Occupational Health

Workers' Compensation and the Physician

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WORKMEN'S compensation laws have been enacted in all States and Territories of the United States. With the passage of the Longshoremen's and Harbor Workers' Compensation Act in 1927 and the Federal Employees' Compensation Act in 1908, they have been extended to all Federal jurisdictions and positions, including the District of Columbia.

Prior to the enactment of such legislation, an employee had a common law right of action against his employer for injuries arising out of and in the course of employment, dependent upon proof of his employer's negligence. Therefore, the common law recognized and enforced the liability of an employer for injuries to his employees caused by the employer's negligence. That rule, however, became qualified by the legal recognition of common law defenses of the employer, which were the employee's assumption of risk, the employee's contributory negligence, and the negligence of the employee's fellow workers.

The enactment of workmen's compensation laws imposed upon the employer liability for those injuries arising out of and in the course of employment that were made compensable by the statute. They deprived the employer of his common law defenses and also deprived the employee of his right of common law action for such injuries, limiting the amount of compensation payable to the injured employee but assuring him of weekly benefits payable over a fixed period of time.

The laws of the several States, the Longshoremen's and Harbor Workers' Act, and the Federal Employees' Act are not uniform with respect to their provisions. Some provide compulsory insurance, while some provide elective insurance. Most laws grant certain exemptions based upon the number of employees. Some exclude farm workers from the benefits provided by the law. Some provide compensation for all occupational disease; others limit compensation to scheduled diseases. These laws vary with respect to the waiting period between the date of injury and the date for the beginning of payment of compensation. Length of time and amount of payment of benefits vary for temporary total disability, permanent partial disability, permanent total disability, and death (*1,2*).

The original acts contemplated coverage for accidental injuries, that is, for trauma occurring at a specific time and at a specific place while the worker was in the employ of a specific employer. By judicial construction and legislative amendments, these statutes have been gradually extended to cover occupational diseases. But what is an occupational disease? While the term has been the subject of many definitions, the basic concept is that it is a disease characteristic of and peculiar to a given employment. The fact remains, however, that many diseases of human life that may be contracted by the employee in his employment have been the subject of awards of compensa-

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tion under these statutes. The trend of commission and court decision has been liberal in favor of a given claimant; in practice the burden of proof rests upon the employer and insurer to prove that the disease or injury did not arise out of and during the course of employment or is otherwise compensable under the statute.

"Injury"

Again, there is concern as to the legal concept of the term "injury." The following quotations from judicial decisions are indicative of legal construction of that term:

"'Injury' as used in Workmen's Compensation Act and as applied to a human being, includes whatever change in any part of the system which produces harm or pain, or lessens the facility of natural use of any bodily activity or capability." *McLean's* case, 93 N. E. 2d 233, 234, 326 Mass. 72.

"In common speech the word 'injury' as applied to a personal injury to a human being, includes whatever lesion or change in any part of the system produces harm or pain or a lessened facility of the natural use of any bodily activity or capability." *Furlong* v. *O'Hearne*, D. C., Md., 144 F. Supp. 266, 270.

"Acceleration, aggravation, or lighting up of preexisting disease as a result of employment is 'injury' for which full compensation is recoverable for entire disability suffered." *Tanenbaum* v. *Industrial Accident Commission*, 52 P. 2d 215, 216, 152 Oreg. 205.

"An employee, helping to erect a stone crusher, made several trips in carrying water in buckets, and then undertook to carry, from a wagon to a car, bags of coal each weighing approximately 150 to 200 pounds. The first to be taken was handed to him and carried to the car. The next bag was rested by the passer on the rim of the wagon wheel. The employee reached to take it from the wheel, and a minute later he was lying on the ground in a dying condition. The medical examiner testified that the employee's heart muscle was tired and exhausted at the time of his last work, and that his final exertions caused the inability of the heart to perform its work. Testimony of two physicians justified this assumption. Held to sustain a finding that the death of the employee was caused by 'injury,' within the Workmen's Compensation Act." *In re Fisher*, 108 N. E. 361, 220 Mass. 581.

Summarizing the legal construction of this term, it may be said that our courts generally construe the term to mean "harm to any part of the body."

"Disability"

For the legal concept of the term "disability," we again find different definitions. The admitted purpose of compensation statutes is to propose an amount of compensation to be payable in terms of a percentage of the loss of wage. This is peculiar to all of our statutes and follows the pattern of the laws adopted by the British House of Commons, which form the precedent of the adoption of our laws (*3*). Therefore, in the administration of the laws originally enacted in this country the basic purpose was to relate compensation for disability arising out of and in the course of employment to the wages earned by the employee during that employment. The trend of our commissions, legislators, and courts has been to differ from that concept, and today we find three distinct concepts of the term "disability" recognized in different States:

1. Inability to earn full wages.
2. Total inability to perform any other work.
3. Actual incapacitation of an employee from performance of his work in the last occupation in which he was engaged.

There is a growing tendency on the part of administrative agencies to divert from the principle of awarding compensation based on loss of wages, and to compensate for injury irrespective of wage loss. In certain States, appellate procedure provides for jury trials, and the tendency to construe compensation claims as damage cases has developed.

Illustrative of this point, we find the following concepts of "disability" in court decisions:

"The word 'disability,' as used in Workmen's Compensation Law, means impairment of earning capacity, and not loss of a member, and is that which disqualifies an employee from doing work in whole or in part." Comp. St. 1929, Sections 48–101 et seq., as amended. *Wilson* v.

Brown-McDonald Co., Neb., 278 N. W. 254, 261, 116 A. L. R. 702.

"'Disability' may result as well from the condition of the mind and nerves as from other causes, and where a man is so inattentive or forgetful as a result of mental disorder that he cannot be trusted to carry on even simple forms of work he is as 'disabled from earning a livelihood' as one who must refrain from work on account of the condition of his vital organs." *United States* v. *Taylor*, C.C.A.N.C., 110 F. 2d 132, 134.

"'Disability' within Compensation Act occurs when employee is disabled from rendering further service by present physical inability to perform work in usual and customary way, and in absence of such disability, employee sustains no compensable injury though employment may have subjected him to exposure which contributed to ultimate disability from occupational disease." St. 1931, Sections 102.01, 102.03 (1) (a). *North End Foundry Co.* v. *Industrial Commission*, 258 N. W. 439, 217 Wis. 363.

"The test of 'disability' under the Louisiana Workmen's Compensation Act is whether employee can do same type of work he was doing at time of his accident in the customary way without an unusual difficulty or pain." *Strickland* v. *W. Horace Williams Co.*, C. A. La. 230 F. 2d 793, 797.

One of the sequels to these changing concepts of disability is the adjudication of claims for compensation as claims for damages, and, until this trend is reversed, the potential of claims arising under our workmen's compensation statutes will be staggering. The result of this tendency is to administer our workmen's compensation statutes as health insurance statutes. Certainly this was not the original purpose of the enactment of such statutes. If that objective is socially desirable, it would seem proper to amend the laws, changing the designation from workmen's compensation laws to health insurance laws.

Role of Industrial Physician

Generally speaking, industrial medicine has been something of a stepchild of the medical profession. Doctors eminently qualified in particular phases of medicine have been and are reluctant to become involved in any controverted case where a lawsuit or compensation claim arises. Most doctors do not wish to appear as witnesses in court or commission hearings. They resent legal cross-examination and the controversion of their opinions by other members of their own profession.

The basic issues in compensation claims are twofold:

1. Whether or not the claimant sustained injury arising out of or in the course of employment.

2. The nature and extent of disability.

The second issue involves the determination of medical questions. Either side is permitted to offer such medical testimony in support of its claim as the litigant deems proper or necessary. Frequently, conflicting testimony is presented. For example, Dr. A, in support of the claim, may take the unqualified position that employment and injury were related; Dr. B, controverting that opinion, may be just as firm in his opinion that there was no such causal relationship.

What can be done to evaluate properly such medical testimony? As illustrative of the role that industrial medicine may play in this matter, consideration is given to heart disease and the pneumoconioses, which may occur during employment.

Problems in Heart Cases

In the trial of causes involving heart cases, three medical questions frequently arise:

1. Was trauma a factor in the heart attack?

2. Is there a direct causal relationship between employment and the heart attack that may be sustained by claimant?

3. Has employment contributed to the aggravation of an existing heart condition?

In the light of present medical knowledge, there are insufficient data for the proper evaluation of all heart cases.

As to the first question, where trauma is immediately and directly related to the heart attack, there should not be any question as to the compensability of the claim.

As to the second and third questions, authoritative criteria have not been accepted to determine whether there is a direct causal relation

between employment and a heart attack, or whether employment has contributed to the aggravation of an existing heart condition. With respect to these questions, courts and compensation commissions are perplexed in their attempts to administer justice when confronted with conflicting medical opinions. As indicative of these problems, reference is made to papers presented by Brig. Gen. Thomas W. Mattingly, now chief of the Department of Medicine at Walter Reed Army Hospital, and Dr. Richard J. Clark, member of the Rehabilitation Committee of the American Heart Association (*4*). Summarizing his discussion of the pathogenesis of heart disease, General Mattingly made the following statement:

"When the exact cause of heart disease is known, there are few occasions where the cause can be directly related to work in general or to a specific occupation. In many instances where the exact cause of heart disease is not known, there has been much speculation as to this relationship and many unjust and conflicting medical opinions and legal decisions may have resulted.

"The natural course of heart diseases has been stressed in the hope that it will provide a better understanding of the problem of aggravation of preexisting heart disease. This appears to be a major obstacle in appropriate employment of the known cardiac patient as well as adjudication of claims arising from his subsequent disability and death. It is believed that a more appropriate, workable, and equitable system should be evolved for the solution of this problem than that provided by the Workmen's Compensation Act and Associations of Industrial Accident Boards and Commissions. This will be necessary before the economy and health of any nation and its unfortunate cardiac inhabitants can profit by suitable employment."

Dr. Clark, who participated in the panel discussion, made the following statements:

"First, what types of cardiac death or disability may be clearly and completely related to work? Penetrating wounds of the heart, incurred in the course of employment, leave no room for debate. When there is nonpenetrating injury to the chest, which is followed within a few hours by disability and clear-cut electrocardiographic evidence of heart muscle or pericardial damage, or in the case of death where autopsy reveals laceration or rupture of any portion of the cardiovascular system, causal relationship may be reasonably assumed. Clear evidence of acute heart involvement or death from electrical shock, toxic gases or other poisonous agents, incurred in the course of employment, indicate direct causal relationship. Relatively rare cases of so-called cor pulmonale, heart disease secondary to pulmonary disease, when this pulmonary disease is clearly of industrial origin, belong in the compensable category. This first group, admittedly a small one, is made up of the conditions where the heart disease is actually caused by industrial work and where compensation should be granted without question.

"In practically every other variety of heart damage, we deal with aggravation of underlying disease, and it is here that tremendous controversy begins. Let us examine circumstances where aggravation may be reasonably attributed to the job. When a patient with any type of heart disease, congenital, rheumatic, hypertensive, or arteriosclerotic, reaches the point of heart muscle weakness, usually associated with enlargement, strenuous exertion or a sudden increase in energy demands, may precipitate acute heart failure, usually manifested by flooding of the lungs and inability to breathe satisfactorily. This may result in sudden death, and by sudden I mean immediate; in this case there is no doubt of aggravation. If sudden nonfatal heart failure develops, there is a situation of disability, temporary but not permanent in character, which is due to the exertion. However, when the acute heart failure has subsided, if the physician decides that the patient can no longer return to his job, it is probable that the resulting permanent disability arises from the underlying disease alone and that the acute heart failure merely pointed up that the patient's reserve was not adequate for the work entailed.

"Apart from acute heart failure, the chief problem is that of coronary artery disease in its various manifestations, which Dr. Mattingly has outlined for you. It is generally accepted that coronary arteriosclerosis is not caused by work."

The above quotations demonstrate the problems confronting courts and administrative agencies in attempting to administer our laws when conflicting medical opinions are introduced into evidence in support of or against the allowance of a given claim.

The Pneumoconioses

The problems resulting from claims for the pneumoconioses received national attention on April 15, 1936, when the Honorable Frances Perkins, then Secretary of Labor of the United States, appointed four committees to investigate silicosis in American industry. The committees considered medical control, engineering control, the economic, legal, and insurance phases, and the regulatory and administrative phases of the silicosis problem. A series of conferences, held in Washington under the direction of the U. S. Department of Labor, resulted in the publication of several reports (*5*, *6*).

From the time the reports of the Department of Labor were published, statutory provisions for compensation for the pneumoconioses have been among the most controversial subjects presented to our legislatures. There is no uniformity under the compensation statutes relating to provisions for the compensation of these diseases or for the method of determining the claimant's disability. Basic to the handling of a workmen's compensation claim is proper diagnosis, evaluation of disability, if any, and the decision as to whether or not the claimant should continue work in which he will be exposed to dust.

The medical profession has found no approved method for curing the disease. It differs from other types of industrial diseases in that it occurs as the result of the accumulative inhalation of fine particles of dust (silicon dioxide) over an extended period of time. This may occur while the employee is in the employ of one or several employers. Similarly, it may occur while the employer is insured by one or several insurance carriers. And the medical profession has found no generally accepted method for the evaluation of disability resulting from the disease.

In many instances, employees have been subject to dust inhalation with demonstrable evidence of the disease prior to the time that applicable amendments to workmen's compensation acts became effective. This has resulted in various provisions in our statutory enactments that attempt to make special provisions for certain of the aforegoing features. Included among such provisions are the following:

1. Limitation upon payments of benefits for the pneumoconioses, as of January 1, 1955 (Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, and West Virginia).

2. Denial of compensation for partial disability (Arizona, Colorado, Florida, Idaho, Maine, Maryland, Michigan, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, South Dakota, and Utah).

3. Monetary limitations for medical benefits (Arizona, Arkansas, Illinois, Nevada, North Carolina, Utah, and Vermont).

4. No provision for medical treatment in cases of silicosis (West Virginia).

Other statutory provisions peculiar to these diseases include the requirement (*a*) that the employee must have been employed in the given State where claims are made for a fixed period of time; (*b*) that claim for compensation must be filed within a fixed period of time after last injurious exposure or disability; and (*c*) that in death cases, compensation is payable only where death has occurred within a limited period of time after the last injurious exposure to the hazard of the disease.

Why have statutory provisions of the types above mentioned been incorporated into law? All persons engaged in industrial operations are exposed in some degree to the inhalation of dust, and with increasing age there may be demonstrable evidence of changes of the lungs which may be interpreted as resulting from or caused by dust inhalation. Impairment of lung function accompanied by increasing age may well disqualify an employee from employment in a dusty trade. Again, a given employer or insurance carrier may assume the risk of accrued or potential liability for the dust inhalation

that the employee may have been subject to in prior employment. Add to this the problems of conflicting medical opinion as to the diagnosis of the disease, evaluation of disability resulting therefrom, and prognosis in a given case, and it will be readily understood that with respect to statutory provisions compensating the pneumoconioses, a problem separate and distinct from other types of injuries or occupational diseases is presented to the administrative agencies.

There is general agreement among employers and employees that occupational diseases, including the pneumoconioses, can and should be prevented. In modern industry it is simply good business for the employer to place high on his agenda the establishment of a division of industrial hygiene or department of engineering control for the purpose of determining and controlling all occupational hazards to which the employee may be subject. The administration of such departments leads inevitably to decreased compensation costs and better industrial relations. Employees are justly demanding clean, safe places in which to work and safe tools with which to work; State and Federal departments of health and labor are giving more and more attention to the conduct of industrial operations to the end that the health of employees may be properly protected. Some occupational diseases can be cured; some cannot. Some become the primary factor in the death of the injured employee; with others the disease so sustained may be aggravated by some other condition, or it may aggravate an existing health condition.

Since the primary questions concerning claims for the pneumoconioses or other occupational disease are medical, involving diagnosis, evaluation of disability, and the factor of the disease in causing death, we again raise the query in determining compensability of the claim, "What agency can best resolve these questions?"

Medical Boards

Compensation administrative agencies and courts generally are composed of lawyers who must reach decisions from conflicting evidence. In certain cases, questions of medical fact may be submitted to juries for determination. Recognizing the importance of the medical issues in compensation claims, the statutes of many States now make provision for medical boards and medical examiners to pass upon controverted medical claims, to resolve controverted medical claims, or to advise the administrative agency which seeks independent and impartial decisions. In most controverted cases, honest differences of medical opinion may exist between the doctor testifying on behalf of the employer or insurer and the doctor testifying on behalf of the claimant employee. Therefore, medical examiners interested only in obtaining justice for the litigants would seem to be best qualified to resolve the medical issues that are presented by the claim.

Differences exist in the statutes of various States relating to the role that medical boards or medical examiners may play in administration of the law. Some statutes provide for hearings before medical boards with the right of appeal upon these issues to the State administrative agency. Some permit the ultimate appeal to courts for the final determination of medical facts. Some statutes provide that the medical examiners shall act in an advisory capacity to the administrative agency. There is no uniformity in these provisions, but legislative recognition is being given to the importance of this feature of the law so that necessary amendments may be made to take advantage of independent and impartial medical opinion.

There should be no attempt to exclude from the record in a given case the testimony of any doctor which is offered by one of the litigants, for the administrative agency would certainly benefit by the advice of such a medical board or medical examiner in the ultimate evaluation of that testimony in its relationship to the issues presented in the claim.

This raises the question as to how the suggested result may be achieved. The answer is that it can be accomplished only by legislative amendments to make adequate and proper statutory provisions for the establishment of medical boards or examiners. Perhaps the most significant role to be filled in the accomplishment of this objective is that to be played by our medical societies. They have, or should

have, the confidence and respect of the various communities where legislation of this type would be considered, and upon them rests the primary burden of taking the initiative to find some solution to the problem.

The ideas presented here are of themselves controversial. There is no agreement on them among employers, insurers, or employees, whose interests may be vitally affected by the decisions to be made. There is no agreement among members of the legal profession as to the value of such boards or examiners to advise administrative agencies, and perhaps there are differences of opinion among doctors not only as to the value of such boards and examiners but also as to the ability to get the best qualified members of that profession to serve. However, the primary objective should be the amendment of the laws to resolve these questions in the best manner possible without bias or prejudice and without the attendant expense to which litigants may be subjected in presenting medical testimony. Certainly members of such boards, by their experience in adjudicating cases and studying the industrial conditions complained of, should be invaluable to the administrative agency in its ultimate decision.

REFERENCES

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(3) Dodd, W. F : Administration of workmen's compensation. New York, The Commonwealth Fund; London, Oxford University Press, 1936, p. 16.

(4) U. S. Bureau of Labor Standards: Workmen's compensation problems. IAIABC Proceedings—1956. Bull. No. 192. Washington, D. C., U. S. Government Printing Office, 1957, 317 pp.

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(6) U. S. Bureau of Labor Standards: National Silicosis Conference. Pt. 1. Report on medical control. Pt. 2. Report on engineering control. Pt. 3. Report on economic, legal, and insurance phases. Pt. 4. Report on regulatory and administrative phases. Bull. No. 21. Washington, D. C., U. S. Government Printing Office, 1938.

New Courses in Environmental Health

Eleven training courses in radiological health, air pollution, water pollution, and food sanitation have been scheduled for January, February, and March, 1958, at the Robert A. Taft Sanitary Engineering Center in Cincinnati, Ohio.

The training courses, part of a continuing program, cover basic education in the environmental engineering field and advanced work in specialized subjects. The first quarter schedule is presented below.

Basic radiological health, January 13–24.

Atmospheric sample analysis, January 13–24.

Environmental health aspects of nuclear reactor operations, January 27–31.

New techniques in bacteriological examination of water, January 27–31.

Microbiological and chemical examination of milk and dairy products, February 3–7.

Laboratory methods for prevention and control of foodborne disease, February 10–14.

Detection and control of radioactive pollutants in air, February 17–21.

Detection and control of radioactive pollutants in water, February 24–28.

Advanced training for sanitary engineers in water supply and water pollution, March 3–14.

Air pollution effects on vegetation, March 10–12.

Sanitary engineering aspects of nuclear energy, March 17–28.

Admission of qualified individuals to all courses is governed largely by priority of application. No tuition fee is charged. Applications should be sent to Chief, Training, Robert A. Taft Sanitary Engineering Center, 4676 Columbia Parkway, Cincinnati, Ohio.