

Volume 6 | Issue 3

1955

Workmen's Compensation

Oliver Schroeder Jr.

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Oliver Schroeder Jr., *Workmen's Compensation*, 6 W. Res. L. Rev. 325 (1955)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol6/iss3/30>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

residuary legatees upon his wife's death. Subsequently, a guardian was appointed for the testator, on the ground of physical incompetency. Testator gave his written consent to this appointment. Thereafter, the guardian, with the consent of the testator and testator's wife, sold the realty in question. Upon the death of the testator a large amount of the proceeds of such sale remained. Testator's widow maintains such proceeds passed to her under item two of the will, to the exclusion of the provisions of item four.

In distinguishing the present case from cases involving *mentally* incompetent testators, the court of appeals held the devise to have been deemed by the sale of the realty and therefore to pass under item four of the will.

ROBERT C. BENSING

WORKMEN'S COMPENSATION

Workmen's compensation decisions covered a wide variety of subjects.

An oral application for compensation claim filed after the statutory amendment requiring written notice of the claim was held invalid.¹ The application was made within the two-year statute of limitations period on an injury occurring before the amendment. The remedial nature of the statutory charge supports its being applied to all injuries not yet the subject of a claim regardless of when the injury occurred.

When a claimant seeks additional compensation based on the employer's alleged violation of a specific safety requirement the Industrial Commission rule requires a filing within 30 days of the award. He is barred thereafter from amending his original claim for additional compensation if made nearly four months after such award despite the general ten-year period of continuing jurisdiction over a compensation claim.²

A claimant with a well-developed simple silicosis applied for an award for change of occupation. His application received the approval of the silicosis referees and the medical board of review. The worker was no longer employed at the place where he obtained the silicosis when the referees rendered their approval. This fact, however, did not preclude such an award for changed occupation.³ An aftermath of this decision was the issue of whether claimant could be given partial disability compensation under Ohio Revised Code Section 4123.57 even though he left his

¹ *Shira v. B.F. Goodrich Co.*, 121 N.E.2d 295 (Ohio App. 1952).

² *State ex rel. De Boe v. Industrial Commission*, 161 Ohio St. 67, 117 N.E.2d 925 (1954).

³ *State ex rel. Nemeth v. Industrial Commission*, 161 Ohio St. 179, 118 N.E.2d 541 (1954).

job before this benefit award. The court determined that claimant need not remain working at the occupation at which he was injured until after the partial disability award has been made and then change his employment within three months. The partial disability benefit is an additional one, over and above the totally disabled benefits of Ohio Revised Code Section 4123.68.⁴

The liberal construction of the workmen's compensation law even on jurisdictional issues was demonstrated again last year. An application to the common pleas court to determine the compensability of a claim denied by the Industrial Commission on rehearing disclosed no facts indicating that the filing had been made within the 60 days statutory period following the Commission's denial. The jurisdiction of the common pleas court was questioned. The court preferred to peruse the rehearing record certified by the Commission to the court to locate factual support to satisfy the jurisdictional requirement. The court even suggested that if the Commission had certified records which it was not authorized to do, these too would be searched for factual support of the 60 days jurisdictional requirement.⁵

A stricter construction was given in interpreting the term "employee," however. This word does not include a worker at an employer's restaurant, where he was injured, when the regular employment of the worker was at the same employer's rooming house. Ohio Revised Code Section 4123.10 requires an employee to be in the "same business" or "same establishment" as the employer to be an employee for purposes of the Act.⁶ On the other hand death benefits are more liberally construed to be the benefits in effect on the date of death not on the date of injury which caused the death.⁷

An employer was held in a common pleas opinion last year not entitled to recover from a negligent third party who killed or injured the employer's employees. This negligence had increased the cost of premiums. Only if there be a contractual duty to the employer from the third party would damages be allowed for such an amount.⁸

The causal relationship issue and the admissible evidence issue provided several interesting cases last year. An employee without help moved heavy rolls of paper an unusual distance. He sustained a coronary occlusion. The court held that he had received an internal compensable injury in the course of and arising out of employment.⁹ However, an employee whose work

⁴ State *ex rel.* Nemeth v. Industrial Commission, 121 N.E.2d 266 (Ohio App. 1953).

⁵ Booker v. Industrial Commission, 121 N.E.2d 161 (Ohio App. 1953)

⁶ State v. Beatty, 94 Ohio L. Abs. 457, 116 N.E.2d 17 (Franklin Com. Pl. 1952)

⁷ State *ex rel.* Jones and Laughlin Steel Corp. v. Dickerson, 160 Ohio St. 223, 115 N.E.2d 833 (1953)

⁸ Decker Construction Co. v. Mathis, 122 N.E.2d 38 (Franklin Com. Pl. 1953)

⁹ Williams v. Industrial Commission, 95 Ohio App. 275, 119 N.E.2d 126 (1953)

became too hard to perform because of physical weakness and illness induced by the regular course of nature from usual and normal activities of employment presents no compensable causation.¹⁰ Evidentiary issues were determined; hospital records were allowed in evidence on the issue of whether death resulted in the course of and arising out of employment;¹¹ and an expert medical witness for the state was permitted to answer a hypothetical question which contained an ambiguous statement made by the employee's physician concerning the time the employee was discovered to have an enlarged heart.¹² In the former case, the argument of the privileged communications between physician and patient was rejected; in the latter case the Commission was permitted to use the ambiguity inherent in the hypothetical question to its own best advantage.

In another case one verdict submitted to the jury for consideration stated that the employee had not been injured on a specific date. The jury returned this verdict which was erroneous and prejudicial. The issue of the date was in the case because certain apparatus which allegedly injured the claimant was not on hand on the specific date in question. The court held proof of a specific date of the injury was not essential for recovery, and therefore the verdict submitted with this date included was in error.¹³

OLIVER SCHROEDER, JR.

¹⁰ *Lakatos v. Industrial Commission*, 94 Ohio App. 486, 116 N.E.2d 742 (1952).

¹¹ *Perry v. Industrial Commission*, 160 Ohio St. 520, 117 N.E.2d 34 (1954)

¹² *Kemp v. Industrial Commission*, 122 N.E.2d 14 (Ohio App. 1953).

¹³ *Wills v. Industrial Commission*, 118 N.E.2d 233 (Ohio App. 1950)

WESTERN RESERVE LAW REVIEW

Member of the National Conference of Law Reviews

Published for THE FRANKLIN THOMAS BACKUS SCHOOL OF LAW
by THE PRESS OF WESTERN RESERVE UNIVERSITY, Cleveland 6, Ohio

EDITORIAL BOARD

RICHARD J. CUSICK, JR., *Editor-in-Chief*

RUSSELL Z. BARON, *Managing Editor*

CHESTER E. GORDON, *Notes Editor*

RICHARD E. GUSTER, *Recent Decisions Editor*

William V. Cawley

Bernard H. Niehaus, Jr. Fred Siegel

Frank H. Harvey, Jr.

Phyllis J. Offenbacher Harry Stein

Arthur S. Leb

Charles R. Perelman James E. Wanner

Alfred L. Margolis

Thomas S. Schattenfield William L. Ziegler

SAMUEL SONENFIELD, *Faculty Adviser*

WALTER PROBERT, *Assistant Faculty Adviser*

WESTERN RESERVE LAW REVIEW

Volume VI, Pages 329 to 422

Western

Summer 1955

Published for

THE SCHOOL OF LAW OF WESTERN RESERVE UNIVERSITY

Copyright 1955 by the Press of Western Reserve University

ONE DOLLAR TWENTY-FIVE PER COPY

FIVE DOLLARS ANNUAL SUBSCRIPTION