is so incredible as to invite reasonable challenge.

5. The earnings of this claimant for eight months prior to this death are shown to have been in excess of one hundred and thirteen dollars a month. All figures submitted as to living expenses paid do not indicate a sum equal to these earnings and all requirement to maintain living standards consistent with the class and condition in life of this family would not seem to have been in excess of this sum.

It is therefore held that claimant has failed to establish a legal claim for loss of support due to the death of his son, Tony Mendina.

The arbitration decision is reversed and the Scandia Coal Company and its insurer is released from all obligation in this connection in the way of compensation payment.

It is further ordered that each party to this action shall pay its own cost of litigation.

Dated at Des Moines this 5th day of July, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

DEPENDENCY OF FATHER NOT ESTABLISHED

Peter J. Riley, Claimant,

vs.

Dallas Products Company, Employer,
Bituminous Casualty Corporation, Insurance Carrier, Defendants.
John T. Clarkson, for Claimant;
Havner, Flick, Huebner & Powers, for Defendants.

In Review

John Riley, son of this claimant, lost his life in a coal mine of the defendant employer November 23, 1927. This action is brought by Peter Riley to establish a claim for compensation based upon alleged actual contribution to his support by the deceased son.

In arbitration claimant testifies that from March, 1927 to the date of his death, November 23rd of the same year, a period of eight months, John Riley gave him as support the sum of $700.00.

Defendants deny that the claimant was either wholly or partially dependent for support upon the earnings of John Riley at the time of his fatal injury.

Questions involved in this controversy are:

1. Does the record show that Peter Riley was, during the period of alleged contribution, in a condition of actual dependency for support?

2. If he was in such condition, does the record show, or tend to show, that John Riley actually contributed to such support, and if so to what extent?

On behalf of claimant it is alleged that failing physical powers had reduced his capacity for earning. He was during the alleged contribution period 61 years of age, a fact urged in support of this contention. He had a year or so previous sustained hernial injury and this fact is also submitted as tending further to support the plea of lowered vigor.

There is no disinterested corroboration of this enervated condition. From November 23, 1926 to March 1, 1927, a period of fourteen weeks, Peter Riley is shown to have earned $306.04. He testifies that he then suspended earning for physical reasons, but on the whole the record does not support this statement. Assumption as to decrepitude on the part of Peter Riley is not justified. Many miners of his age and beyond have full earning capacity. He was offered an operation for his hernia which was declined as he preferred to use a truss, which he says he still uses "sometimes." This hernia would not seem to have been any serious handicap in view of later earnings and strenuous labor. Evidently claimant declined work in the mine for reasons other than physical incapacity.

A son, Ed, worked in a mine room adjoining that of Peter Riley. His earnings were less than those of the father. Peter says his own earnings were increased because of help from Ed in heavy work and that Ed's were reduced because of this fact. Claimant declares that this son, so willing to increase his burdens and reduce his own earnings when John was said to be making such heavy contributions to his support, gave him no aid after he was deprived of contributions from John.

Claimant admits that he had $400.00 or $500.00 saved up at the time of John's death. Personal earnings and a little inheritance may easily account for this possession without contributions from other sources. Evidently he had no call for relief from developing needs.

Now as to evidence of actual contribution on the part of the deceased son:

In such cases justice demands the exercise of liberal allowance in case of failure to produce complete documentary or other definite evidence as to all alleged contribution. Family bookkeeping is not usually done and such family disaster is, of course, always unexpected, so the holding that such claims must be so evidenced would be manifestly unfair. On the other hand, claims for dependency cannot be allowed merely on the assertion of the claimant. The general situation must suggest dependent relationship. There must be, and in successful cases there always is, in evidence more or less of definite proof of actual contribution and there must be established ground for substantial inference that the claim is well founded to greater extent than may be shown in actual figures. Presumption may be exercised only to supplement substantial evidence of actual contribution.

In this case there is no substantial evidence to support the statement of Peter Riley that he received as support from his son John $700.00 or any other substantial sum. No letter, or check, or receipted bill is submitted to prove that any part of this large alleged aggregate contributed ever passed from son to father. Naturally it would seem that in cases for necessary contribution for support subsistence would be the chief concern. It appears, however, that during the period of alleged contribution, Peter bought his own clothing and John paid only his contributive share of the "baching" expenses. Peter paid some rent, John paid just a little more, and Ed paid some. No witness is introduced to show that John Riley paid for his father any bill for merchandise or any other account that might be considered as contribution for support. No date or incident or circumstance is in evidence tending to sustain the claim of Peter Riley and no basis for logical inference in his favor is created. Such evidence was available to a greater or less extent if these contributions were actually made as alleged, and its absence is of much significance.

Furthermore, it is utterly inconceivable that it was in the range of possibility for John Riley to make any such contribution as alleged. The earnings of Ed Riley were nearly as large as those of the deceased, and on page 22 of the transcript Peter says "I know it took every cent Ed made to keep himself." With earnings almost equal and with personal needs comparatively identical, why should one son have been able to contribute out of his earnings more than $20.00 a week while it took every cent the other made to keep himself?

In *Serrano vs. Cudahy Packing Company*, 190 N. W. 132, the Iowa supreme court makes its only deliverance of opinion broadly applicable to this controversy. Both parents of a son killed in employment testified that the deceased had contributed weekly as support to the extent of

$15.00. Affirming department holding the court in its decision makes plain the rules necessary to apply in such cases. Quoting:

"Dependency is an issue and must be established by the claimant as any other material issue; in other words, the 'questions of dependency in whole or in part shall be determined in accordance with the fact as the fact may be at the time of the injury.' Section 2477m16, par. 5, Supp. Code Iowa 1913.

"What is the meaning of dependency? Clearly a person cannot at the same time be dependent and self-sustaining. The definition of "dependent" as found in Webster's Dictionary is:

"'Relying on or subject to something for support; not able to exist or sustain self; not self-sustaining.'

"This definition has found judicial approval in many cases. See *Rock Island Bridge & Iron Works vs. Industrial Com.*, 287 Ill. 648, 122 N. E. 830.

"No person can be regarded as a dependent 'whose financial resources at his command or within his power to command by the exercise of such efforts on his part as he reasonably ought to exert in view of the existing conditions are sufficient to sustain himself and family in a manner befitting his class and position in life without being supplemented by the outside assistance which has been received or some measure of it.' *MacDonald vs. Pocahontas Coal & Fuel Co.*, 120 Me. 52, 112 Atl. 719.

"Unless the Commissioner has applied an illegal standard or found a fact without evidence, this court will not review his finding. The mere fact that the parents used certain earnings of the deceased son does not prove that they relied upon those earnings as their means of support. *McDonald vs. Great Atlantic & Pacific Tea Co.*, 95 Conn. 160, 111 Atl. 65. No one is a dependent within the meaning of our Compensation Act who has sufficient means at hand to supply present necessities, rating them according to the dependent's class and position in life. *Blanton vs. Wheeler & Howes Co.* et al., 91 Conn. 226, 99 Atl. 494, Ann. Cas. 1918B, 747."

These rules are common throughout compensation jurisdiction.

It is plain that under this record it cannot be said that Peter Riley during the alleged payment period was dependent in accordance with the definition of this term in *Serrano vs. Cudahy Packing Company.* It cannot be said that he had "not at his command or within his power to command," resources to support himself—that he had not "sufficient means at hand to supply his present necessities." In view of this record and in compliance with the statute and the ruling of the supreme court it becomes necessary to hold that

1. Peter Riley has not submitted testimony establishing a condition of dependency as alleged, and

2. The record fails to prove, or to afford basis for logical inference, that John Riley contributed $700.00 or any other substantial sum to the support of Peter Riley as alleged by claimant.

The arbitration decision is reversed and award is denied.

Dated at Des Moines, this 19th day of April, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

DEPENDENCY BASED ON CONTRIBUTIONS NOT ESTABLISHED

J. D. Porter and Mrs. J. D. Porter, Claimants,

vs.

Town of Afton, Employer,

Fidelity & Casualty Company of New York, Insurance Carrier, Defendants.

O. M. Slaymaker and R. E. Killmar, for Claimants;

B. O. Montgomery, for Defendants.

In Review

These claimants allege loss of support due to the death of their son, George Porter, June 14, 1928, as arising out of employment by the town of Afton.

Defendants deny the existence of any legal claim for dependency on the basis of actual contribution by the said deceased son.

George Porter became of age in January of 1927. He had then been living in Chicago for some months and returned to the Afton home in the following September. He lived with a sister while in the city with earnings apparently barely sufficient for his own support. It was necessary for the father, J. D. Porter, to send him money with which to pay expenses on the trip home. He worked in the implement business of the father from date of his return until about May 8, 1928, when he entered the employ of the town of Afton, of which J. D. Porter was mayor.

At the time of his accidental death, June 14, 1928, George had received but one payment on his engagement with the town which amounted to $51.33. He personally cashed this check. Out of the proceeds he would seem to have paid his father $10.00, as money personally borrowed. He would also seem to have paid his father the further sum of $35.00 to apply on a large family store bill, a substantial portion of which bill was for merchandise purchased by himself.

Scrutiny of this record is by no means reassuring in support of this claim. No claim is made for contribution from the son until he came home from Chicago. He then stayed in the parental home helping his father in his implement business until the following May. For this he received board and spending money only and there was no wage agreement. Since at the time of the first payment from the town he owed his father $10.00 borrowed money and paid much of the proceeds of his first check on a family store bill for merchandise used by himself, it is evident that in family calculation there had been no consideration of earnings in the implement service. It is not clear as to whether or not, at the dull season of the year in this trade there were earnings in excess of board and spending money, or that George Porter took another job as soon as an opening offered.

This record is searched in vain for substantial evidence that George Porter made any such contribution to family support as might afford a basis for dependency under the compensation statute. Counsel for claimant in argument seems disposed to regard as reflection upon the deceased the finding that the record does not show aid in support of his parents. As a matter of fact the father seemed able to support himself and his dependents. In using all his earnings to take care of himself George

Porter did only what is usually done under like circumstances by the young men of the period.

The arbitration decision in denial of award is hereby affirmed.

Dated at Des Moines, this 18th day of June, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

Appeal pending.

DEPENDENCY OF PARENTS BASED ON CONTRIBUTIONS

Milo Stevens and Bessie E. Stevens, father and mother of the deceased, Donald E. Stevens, Claimants,

vs.

National Construction Company, Employer,
Southern Surety Company, Insurance Carrier, Defendants.
Shaw & Yoder, F. M. Beatty, for Claimants;
Parrish, Cohen, Guthrie, Watters & Halloran, for Defendants.

In Review

Arbitration finding was for claimants in an award of $6.02 a week for a period of 300 weeks, as dependency based upon conclusive presumption, together with costs of litigation.

Stipulation of record shows that Donald E. Stevens lost his life as arising out of employment and this controversy involves only the matter of parental dependency.

Defendants deny that these claimants were receiving the earnings of their deceased son, Donald E. Stevens, within statutory meaning; also that the earnings of the deceased at the time of his fatal injury were $15.06 a week.

Both claimants testify positively that the deceased son turned over for family use all his earnings; that his personal spending was covered by contributions from time to time from the mother or the father.

A. W. Milliken testifies that in making payment for work performed by the father and this son, Donald told him to pay his earnings to his father.

John A. Ritter declares he employed M. E. Stevens and two sons to do a job of work and that all payment including that of Donald was made to the father. There is other direct evidence tending to support claim of parents.

In support of its position the defense features the purchase of two automobiles, one at a time, in which Donald appears as the buyer. The record tends to show that these purchases were made with the co-operation of the parents, the father signing with the son paper for deferred payments. Circumstances developed indicate that these cars were used for family purposes, chiefly for carrying the father and sons between their home and jobs at a considerable distance. This situation is not at all inconsistent with mutuality of family arrangements in which the son gave substantially all he earned into the family fund.

Among those conclusively presumed to be wholly dependent upon the deceased employee under the provisions of section 1402 of the Code is—

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

Under usual family relationship in these latter days this situation does not frequently exist. If this record, however, does not qualify these parents for consideration under this provision it is difficult to conceive of any purpose for which it remains in the statute.

In the Stevens family were six children. Donald at seventeen was the second from the head. The family surely needed all the earnings that could be gathered during the year by all its members with intermittent employment. Evidently Donald was a loyal son disposed to do all he could in helping to keep the family clothed and fed. The amount contributed is not as important as the spirit and practice manifest. Record disclosure makes it inherently probable that the terms of the statute as to conclusive presumption are substantially met in this family situation.

Exhibit No. 1 herein is a signed statement of M. E. Stevens introduced by the defense in support of denial of dependency obligation. This statement was taken in the early afternoon of October 3, the day of the fatal injury, by a representative of the insurer. The scene of this proceeding was the office of the undertaker. In an adjoining room lay the broken body of the boy who had a few hours earlier entered upon his daily duty. Taken as of full value in its phraseology this statement does not defeat this claim. It relates chiefly to the automobile purchases which are more fully set out in the evidence of several witnesses. The father, however, repudiates its validity on the ground that he was in no state of mind coherently to diagram the circumstances and conditions involved. One of his assertions on the witness stand—"you put yourself in my place and have something like this happen and see how much you will remember"—appeals to deliberate judgment as well as to human sympathy.

In this connection it is interesting to examine the testimony of defendant's witness, Sam Beardsley, undertaker, introduced at the review hearing. He says he went with the insurance adjuster to the home of the deceased boy about noon of the day he was killed; that appointment was made for meeting between the father and the adjuster at the undertaker's office right after lunch. Witness says the statements appearing as Exhibit No. 1 are in substantial accord with the talk between the father and the adjuster.

He testifies that he thought the interview and the statement were for the purpose of deciding as to who would pay the undertaking bill and he was therefore interested. Says "there was talk about how I was to get my money." "I was wanting my money." Stevens said he did not have money enough for burial purposes. The adjuster did not tell witness that they would pay him until after the statement was signed.

"Q. Was it explained to Mr. Stevens why they wanted him to sign this paper?

A. For me to get my money. Wanted my money. I wasn't taking Stevens for it."

Beardsley says Milo Stevens, the father, remarked that his father had a little farm and he thought he could get money from him. Says in the meantime this grandfather of the deceased "came up and had no money." After statement was signed the adjuster made statutory payment.

Disclosures in evidence plainly indicate that the dependent father was under stress of painful circumstances during his interview with the adjuster who was making up Exhibit No. 1. Evidently he was not thinking about what he was to get out of this disaster but how he was to bury his boy. He had no money.

Of course the adjuster knew from the beginning there was no doubt as to insurance liability for burial charges, at least, but he did not relieve the suspense of the father until the statement was signed.

As already stated this exhibit by no means defeats this claim but if its expression were much more unfavorable it could not be given much weight in view of circumstances attending its preparation and execution.

The deputy commissioner would seem to have used due diligence in informing himself as to the earnings of the deceased and his conclusion relative thereto should not be disturbed.

It is therefore held that the arbitration decision does not err at either point upon which this appeal is founded; that at the time of the death of Donald Stevens family relations were such as to make these claimants, Milo Stevens and Bessie Stevens, in a statutory sense, wholly dependent upon the deceased employee on the basis of conclusive presumption.

The arbitration decision is affirmed.

Dated at Des Moines this 9th day of April, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Commissioner affirmed District Court; settled.

AWARD BASED ON SHOWING OF FAMILY CONTRIBUTION

Lawrence and Jennie Vignorali, Claimants,

vs.

Norwood White Coal Company, Employer,
Bituminous Casualty Corporation, Insurance Carrier, Defendants.
John T. Clarkson, for Claimants;
Havner, Flick, Huebner & Powers, for Defendants.

In Review

This action is brought to establish parental dependency based on the death of Santine Vignorali who lost his life in the service of this employer August 27, 1928.

In arbitration January 30, 1929, award was made in the sum of $2.00 a week during a period of 300 weeks.

From this holding claimants appeal.

The parents, Lawrence and Jennie Vignorali, both testify that the deceased son turned all his earnings into a family fund from which he received his support. Their daughter, Lucy Vignorali, joins in this statement.

This family arrangement is practically unknown in our experience, except among some groups of our foreign born citizens, but in view of known developments it is not at all inconceivable that this son at the age of 24 may as a member of the household have made contribution substantially as testified.

Santine Vignorali had worked with his father in the coal mines of this field since boyhood. He seems to have had no other abiding place than in this family home, except when temporarily out of the state. He was otherwise unattached in a domestic sense during his life time, and he would not appear to have had much social inclination which took his attention or his earnings to any considerable extent.

It seems to have been the way of the Vignoralis to live largely within themselves and to be mutually helpful as needs developed. It appears to be established that when the deceased son was without earnings and on expense on account of seriously disabling injury a few years before his death the situation was met as an additional family burden. It seems also true that when additional family expenditure was created by medical, surgical and hospital charges for the relief of the mother, Jennie Vignorali, Santine bore a share of this financial burden.

When claims based upon contribution are made it is always difficult to get at the actual existing situation. If it were held necessary to reach a conclusion upon the basis of vouchers produced recovery would be rare and usually in small degree. Few families, indeed, and especially among the wage earning classes, are at all methodical in the matter of family receipts and expenditures. Of course the calamity which makes acute the demand for proof is always unexpected and hence the claimants are usually unprepared for grilling as to details of support contributed.

In this situation it becomes necessary to establish certain reasonable conclusions. It is first important to show that family relationship and attending circumstances were such as to make it inherently probable that contribution more or less substantial was actually made. It is also important to show that if made, contribution was required for the reasonable support of claimants in the scale of living consistent with their station in life. With these questions answered in the affirmative the extent of support may be approximately understood.

Good faith on the part of claimants is essential to such understanding. With this in evidence the problem is much simplified. In the pending proceeding this vital element seems rather outstanding. On the witness stand the parental claimants were seriously handicapped by lack of familiarity with our language. They had difficulty in comprehending queries and in expressing themselves in reply. Close attention to their statements and to their manner on the witness stand, however, was reassuring as to general integrity. The daughter, Lucy Vignorali, eighteen years old, understands readily and expresses herself well. Her bearing was that of honesty and of deliberate painstaking in frankly meeting all interrogation. She substantially supported the claim of her parents in statements tending to show general family relationship and as to facts relative to the actual situation. These facts in brief are important to actual proof favorable to the contention of claimants:

In order to get understanding as to related conditions and circumstances, it is in order to take up a train of events covering a period longer than one year prior to this death. The main reliance, however, must be upon developments of the year last past.

In April of 1927, a strike served to suspend mining until the October

following. During this period the father's earnings were nominal. When mining was resumed Lawrence Vignorali began substantial earning. From this date until the middle of July, 1928, he is on the company books credited with earnings in the mine to the amount of $1,100.40 net. (See Exhibit d2.)

The record discloses that when the mine was closed in April, there was considerable hang-over of family debt. Money borrowed to meet family expenses was only partly paid. Payment for further borrowing on account of an automobile purchased was still necessary. This automobile as a family expense is clearly justified because the father and the deceased son used it to reach their mine work ten to seventeen miles distant. Showing that during the strike period family debts and family needs accumulated is by no means incredible. When work was resumed in October these deficits received practical attention and there was the father and mother, Miss Lucy, aged 17, and two younger brothers to support, all without earning except the father. Manifestly there was paid out in the months succeeding the resumption of earning in October much more than the $1,100.00 received by the father for his mine work.

Santine, the deceased son, had been in Detroit the latter part of 1926 and in 1927 until in October. On his return he had little in the way of earnings here until in December when he was again taken on by the defendant operator. From this time in December of 1927, until his death in August of 1928, he is credited with net earnings of $757.27. (See claimant's Exhibit 1.)

In view of the fact that there was no other source of family supply except from the deceased son and merely nominal contribution from a son, Richard, it seems more than a matter of surmise or conjecture to assume that Santine made liberal contribution to the payment of family debts and family needs, all qualifying as family support.

Counsel contends feebly if at all that contribution was not made to family use by Santine Vignorali. He seems to rely in defense upon the assumption that such contribution was not required to meet reasonable family needs. He submits a long list of perfectly good decisions tending to afford support of this conclusion as to requirement. It may be readily assumed that if earning on the part of the father were sufficient to meet all reasonable family demands shown to have existed, then the case of claimants must fail. The record appears by no means to justify any such assumption. Existing needs substantially exceeded the earnings of the father. It is not shown that living expenses were in the least excessive for comfortable and decent living.

The estimate of counsel that fixes obligations at compensation maximum is not tenable. Neither does it seem reasonable to assign for the use and benefit of the deceased out of the family fund only an amount equal to that expended each for the mother, the young daughter and the little boys in the home, if it is assumed that all expenditure is taken from a family fund.

On the other hand we note the substantial earning of the deceased, the absence of all proof tending to show accumulation or free spending on

his part and the manifest inadequacy of the earnings of the father to meet family needs.

In view of this entire situation as to earning and requirement, and other factors important to proximate conclusion, it appears inherently probable that the contributions of Santine Vignorali in the year previous to his death to the family fund and which was required for consistent family support affords substantial basis for award in the sum of $5.00 a week for a period of 300 weeks.

The arbitration decision is therefore modified by increasing the award from $2.00 to $5.00 a week and as so modified said decision is hereby affirmed.

Dated at Des Moines this 31st day of December, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

No appeal.

POLICE PENSION SYSTEM EXCLUDES WORKMEN'S COMPENSATION

Paul H. Ogilvie and Maxine Ogilvie, Infants, by Valley Savings Bank, a corporation, as Guardian of the Estate of said infants and next friend, Claimants,

vs.

City of Des Moines and State of Iowa, Defendants.

H. W. Hanson, for Claimants;

Chauncey A. Weaver, Gerald O. Blake, C. J. Stephens, for Defendants.

In Review

Harry Ogilvie came to his death by violence July 11, 1930, in the attempt to make an arrest as a policeman of the City of Des Moines.

This action is brought to establish liability in the State of Iowa under the provisions of section 1422 of the code.

The only issue involved is a single question of law.

In section 1361 of the code, it is provided that the compensation statute shall not apply

"4. As between a municipal corporation, city, or town, and any person or persons receiving any benefits under, or who may be entitled to benefits from, any 'firemen's pension fund' or 'policemen's pension fund' of any municipal corporation, city, or town, except as otherwise provided by law."

Section 1422 of the code provides specific relief to police officers or their dependents in case of injury or of death under circumstances set out. Definite exception is made as to policemen "pensioned under the policemen's pension fund created by law."

The defense rests its case upon what is assumed to be plain statutory statements of exclusion as quoted herein.

Counsel contends the wording of the statute does not bar claimants from compensation benefits. He submits that the exclusion applies only to cases in which policemen involved are actually receiving pension relief at the time of injury or of death. The legal expression is in the past tense. Legislative journals recording the enactment of the statute now

appearing as section 1422 are introduced to show that at all stages the exclusion cited was made to apply only to "policemen pensioned," that is to say, policemen actually on the pension rolls as present participating beneficiaries and as having no relation whatever to policemen who may hereafter be entitled to receive such benefits. It is shown that the deceased officer was never on the pension roll as receiving payment thereunder and hence, it is contended, his dependent children are not to be denied statutory compensation benefits. The question of legislative intent is by the defense interpreted as meaning to reserve all compensation rights in such cases as this to these policemen or their dependents.

Where the statute is obscure and its meaning involved in reasonable doubt it is well to summon collateral evidence in the endeavor to understand its actual significance. This situation, however, seems quite clearly to afford its own interpretation. In its original form the compensation statute did not exclude policemen from compensation coverage. Later it was so amended as to exclude from such coverage all policemen eligible to relief from the policemen's pension fund as prescribed in that portion of 1361 previously quoted. This provision excludes all policemen "receiving any benefits under, or who may be entitled to benefits from any * * * policemen's pension fund."

It seems clearly apparent that in providing the relief afforded in section 1422 it was the legislative purpose to make this provision consistent in terms and conditions with the policemen fund exclusion as outlined in section 1361. It was not intended to qualify that provision by dividing policemen in pension fund cities into two classes in direct departure from the plain terms of the existing law. It is only by strained construction that we could interpret section 1422 as contended by claimant in view of its well understood history in relation to the situation under consideration.

Moreover, it is a matter of common knowledge that under the provisions of the Iowa statute a policeman in service never qualifies for pension relief. He must be on the retired list before he has any relation to the pension fund except as a contributor. He then automatically becomes an ex-policeman, and as such he could not "in line of duty" or " while in the act of making or attempting to make an arrest or giving pursuit" become eligible to relief under section 1422 of the code. Therefore, if the expression "except those pensioned" in section 1422 refers only to those who have been retired on pension it is meaningless. It could not have been put in the law for the purpose of excluding these already excluded policemen. It must have had some other meaning. It must have been intended to embrace under the word "pension" others than the ex-policemen actually retired on pension, and to those who are in the larger class of active officials who are under the pension system and entitled to its benefits.

Furthermore, an active policeman who has been injured and is thereby in position for retirement on pension, does not get the pension automatically but only on his application; and if he does not choose to take the municipal pension, but rather applies for relief under the workmen's compensation law, he is therefore in the position of having the right of election as to whether he would take under the one or the other. Did

the legislature give him this right? Can he voluntarily take himself out of the class of recognized pensioners in order to get the larger benefits of workmen's compensation?

It is therefore necessary to hold that the compensation statute affords no relief to these dependent children of Harry Ogilvie because the said statute specifically excludes all Des Moines policemen from the application thereof.

The arbitration decision denying award is affirmed.

Dated at Des Moines this 11th day of September, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Affirmed District Court; pending in Supreme Court.

DEPUTY CITY ASSESSOR EXEMPT AS AN OFFICIAL.

H. N. Child, Claimant,

vs.

City of Des Moines and Polk County, Defendants.

W. C. Hoffman, for Claimant;
Chauncey A. Weaver, for City of Des Moines;
Alexander M. Miller, for Polk County.

In Review

Hearing and argument in review is waived by counsel and decision rests wholly upon the arbitration record.

No issue of the fact is in controversy. Stipulation of record shows that on or about January 22, 1929, H. N. Child was in service as deputy assessor in and for the city of Des Moines and county of Polk, under appointment by Elza H. Higgins, City Assessor. It further shows that this appointment was approved by the Board of Supervisors of Polk county.

On said January 22nd, claimant sustained injury in the total loss of vision in his left eye.

In arbitration it was found that said injury arose out of and in the course of employment. It was further held that award must be denied for the reason that the said deputy assessor was by statute barred from recovery as an official appointed.

Among those persons "who shall not be deemed 'workmen' or 'employees' " section 1421 of the code includes "an official elected or appointed by the state, county, school district or municipal corporation."

This language is plain. It would seem to suggest but a single meaning. It remains only to be established as to whether or not Child was an appointed official. Here the record permits of no doubt. The claimant was appointed as deputy assessor by one authorized to make the appointment. This appointment was subject to approval of the Board of Supervisors and such approval is plainly in evidence. After such appointment and approval the oath of office was duly administered by the county auditor. After all this formal and significant procedure it is fairly inconceivable that this deputy assessor is to be omitted from the exclusion

the statute applies to an official elected or appointed in section 1421 of the code.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 19th day of September, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

MINE INJURY ESTABLISHED AS COMPENSABLE

George Ansley, Claimant,

vs.

Central Iowa Fuel Company, Defendant.

John T. Clarkson, for Claimant;

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

In Review

At the arbitration hearing March 25, 1930, claimant gave this case history.

March 10, 1929, while running a mule-drawn car in the mine of the defendant employer, he caught his foot in a track switch. He was unable to wrench it loose until the foot was struck by a wheel of the moving car when he was released. The contact almost wholly ripped the sole from a new shoe he was wearing.

The moving car gave him a severe bump on the right hip and side. There was some pain but Ansley soon resumed his driving. While he continued in service he says he had considerable distress much of the time which was more severe with the strain of his various tasks. Three days after the accident he consulted Dr. Fisher who he says: "taped me up." Saw Dr. Fisher for treatment five or six times.

Claimant worked on until June 12, 1929, when he says he was unable lónger to continue. He then appealed to the claims manager for relief and was taken straightway to Dr. Jackson at Chariton who advised him to go to bed using hot packs. Later upon advice of the employer he was examined by Dr. T. E. Gutch, of Albia, and by Drs. Glomset and Throckmorton, of Des Moines. Up to this time all doctors consulted seem to have made negative report. They are to a considerable extent in a agreement as to findings unfavorable to this claim. They appear to find no pathology accounting for alleged pain and no connection between any existing disability and the incident of March 10, 1929.

The deposition of Dr. Leo J. Miltner, of the University Medical Staff, appears in this record. He says:

"Mr. George Ansley was first seen August 5, 1929. * * * At which time he was admitted to the house for study. Our record states that on August 13th a quite complete study was made. On August 14th he was transferred to the nose and throat department for treatment. According to the records he apparently returned to us again on August 31, 1929, at which time physiotherapy treatment was started. This treatment gave the patient considerable improvement and he was discharged September 6, 1929, to return in four months for observation." (Dep. page 2.)

Furthermore (page 3) "our diagnosis was right sacro-iliac strain with possible sciatic involvement."

Witness further states:

"In my opinion it is possible for the injury such as the patient described to have caused symptoms which were intermittent and the fact that he sought medical attention two or three days after the injury and possibly continued to work with intermittent pain, the condition might perfectly well have been aggravated until he was of necessity forced to quit work on June 11th." (Page 13.)

"The patient might perfectly well continue to work having mild pain in the sacro-iliac joint until approximately 32 days after the injury as you have stated." (Page 14.)

The doctor's testimony concludes as follows:

"A. In my opinion the condition was due to the injury received because I was given no reason to believe that the patient was a malingerer.

Q. I take it you have tests by which you satisfy your own mind as to whether a patient is malingering?

A. To an experienced physician it is quite easy to detect a malingerer.

Q. And did you find anything to indicate this man was malingering.

A. We found nothing at that time." (Page 24.)

Defendant insists the testimony of four doctors, all more or less unfavorable to claimant as against anything submitted by the single Iowa City physician constitutes a preponderance of medical opinion. Weight of evidence is not determined by abundance of words or measures of ink. The well established rule as to burden is understood to be "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." It is a matter of rather common experience that doctors skilled and honest are mistaken in diagnosis. The human structure is a very intricate organism and in the endeavor to discover all its strange developments it is easy to err.

This case presents these phases:

There is definite history of accident from which a workman was fortunate in escaping with his life or without loss of limb. The account of the workman as to circumstances of injury is sufficiently supported by a fellow workman who was an eye witness. Good faith, that most important element in compensation cases, is substantially in evidence. A workman of steady habits and evident industry is not disposed to shirk when able to earn and he continues until his condition forbids. There is manifest connection between the incident of injury and subsequent disability. No other cause of disability is suggested. When he quits work it is to surrender earnings of $5.80 a day for a chance to win $2.50 per day.

Four doctors of repute failed to discover the cause of physical incapacity. They apply little treatment and provide no effective relief. A fifth doctor discovers what has evidently been overlooked by others. He applies a remedy and gets substantial results in returning the workman to full usefulness in a few weeks. It seems safe to say the diagnosis of this doctor supported by developments and successful treatment in accordance therewith outweighs the testimony of his professional brethren who failed to effect relief because they failed to locate the trouble.

In the exercise of the important element of inherent probability this claim is substantially supported by the record.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 13th day of August, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Not appealed.

MINE INJURY RESULTS IN COMPENSABLE DISABILITY

Wm. Daniels, Claimant,

vs.

Red Rock Coal Company, Defendant.
John T. Clarkson, for Claimant,
Sargent, Gamble & Read, A. B. Howland appearing, for Defendant.

In Review

Defendant makes general denial as to injury of March 19, 1927, as alleged. In further resistance it is plead that if injury occurred at that date it was without notice on the part of claimant or knowledge on the part of defendant.

Wm. Daniels gives this statement of fact and circumstances in connection with his alleged injury. On or about March 19, 1927, in the course of his employment it became necessary to track a derailed coal car. In lifting for this purpose he placed his back against the car and his hands under it. As he was in the strain of lifting his foot slipped causing the car to give him a heavy bump in settling back to the ground. He says that a bolt projecting from the car structure hit him near the spine causing a considerable lump.

Claimant worked several hours until quitting time at four o'clock. At the suggestion of a son working with him he went to the company office. There he told the bookkeeper, Archie Metz, charged with the duty of reporting injuries, as to the lifting incident. Says he pulled up his shirt showing the visible effects. Asked if he wanted the matter reported, said "I don't know whether or not. It probably may come out all right." "Had not had much pain. I did not regard the injury as at all serious," he says. He was given liniment to apply on the bruise.

Claimant worked right along a week or so after the lifting incident with slight pain, as he states. In the forepart of April Dr. Reiter advised him to apply a poultice with hot applications. Next day an abscess at the point of injury was lanced by the doctor. In a few days healing seemed complete.

There is history of intermittent developing, breaking and healing of abscesses, all at the point of injury. At each healing recovery was believed to have occurred. For several months in 1928, and 1929, there was a considerable period of dormancy but in the spring of 1929, the situation became acute.

Most of this history is from the testimony of the claimant. Now it becomes necessary to consider elements of corroboration.

On the witness stand Dr. Reiter gives evidence of remarkable lapse of memory. He seems vaguely to remember that Daniels consulted him.

Admits hazy recollection as to being told of some sort of an injury. Doesn't remember that he did or did not use the lance on the claimant. May or may not have advised poultices. It seems he did not fail to remember to collect for services rendered, the bill indicating more than negligible treatment.

Dr. T. E. Gutch examined claimant March 12, 1928. In his deposition dated January 24, 1929, the doctor definitely expresses the opinion that the developing abscesses were due to trauma. Out of a wide range of professional experience he gives substantial support to this claim.

Examination by Dr. J. W. Martin, in May of 1929, is developed in deposition that does not substantially discredit the contention of claimant.

The most searching analysis in the entire physical situation is found in the deposition of Dr. W. J. Alcock of the University of Iowa. This witness proved quite a handful for counsel. He was more or less recalcitrant and arbitrary as to legal proceedings but he holds the inquiry to actualities of fact and circumstance and squarely submits professional diagnosis clear and convincing. After a thorough understanding of case history in its relation to causes and effects he insists that regardless of the story of claimant the condition he found was due to trauma. The doctor makes this very important statement:

"Now he has had in the same region from the time of this accident at least four abscesses, therefore there must be something there to cause the recurrence of this same abscess information. I discovered that he had a sinus communicating with the kidney and in this sinus this calculus, and therefore the explanation of all the abscesses." (Page 23.)

Asked if the condition he found clearly indicated that there had been trauma the witness answered, "I can see no other explanation."

The defense resists Dr. Alcock's conclusions but does not assail his statements of fact as being inconsistent with the record.

Scrutiny of every page of this extensive record leads to the deliberate conclusion that there was no error in arbitration award.

The testimony of claimant is not seriously disturbed in rigid cross examination. It is consistently supported by several members of his family. Discrimination is necessarily exercised in the consideration of self-serving evidence and this precaution is not neglected herein. Evidence of good faith is very difficult of manufacture. It takes a witness of rare genius seriously to deceive a tribunal accustomed to weighing evidence. Minor discrepancies in the record of claimant does not tend to indicate intent to deceive. While it is well to scrutinize the story of claimant in an involved case like this hasty assumption as to fraud and falsehood may lead to a miscarriage of justice. The Iowa supreme court is on record with this striking expression:

"It ought to go without saying that it is still possible for a claimant of compensation to be an honest man, and that his testimony may be so candid and so inherently probable as to command the confidence of a fair-minded court or juror even though he is unable to produce any other witness to corroborate him."

The record conclusively shows that there was an injury from lifting in March of 1927. It clearly appears that the record is sufficient as to notice to the employer. Evidence of Metz supports statement of claimant.

Recurring abscess development at the point of injury is strongly significant of relationship with injury as alleged. The contention of claimant is substantially supported by medical testimony.

It may be frankly admitted that this case has its elements of weakness. If dead moral certainty were the rule in claim establishment it must of course fail. It is only necessary, however, that evidence in support shall outweigh evidence opposed. The necessary preponderance is established when it appears that the element of greater probability is shown to favor the claimant.

Counsel generously admits in argument that it is well to resolve ordinary doubts in favor of a claimant. He insists, of course, that the consistent exercise of this rule will not justify award herein. The record is here otherwise interpreted.

The arbitration decision is affirmed.

Dated at Des Moines, Iowa, this 15th day of August, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Appealed to District Court.

BAD AIR—MINER'S WIDOW GIVEN AWARD

Elenora Dille, Administratrix of the Estate of W. O. Dille, deceased, and Elenora Dille, widow of the deceased, W. O. Dille, Claimants,

vs.

Plainview Coal Company, James Hupton, Albert Nelson and Morgan Vance, co-partners, Employer,

Bituminous Casualty Corporation, Insurance Carrier, Defendants.

John T. Clarkson, for Claimant;

Havner, Flick, Huebner & Powers, for Defendants.

In Review

October 22, 1929, W. O. Dille became unable to continue with his work of coal mining in the mine of the defendant employer. This action is brought to establish a claim for disability and death as arising out of and in the course of the employment.

Arbitration hearing was opened at Albia, December 17, 1929. At this time the deposition of claimant was introduced and made a part of the record, Mr. Dille being physically unable to appear in person and testify. The Albia hearing was adjourned for hearing in argument and otherwise at the department, and in the meantime W. O. Dille died, on December 28, 1929.

January 4, 1930, amendment to petition for arbitration with motion to substitute this claimant was filed.

January 7, 1930, defendants filed motion to dismiss and strike amendment to petition.

June 30, 1930, arbitration decision was filed by the Deputy Industrial Commissioner denying award to Elenora Dille as administratrix and widow of the deceased W. O. Dille for failure to sustain the burden of proving that the disability and death of her husband arose out of and in the course of employment.

Before proceeding with the record as it relates to whether or not this death arose out of employment, it seems necessary to consider the issue raised by the defense as to the right of this widow to recognition as substituted claimant.

It is the contention of the defendants that with the death of W. O. Dille his claim for compensation died with him and cannot be made to survive for the benefit of this claimant. This view is repugnant to a sense of justice and wholly inconsistent with the spirit and purpose of the compensation service. While it may be said that the object of first importance in case of personal injury is the care of the injured and provision for his support in physical infirmity, hardly less important is the statutory expression considerate of the interests of those dependent upon him. In case of death due to the injury compensation in full measure continues to run to a surviving widow or children under sixteen years of age. If the law and the facts developed in this record tend finally to show that this injury and death are such as to entitle the workman to relief in his life time, travesty upon plain justice seems definitely suggested in the contention that through legal technicality the claims of the widow to the right and relief automatically afforded in such circumstances must be denied. The statute makes it the duty of this department in official action to "make such investigation and inquiry in such manner as is best suited to ascertain and conserve the substantial rights of all parties thereto." To hold with counsel at this point would be gross neglect of official duty.

The defense is able to submit citation favorable to its theory of the law but the weight of authority would seem to afford substantial support to the official view herein expressed. It is therefore held that this claimant is well within her rights in asserting legitimate claim to relief in these premises if it shall finally appear that the injury and death of her husband arose out of employment.

As a general thing Iowa coal is brought to the surface through a shaft occupied by an elevator. This shaft is important in mine ventilation as well as transportation uses. Usually mine development begins by the construction of a run-way cut obliquely from the surface to the coal level. This run-way affords the only approach to and manner of egress from the mine and the only opportunity for ventilation. To this situation the term slope mining is applied and this process usually continues only until development shall have proceeded to the point of practical shaft ventilation. In the Plainview mine a shaft was nearly completed at the time of the injury of Mr. Dille as alleged.

It is a matter of knowledge common among those who understand mine development that in a slope mine the opportunity for ventilation is limited. The mining statutes give recognition to this condition and impose important restrictions as to ventilation and otherwise pending slope operation.

In the review record R. H. Rhys, inspector for the first Iowa mining district during the past twenty-four years, upon inquiry in which the physical situation at the Plainview mine was diagramed goes into detail in relation to mine ventilation. He explains why in slope mining the matter of ventilation is more difficult and less satisfactory. He further

states that the ventilating tube of 12-inch boards was not of such dimension as to afford adequate fresh air provision. Furthermore that the fan device was lacking in capacity for necessary relief by reason of the inadequate intake leading from the fan. It is the opinion of Inspector Rhys from description submitted to him by counsel that the situation at the Plainview mine in October of 1929 was strongly significant of gas peril to workmen therein.

Miners testifying show conclusively that in the days intervening between the opening of the mine in September and the collapse of Dille late in October, noxious gasses had been distinctly in evidence, several cases being so serious as to drive individual workmen temporarily off the work.

The record substantially indicates that whatever the cause of Dille's breakdown, the mine situation in its relation to ventilation and the existence of noxious gasses was such as to menace the workmen in service. Evidently the husband of this claimant might have and indeed may have been sacrificed to this peril but it remains to be seen whether or not such sacrifice was inherently probable from all facts and circumstance relative to his collapse, his subsequent experience and ultimate death.

It is in evidence that William Dille had been in previous years and until quite recently in a very good state of health. He had through the summer labored strenuously and evidently without lack of strength. In recent weeks he had complained of not feeling well at times, due, as contended, to occasional increase of gas exposure. The record, however, does not tend to indicate substantial loss of strength.

This breakdown occurred October 22nd. In the last ten days worked in September, Dille's production weighed 5,300 pounds daily. His fellow workman, Kolling, exceeded this output but Wilson working near averaged for the nine days he worked, 3,700 pounds, while Oliver, the only other employee reported, averaged 3,260 pounds. In October Dille's average per day was 6,000 pounds while Wilson's was 3,600 and Oliver's 6,200 pounds. The morning of the 22nd when Dille went down he loaded a car in twenty-five minutes. This record does not indicate that Dille gradually faded away and finally fagged out.

The testimony of W. O. Dille must be given substantial weight. He was a man of high standing in the community. His deposition was taken December 14th when he knew he stood before a grave open to receive his mortal remains. His death occurring December 28th was definitely foreshadowed. A man who ever tells the truth would not be expected to falsify at such a time. His statements bear the imprint of candor.

Dille says in this mining experience there were days when the gas "didn't seem to bother to amount to anything," and "other days we could not work all day." "Three of us went home on four different days." Other times "we would go back where we could get a little air and stay there awhile and then try it again." "Several times men went on top."

On the morning of October 22nd Dille went to his work as usual about 7:30. Says "it was affecting me before I got the first car loaded." "Made me weak." After filling this car he sat down about twenty minutes at

the mouth of his room while the driver was coming with another empty. While using his pick to mine out his shot his "breathing was short." "It got so I had to gasp for breath." In the later work of shoveling "I got so weak I couldn't stand up," with terrible pains in his chest. With difficulty he reached the bottom of the slope where he gave way and was helped into the car and to his home where he died as related, December 28th, the immediate cause being heart dilitation.

The record shows there was no break through in Dille's room. He was working about thirty feet from its mouth, the only opening for air. After loading the first car in mining off his shot, as the miners say, with his pick he broke through into a powder crack which emitted a distinct odor indicating what is known to miners as "stink damp," the only noxious gas which so announces its presence. This incident tends to indicate menace in addition to that of the other noxious elements due to poor ventilation.

In the presence of such a situation doctors are disposed to marvel and to disagree as to conclusions in detail. Careful reading of their testimony in this case, however, does not tend to break down this claim. All medical witnesses seem to agree that the contention of claimant is wholly within the limit of possibility and much of the medical evidence with painstaking analysis gives substantial support.

Defense counsel manages to draw from a number of these witnesses the admission that since all the miners "breathed the same air" or "air of the same quality" it is difficult to see how Dille could have succumbed from noxious gas while the others were not at that time seriously affected. This admission makes no convincing appeal since it is based upon assumption wholly unsound. It is within the knowledge of all in any way informed that the tendency of mine gas in Iowa mines (and all have it in some degree) is to settle or abound or exist more or less in pockets where conditions are most favorable to its development and where ventilation is less effective. A miner in one room may suffer while another a few feet away may not have any sensation indicating gas presence. It is also well to understand that some men are far more susceptible than others to its deleterious effects. This is known to be true in this field of peril as in cases of freezing or heat exhaustion and other menacing exposure.

Where inherent probability tends so strongly to favor award it naturally behooves the defense, if not actually incumbent, to submit evidence and logical contention tending to establish some other cause of disability or death. Realizing this situation counsel comes forward with a proposition. On Sunday, the 20th, two days before the breakdown claimant went with his car two miles west of Albia on account of the burning of the home of a brother-in-law. Reaching there he found the house in ruins. After a stay of twenty minutes, without any physical activity, he drove back to Albia. Claimant admits he did some coughing after this experience. He even admits he spit up some colored mucous. Reading carefully the record in this connection, however, the incident seems inconsequential, merely serving to emphasize the difficulty of the

endeavor to offer some plausible explanation for this collapse other than that alleged by claimant.

Counsel seems to contend that if this mine was an unsafe place to work, in accepting employment there a miner assumed all risk involved and was barred from relief in case of injury due to unsafe conditions. This is important if true, but the theory is foreign to the spirit, purpose and practice in compensation administration.

The defense assumes that since holding here was against award in *Muck v. Central Iowa Fuel Company*, decision in this case must deny relief to this claimant. In asserting this to be a weaker case counsel speaks without the record. The mine of the defendant in the former case was not of the slope kind which is commonly understood to be suggestive of gas trouble. It had ventilation of approved character which the Plainview mine had not. There was in the room of Muck a break through favorable to air conditions. Dille's room had no friendly air hole other than its mouth. Furthermore a searching air test in the Muck room made shortly after the alleged injury was most favorable to the defense. There was in the Muck case much less evidence in support of the rule of inherent probability.

This record is substantially strengthened at the review hearing. The testimony of State Mine Inspector Rhys is very convincing as to peril from bad air in the Plainview mine. Herman Bitterman made a good impression as a candid witness. Though fairly overwhelmed by a mass of technical detail as to air currents, ventilation in general and personal experience, on the whole his testimony affords support to the contention of claimant. Dr. Glomset adds to his former support.

This case cannot be decided in any cocksure way. If the claimant were required to prove her case to a dead moral certainty she must fail, but this is by no means the rule.

After careful consideration of this very large record the conclusion is deliberately reached that under the rule of inherent probability this claim is established. It is reasonable to conclude that but for the condition of this mine as to noxious gasses and inadequate ventilation and for the effects of the consequent noxious gasses upon W. O. Dille, he would have continued in earning indefinitely.

The arbitration decision in denial of award, filed June 30, 1930, is hereby reversed.

Defendants are ordered to pay to this claimant, Mrs. W. O. Dille, the sum of $8.86 a week for a period of 300 weeks with interest at 6 per cent on all deferred payments from October 22, 1929. Defendants must also pay statutory medical, surgical, hospital and burial charges together with the costs of this action.

Dated at Des Moines, Iowa, this 14th day of October, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

KILLED ON STREET IN DISTANT CITY—AWARD

Mabel J. Walker, Claimant,

vs.

Speeder Machinery Corporation, Employer,
Continental Casualty Company, Insurance Carrier, Defendants.
Havner, Flick, Huebner & Powers and Calhoun & Calhoun, for Claimant;
Carl F. Jordan, for Defendants.

In Review

Charles E. Walker was in the employ of the defendant corporation as demonstrator and expert repairman. Most of the time he was on the road attending to the duties of his employment under the immediate direction of the home office at Waterloo. Under such direction he traveled about this country and was once sent even to Russia by the employer.

In February of 1930, Walker was sent to Cincinnati to deliver a machine. He was further directed from that city to Columbus, Ohio. On February 22nd he was wired to go to Pittsburg for expert service.

Arriving at Pittsburg Sunday, February 22nd, along in the afternoon, he registered at a hotel and went to his room. In the early evening he started out to get a meal at a restaurant as advised by a hotel clerk. In crossing a street directly en route he was run down by an automobile and fatally injured.

The ground of protest on the part of the defense is well stated in the following inquiry submitted by counsel: "Was Walker exposed to the danger on the streets of Pittsburg by reason of anything that arose out of or was connected with his employment?"

Counsel emphasizes the fact that at the time of his injury Walker was not at work. He was using the streets where he had no work to do. A workman may be in service at times when he is not using any tools of his employment or at the moment making any definite contribution of physical exertion in the interest of his employer. This statement needs no argument.

Our supreme court has several times gone on record with this emphatic statement: "The accident arises in the course of employment if it occurs while the employee is doing what a man so employed may reasonably do within the time during which he is employed and at a place where he may reasonably be during that time."

The record shows that Walker was on the road most of the time. His salary was $200.00 a month with all expenses paid. When he took his grip and left the home office he came under the protection of the compensation statute. Now when was this protection suspended. Not while he was going to the railway station, not while enroute, not when going to his hotel. All this would be admitted by counsel. He would not deny that in going from Columbus to Pittsburg and to his hotel Walker was covered but it is insisted he was on his own in his hotel room and in seeking nourishment.

His very act and occupation recorded was due wholly to his employment which sent him away from home to encounter extra hazard. Eating

and sleeping is vital to service in promotion of the employer's business. Under such circumstances as herein recited we may well paraphrase and apply an old proverb—"they also serve while they eat and sleep." If this man was not doing anything for his employer except when actually experting or while traveling why should his expenses have been paid covering the entire period of his service trip.

The fact that this accident occurred on Sunday and out of working hours affords no substantial defense since Walker was pursuing a line of conduct entirely consistent with the promotion of his employment.

Counsel seems disposed to admit that as a traveling salesman, Walker might have been under coverage but that he could not be so classified. This is a distinction without a difference. How can any line consistently be drawn between men who are employed to travel in the interest of employment, whether as salesmen, collectors, demonstrators or mechanical experts.

The arbitration decision in its holding for all statutory benefits is affirmed.

Signed at Des Moines, Iowa, this 14th day of October, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

Appealed.

DEPARTMENT RULINGS

APPEAL NOT TAKEN IN TIME

J. A. Williams, Guardian of Wayne Paxton, William Paxton, and Ilene Paxton, minors, Claimant,

vs.

R. W. Bogardus, Employer,
Federal Surety Company, Insurance Carrier, Defendants.
J. A. Williams, for Claimant;
Swanson & Perkins, for Defendants.

Ruling on Time Limitation

On the 16th day of December, 1929, there was filed with this department by Ralph Young, deputy industrial commissioner, a decision making award to claimants in this case.

December 24, 1929, there was filed with the department by counsel for the defense a "notice of appeal" from the award of the deputy industrial commissioner to the district court in and for Fremont county, Iowa.

Section 1447 of the code provides:

"Any party aggrieved by the decision or findings of a board of arbitration may, within ten days after such decision is filed with the industrial commissioner, file in the office of the commissioner a petition for review, and the commissioner shall thereupon fix a time for the hearing on such petition and notify the parties."

Since the instrument filed December 24, 1929, giving notice of appeal to the district court in no sense and to no degree complies with these requirements, it seems necessary to hold that said instrument is wholly without force or effect and that it must be denied recognition for any purpose whatever by the Iowa industrial commissioner.

Signed at Des Moines this 21st day of January, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

COMPENSATION PAYMENTS APPORTIONED UNDER SECTION 1403

John Weiler, Employee,

vs.

W. L. Yokom Company, Inc., Employer,
Massachusetts Bonding & Insurance Co., Insurance Carrier, Defendants.

Apportionment of Compensation Payments

Memorandum of agreement between the W. L. Yokom Company, Inc., and Mrs. Lorraine Thompson Weiler filed for record February 17, 1930, recites:

John Weiler of Dubuque, was fatally injured in the employ of this defendant, December 30, 1929. His earnings of $23.76 per week entitled his dependent widow, claimant herein, to weekly payments in the sum of $14.26 for a period of 300 weeks.

Information of record discloses that Mary Jane Weiler, aged about eleven years, daughter of the deceased workman by former marriage, is living with her grandparents at Decatur, Illinois. This daughter will

continue to live separate and apart from the surviving widow, the claimant herein.

It is also shown that a child of the deceased and this claimant will share with its mother in the compensation payments due her as the widow of the deceased John Weiler.

Appeal is made to the Iowa Industrial Commissioner to make equitable apportionment of the compensation payments to be made on account of the death of the said John Weiler under the provisions of section 1403 of the Code of Iowa. In recognition of equities involved order is issued as follows:

For the use and benefit of the daughter by the first marriage, Mary Jane Weiler shall receive out of the weekly payment of $14.26 the sum of $4.00 a week.

The surviving widow, Lorraine Thompson Weiler, for the use and benefit of herself and her aforesaid child shall receive the sum of $10.26 a week, with the understanding that out of this allowance the said dependent widow shall pay all expenses of burial of the deceased John Weiler in excess of the statutory allowance of $150.00 due from the employer.

The Massachusetts Bonding & Insurance Company is hereby directed to make weekly payments to the dependent widow direct in the sum of $10.26. Payment to the dependent daughter, Mary Jane Weiler, in the sum of $4.00 weekly, in accordance with section 1409 of the Code of Iowa, must be made through the Union Trust & Savings Bank of Dubuque, Iowa, trustee for the incompetent for the county of Dubuque.

Dated at Des Moines this 17th day of February, 1930.

A. B. FUNK,
Iowa Industrial Commissioner.

RE-OPENING AND REVIEW OF SETTLEMENT

DISABILITY PERIOD ESTABLISHED BY MEDICAL EVIDENCE

Joseph F. Hall, Claimant,

vs.

Des Moines Coal Company, Employer,
Standard Accident Insurance Co., Insurance Carrier, Defendants.
John T. Clarkson, for Claimant;
Sargent, Gamble & Reed, for Defendants.

Re-Opening Decision

Due to the fall of a huge mass of slate in the mine of the defendant employer, February 25, 1927, this workman sustained very serious injury to his spine and otherwise.

Obligation admitted on the part of the insurer is to the extent of 25 per cent of total and permanent disability, and this action is brought for additional recovery.

The offer of defendants is based on estimates of Dr. O. J. Fay and Dr. J. W. Martin.

In deposition Dr. D. J. Glomset expresses the opinion that 35 per cent of loss of function has been sustained, and Dr. L. D. Powell also testifies in deposition that an estimate of 35 to 40 per cent of loss is justified by the condition of claimant.

At the hearing in re-opening Joseph Hall was rigidly examined on the witness stand. His bearing is that of an honest man. His replies to searching questions suggest painstaking fidelity to veracity. Case history indicates that claimant made unusual endeavor to promote all possible efficiency and earning capacity. Many men in his condition have so far yielded to impairment distress and discouragement as to sacrifice much capacity that might have been developed by courage and determination.

In this situation we must depend largely upon the doctors in the effort to establish justice. We must not lose sight of the estimates of Drs. Fay and Martin, but on the other hand we cannot ignore the opinions of Drs. Glomset and Powell.

In the endeavor to reconcile these reports and in consideration of other developments of this record, the conclusion is reached that settlement should be made on the basis of 30 per cent of total permanent disability requiring payments for a period of 120 weeks, less payments already made, and it is hereby so ordered.

Dated at Des Moines this 24th day of December, 1929.

A. B. FUNK,
Iowa Industrial Commissioner.

DISABILITY FOUND TO BE PERMANENT

R. J. Even, Claimant,

vs.

Wagner-Erling Company, a corporation, Employer,
Southern Surety Company of New York, Insurance Carrier, Defendants.

Re-Opening Decision

This claimant suffered injury to his left arm, left leg and foot and his back, July 29, 1929, in accident arising out of and in the course of his employment by defendant employer. Under tentative settlement agreement entered into by the parties the claimant received compensation from defendant insurer at the rate of $10.38 per week for 31 weeks.

Upon the record in re-opening proceeding, petitioned for by the claimant, it is held that as a result of the injuries sustained in his employment by defendant employer, July 29, 1929, the claimant is permanently disabled 33 1/3 per cent. Wherefore, the defendants are hereby ordered to pay additional compensation at the rate of $10.38 per week for a period of 102 1/3 weeks. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 3rd day of June, 1930.

RALPH YOUNG,
Deputy Industrial Commissioner.

VISION AND HEARING LOST—COMPENSATION EXTENDED

Paul Hyland, Claimant,

vs.

John Gebuhr, Employer,
Employers Mutual Casualty Co., Insurance Carrier, Defendants.

Re-Opening Decision

In this case, heard in re-opening proceeding at Council Bluffs, the claimant suffered injuries about his head February 16, 1928, in accident arising out of and in the course of his employment by defendant employer. The defendant insurer furnished the statutory medical, surgical and hospital benefits and in installments paid the claimant $15.00 per week for forty-five weeks.

Upon the record the defendants are held for one hundred weeks of compensation, including the forty-five already paid, such award being for a substantial permanent loss of vision in the right eye and a more or less indefinite permanent loss of hearing in the left ear. Wherefore, the defendants are hereby ordered to pay the claimant fifty-five weeks additional compensation at $15.00 per week. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 23rd day of December, 1929.

RALPH YOUNG,
Deputy Industrial Commissioner.

DISABILITY HELD NOT DUE TO COMPENSABLE INJURY

C. O. Gregory, Claimant,

vs.

Sinclair Refining Co., Defendants.

Re-Opening Decision

In accidental strain, arising out of his employment by defendant employer, the claimant in this case on February 4, 1928, suffered a ventral hernia at the site of an old abdominal scar. He was operated May 7, 1928, at an expense to the defendant of $221.50. Repair was complete. Under settlement agreement entered into by the parties and approved by the Commissioner the claimant received from the defendant compensation for 17 weeks of temporary disability at $15.00 per week or a total of $255.00.

The case was heard at Oskaloosa, Iowa, February 28, 1929, in re-opening proceeding petitioned for by the claimant who alleged continuing disability as a result of the hernia.

Upon the record it is held that the claimant has failed to discharge the burden of proving that the disability, suffered by him as a result of the hernia and operation for the repair of the same, exceeds that for which he has been paid by the defendant under settlement agreement. The symptoms are all subjective, and if actually existent, are suggestive of adhesions, which according to the preponderance of medical testimony in the record, would be the result of the earlier operation for appendicitis which had no connection with employment. It is pointed out in the record that adhesions could not result from the herniotomy as in this operation in this case there was no incision of the abdominal wall and no stitching through. Recovery is denied and the costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 12th day of March, 1929.

RALPH YOUNG,
Deputy Industrial Commissioner.

CONTINUING DISABILITY NOT DUE TO INJURY

Lester Joy, Claimant,

vs.

Marshall Canning Company & Western Grocery Company, Employers,
U. S. Fidelity & Guaranty Co., Insurance Carrier, Defendants.

Re-Opening Decision

Under settlement agreement entered into by the parties and duly approved by the Commissioner the claimant in this case received from the defendant compensation at the rate of $12.97 per week up to January 20, 1928, for injury suffered by him November 21, 1927, in accident arising out of his employment by defendant employer.

In re-opening proceeding, petitioned for by the claimant, and had at Des Moines, January 29, 1930, it is held that the claimant has failed to discharge the burden of proving that the disability resulting from his injury in the employment exceeded that for which he has already been paid, it appearing as the greater probability that his present complaints and ailments are wholly independent of his injury in the employment and have no connection therewith. Wherefore, recovery is denied and costs of the hearing are taxed to the claimant.

Signed at Des Moines, Iowa, this 6th day of February, 1930.

RALPH YOUNG,
Deputy Industrial Commissioner.

DISABILITY FOUND TO BE PERMANENT

William Hockman, Claimant,

vs.

Old King Coal Company, Employer,
Bituminous Casualty Corp., Insurance Carrier, Defendants.

Re-Opening Decision

The claimant in this case suffered a fracture back injury, February 21, 1929, in accident arising out of and in the course of his employment by defendant employer. Compensation was paid by defendant insurer for 32 weeks at $15.00 per week under tentative settlement agreement entered into by the parties.

Upon the record as made in re-opening proceeding at Centerville, May 23, 1930, petitioned for by the claimant, it is held that the claimant is permanently disabled 12½ per cent as a result of his injury in the employment. Wherefore, the defendants are ordered to pay additional compensation in the amount of $270.00 which represents 18 weeks at $15.00 per week. Defendants are also ordered to pay the costs of the hearing.

Signed at Des Moines, Iowa, this 28th day of May, 1930.

RALPH YOUNG,
Deputy Industrial Commissioner.

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