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Workmen's Compensation

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estate, reserving only the mineral rights in it. A petition was filed to construe the will. The court held that the testator's selling of the real estate did not adeem the entire devise, since the sale was not of the testator's entire interest in the real estate.[26]

Analyzing the law of Texas, the situs of the property, the court held that under that law the reservation of mineral rights constituted an interest in real estate. Accordingly, the devise remained effective as to the reserved mineral rights, since the testator's will "attaches to any portion [of the real estate] undisposed of by the deed 'pro tanto.' "[27]

GEORGE N. ARONOFF

WORKMEN'S COMPENSATION

Over fifty years ago, Ohio established its workmen's compensation program. A major purpose of this social insurance for injured workmen was to provide speedy payment of claims through *simple administration.* Today in controversial claims this purpose is frequently not achieved. The cumbersome administrative and judicial appeal procedures are prime reasons for this failure. Appeals are too often time consuming and confusing.

APPEAL PROCEDURES

Several judicial decisions reported in 1962 emphasize these weaknesses. In *Parker v. Young*[1] the supreme court held that an order of the Industrial Commission refusing an appeal from an order of the Regional Board of Review could not be appealed to the court of common pleas. The appellant must appeal directly to the common pleas court from the decision of the Regional Board of Review.

Further, a court of appeals held that, when an employer has appealed to the court of common pleas from a prior award, the employee can require the Commission to order the Administrator of the Bureau of Workmen's Compensation to hear and determine the employee's application for additional compensation.[2] When the employer files the notice of appeal in the court of common pleas, Ohio Revised Code section 4123.519 requires that the employee file a statutory petition within thirty days or his claim will be considered abandoned.[3] The employer's notice of appeal, however, need not state the name of the Administrator, even though that public officer must be a party to the proceedings.[4]

26. *In re* Will of Knickel, 185 N.E.2d 93 (Ohio P. Ct. 1961).
27. *Id.* at 95.

The Commission has no jurisdiction to modify or revoke an order denying an employer's appeal, where no evidence of new and changed conditions subsequent to the order has been presented.[5] In *State ex rel. Oberlin v. Industrial Comm'n*[6] the employer had not presented any such evidence and thus the Commission lacked jurisdiction to refer the medical issues to a medical board for consideration, three months after the Commission had ordered the employer's appeal denied.

RETROACTIVITY

Legislative amendments to the Workmen's Compensation Act generally invoke the Ohio constitutional provision prohibiting retroactive legislation.[7] By interpretation, the courts have held that procedural changes may be applied retroactively. The constitution prohibits only substantive retroactivity.[8] The issue which becomes acute in workmen's compensation is what is a substantive matter? The right to compensation for injury is clearly substantive. Hence that portion of Ohio Revised Code section 4123.519 which seeks to apply the new amendments defining an "injury"[9] to cases then pending in court on the effective date of the act is invalid.[10] Also the amendment requiring only a majority, not unanimous, vote of the Commission to award additional medical expenses was held to be substantive.[11] The statutory provisions in force at the time of injury therefore must apply. However, the right of appeal from the order of the Commission to a court is strictly procedural when the claimant's appeal involves the issue of the extent of disability. The legislature may take away this right of appeal after the injury date even though the claim is pending.[12]

ADMINISTRATIVE MATTERS

In *Luft v. Young*[13] the Industrial Commission rule barring recovery on medical, hospital, and nursing service bills unless filed within two years from rendition of services was held valid.

1. 173 Ohio St. 464, 178 N.E.2d 798 (1961). *Accord,* Gilliman v. Frigidaire Div. Gen. Motors Corp., 115 Ohio App. 551, 186 N.E.2d 142 (1961).
2. State *ex rel.* Serafin v. Industrial Comm'n, 113 Ohio App. 405, 179 N.E.2d 90 (1961).
3. Keenan v. Young, 179 N.E.2d 556 (Ohio C.P. 1961).
4. Milenkovich v. Drummond, 181 N.E.2d 814 (Ohio C.P. 1961).
5. State *ex rel.* Oberlin v. Industrial Comm'n, 114 Ohio App. 135, 178 N.E.2d 250 (1961).
6. *Ibid.*
7. OHIO CONST. art. II, § 28.
8. Weil v. Taxicabs of Cincinnati, 139 Ohio St. 198, 39 N.E.2d 148 (1942).
9. OHIO REV. CODE § 4123.01(C) (Supp. 1962).
10. Hearing v. Wylie, 173 Ohio St. 221, 180 N.E.2d 921 (1962).
11. State *ex rel.* Jeffrey v. Industrial Comm'n, 183 N.E.2d 256 (Ohio Ct. App. 1955) .
12. Lotti v. Ternstedt Div., Gen. Motors, 113 Ohio App. 496, 178 N.E.2d 815 (1961).
13. 114 Ohio App. 73, 180 N.E.2d 292 (1961).

In *In re Unauthorized Practice of Law*[14] the Court of Appeals for Cuyahoga County defined what constitutes the practice of law within the workmen's compensation program. The court decided that, beginning with the claimant's application for rehearing, in any procedure after the Administrator has entered his decision, only a licensed attorney may represent the claimant.[15]

SUBSTANTIVE MATTERS

Who Is an "Employee"?

A salvage company had an exclusive contract to go onto a city dump to retrieve materials. Only the company's employees and pickers who were paid on the basis of what they gathered were allowed to enter the dump. A deceased picker who had worked under these conditions for a long period of time was held to be an employee for compensation purposes and not an independent contractor.[16] On the other hand, a regular employee may move outside the employment circle for compensation purposes. A route salesman did just that when he parked and locked the employer's truck in the evening, visited beer taverns to drink, accepted a ride with a stranger to a nearby town to retrieve his route book for the next morning's work, and was injured during the ride.[17]

What Is an "Injury"?

In *Hearing v. Wylie*[18] the supreme court was confronted with a claim for benefits for a death due to a ruptured appendix. The rupture was allegedly the result of an injury received while lifting a hundred-pound section of beef. Prior to this case, the decisions were in apparent conflict as to whether "injuries accidental in character and result were compensable the same as injuries caused by external accidental means."[19] In the three most recent cases on this point,[20] the supreme court held that

14. 185 N.E.2d 489 (Ohio Ct. App. 1962).

15. See generally Schroeder, *Survey of Ohio Law — Workmen's Compensation,* 13 W. RES. L. REV. 548, 552-53 (1962).

16. Birchak v. Young, 183 N.E.2d 148 (Ohio Ct. App. 1962).

17. Stephens v. Young, 115 Ohio App. 13, 184 N.E.2d 112 (1961).

18. 173 Ohio St. 221, 180 N.E.2d 921 (1962). In Wideman v. Young, 178 N.E.2d 805 (Ohio Ct. App. 1961), a court of appeals, following Dripps v. Industrial Comm'n, 165 Ohio St. 407, 135 N.E.2d 873 (1956), (See text accompanying notes 19 & 20 *infra.*), denied compensation to an employee who had suffered a "catch" in his back while shoveling sand but while doing nothing out of the ordinary.

19. Hearing v. Wylie, 173 Ohio St. 221, 222-23, 180 N.E.2d 921, 922 (1962). See Schroeder, *Survey of Ohio Law — Workmen's Compensation,* 11 W. RES. L. REV. 453 (1960); Schroeder, *Survey of Ohio Law — Workmen's Compensation,* 10 W. RES. L. REV. 471 (1959).

20. Davis v. Goodyear Tire & Rubber Co., 168 Ohio St. 482, 155 N.E.2d 889 (1959); Artis v. Goodyear Tire & Rubber Co., 165 Ohio St. 412, 135 N.E.2d 877 (1956); Dripps v. Industrial Comm'n, 165 Ohio St. 407, 135 N.E.2d 873 (1956).

such injuries were not compensable. But, as the court recognized, the 1959 amendment of Ohio Revised Code section 4123.01, defining injury as "any injury, whether caused by external accidental means or accidental in character and result,"[21] was apparently intended to change the results of these decisions and allow compensation for the type of injury that had occurred in the instant case. However, the particular claim was disallowed because of the court's determination that the amended definition of "injury" could not be applied retroactively.[22]

Judge Zimmerman[23] dissented, pointing out that the 1959 amendment of Ohio Revised Code section 4123.01 did nothing more than clarify the law as it already existed and that injuries similar to that suffered by the claimant were compensable prior to the amendment.[24] Judge Taft also dissented on the ground that *Malone v. Industrial Comm'n*[25] and *Maynard v. B. F. Goodrich Co.*,[26] two cases which had held that this particular type of injury was compensable, have never been overruled, implying that the 1959 amendment had not changed the law and thus there was no problem of retroactive application.[27]

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21. OHIO REV. CODE § 4123.01(C) (Supp. 1962).

22. Hearing v. Wylie, 173 Ohio St. 221, 224, 180 N.E.2d 921, 923 (1962). See text accompanying note 10 *supra.*

23. Hearing v. Wylie, 173 Ohio St. 221, 225, 180 N.E.2d 921, 923 (1962) (dissenting opinion).

24. *Ibid.*

25. 140 Ohio St. 292, 43 N.E.2d 266 (1942).

26. 144 Ohio St. 22, 56 N.E.2d 195 (1944).

27. Hearing v. Wylie, 173 Ohio St. 221, 224, 180 N.E.2d 921, 923 (1962) (dissenting opinion).