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WORKMEN'S COMPENSATION — INJURY BY ACCIDENT — COMPENSATION FOR A CONTAGIOUS DISEASE CONTRACTED FROM A FELLOW EMPLOYEE — *P* and *X* were both employed by *D*. Their work made it necessary that they be in close proximity to one another. *X*, who was infected with tuberculosis, frequently coughed in *P's* face and on one occasion the spray and sputum went into *P's* face and mouth. Within several months *P* was forced to leave the employ of *D*. Applying for relief under the North Carolina Workmen's Compensation Act,[1] *P* made a showing that he was disabled with tuberculosis, and the Workmen's Compensation Commission, finding that *P* had been in contact with no other source of the disease, made an award of compensation from which *D* appealed. *Held*, with one justice dissenting, that the unusual circumstances under which the disease arose constituted a compensable injury by accident arising out of and in the course of employment. *MacRae v. Unemployment Compensation Commission of North Carolina*, 217 N. C. 769, 9 S. E. (2d) 595 (1940).[2]

Because claims for contagious diseases[3] under workmen's compensation laws are unusual, it is especially necessary to analyze the controlling statute before examining judicial treatment of such claims. Workmen's compensation statutes may be classified in accordance with their definitions of compensable injuries as follows: (1) statutes which provide that a "personal injury" will be compensable,[4] (2) statutes stating that "injury or personal injury" shall mean only injury by accident,[5] and (3) statutes providing that "injury and personal injury" shall mean only accidental injury.[6] For the purposes of this note, the controlling statute may be analyzed as requiring four elements: (1) an accident

[1] " 'Injury and personal injury' shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident." N. C. Code (Michie, 1935), § 8081 (i)(f). Section 8081 (i) provides in effect that the word "accident" shall not be construed to mean a series of events, like or similar, occurring over a period of time and that a disease attributable to such causes shall not be compensable unless it is occupational.

[2] It should be remembered that the general purpose of workmen's compensation was to provide a means of giving the injured party reparation even though he is at fault, thus doing away with the dilatory nature of the tort action and putting the burden of industrial injuries on industry as a regular cost of production to be passed on to the consumer. 1 SCHNEIDER, WORKMEN'S COMPENSATION, 2d ed., 1 et seq. (1932); 1 HONNOLD, WORKMEN'S COMPENSATION 3 et seq. (1917).

[3] A contagious disease should be distinguished from an occupational disease, which is a disease arising as a natural and probable consequence of employment in a certain industry. For the purposes of this note, disease refers to a contagious disease unless otherwise specified.

[4] 12 Mich. Stat. Ann. (1937), §§ 17:141, 17:151; 1 Ohio Gen. Code (Page, 1937), § 1465-68; Iowa Code (1939), §§ 1379, 1421. See also Cal. Labor Code (Deering, 1938), § 3208, which provides for injury or disease. Under this type of statute, courts have by judicial interpretation required that the element of accident be present.

[5] N. C. Code (Michie, 1935), § 8081 (i)(f).

[6] 64 N. Y. Consol. Laws (McKinney, 1938), § 2(7).

arising out of and in the course of employment (2) which results in an injury—i.e., some physical or mental harm or incapacity—(3) causing as a natural and probable consequence a contagious disease (4) followed by some degree of disability. Whether the courts will allow compensation where the disability complained of has arisen through a contagious disease depends on the way in which the disease was communicated. Compensation has been awarded in cases where the disease was communicated into the body by some independent source, acting after but because of an accidental and obvious physical injury; [7] where the disease was transmitted as a result of some medical treatment offered by the employer, such as vaccination; [8] where the disease was contracted as the result of taking into the body food or drink eaten or drunk during working hours.[9] In such cases, the four named elements can be found from the facts. Depending on the controlling statute, the court may say that the disease is itself the accident [10] or the injury.[11] More frequently, the courts will merely conclude that the requirements of the controlling statute have been met and will state no other obvious reason.[12] Where the disease was communicated by no other obvious physical act than by another person's coughing in plaintiff's face, or where the disease is contracted merely because plaintiff is in the presence of the diseased person, the courts have split as to recovery in the few cases decided.[13] In these

[7] Cline v. Studebaker Corporation, 189 Mich. 514, 155 N. W. 519 (1915) (chip of steel got in *P's* eye; fellow workman tried to get it out using dirty handkerchief and matchstick; *P* contracted gonorrhea and the court awarded compensation); State ex rel. Adriatic Mining Co. v. District Court of St. Louis County, 137 Minn. 435, 163 N. W. 755 (1917) (similar facts, court allowed recovery).

[8] Neudeck v. Ford Motor Co., 249 Mich. 690, 229 N. W. 438 (1930) (employer ordered *P* to be vaccinated by company doctor; court awarded compensation for streptococcus infection contracted causing death, resulting from vaccination); Texas Employers' Ins. Assn. v. Mitchell, (Tex. Civ. App. 1930) 27 S. W. (2d) 600 (same facts, compensation allowed). But see Smith v. Seamless Rubber Co., 111 Conn. 365, 150 A. 110 (1930), where compensation was refused because the court said the injury did not arise out of and in the usual course of employment, since apparently the employer did not order the vaccination.

[9] Wasmuth-Endicott Co. v. Karst, 77 Ind. App. 279, 133 N. E. 609 (1922) (*P* contracted typhoid from drinking water furnished by fellow employee; compensation allowed); Tscheiller v. National Weaving Co., 214 N. C. 449, 199 S. E. 623 (1938) (*P* ate food employer furnished for sale at company canteen with approval of employer; damages in tort action refused as court said *P* could receive compensation). See 57 A. L. R. 627 at 631 (1928) for some collected cases.

[10] Neudeck v. Ford Motor Co., 249 Mich. 690, 229 N. W. 438 (1930), and Frankenkamp v. Fordney Hotel, 222 Mich. 525, 193 N. W. 204 (1924), were both decided under a statute of type number 1. See also 39 A. L. R. 867 at 871 (1925) for collected cases.

[11] In Millers' Indemnity Underwriters v. Heller, (Tex. Civ. App. 1923) 253 S. W. 853, the statute was such as type number 1.

[12] This seems to be especially true if the statute is of type number 2 or 3. See 39 A. L. R. 867 at 871 (1925) and 57 A. L. R. 627 at 631 (1928).

[13] In Martin v. Manchester Corp., [1912] Butterworth Workmen's Comp. & Ins. Rep. 289, 28 T. L. R. 344 (1912), an employee of scarlet fever hospital contracted scarlet fever and the court refused compensation. In Madeo v. I. Dibner & Bro., 121

cases it is harder to find existing in the facts all elements required by the language of the statutes. Because another section of the North Carolina statute, requiring in effect that the injury be traceable to one occurrence if there were many like or similar occurring events,[14] complicated the principal case, it was hard for the court to find the required elements.[15] Possibly compensation in cases where the claim was based on a contagious disease can be justified, in spite of technical problems of construction pressed on the courts, by reference to the broad purpose and intent underlying workmen's compensation legislation.[16]

Conn. 664, 186 A. 616 (1936), *P*, working in a factory where work and health conditions were poor, contracted tuberculosis from another worker. Compensation was refused for an occupational disease; apparently *P* did not prosecute the claim as a contagious disease because of a statute something like that in the principal case. In De la Pena v. Jackson Stone Co., 103 Conn. 93, 130 A. 89 (1925), the court awarded compensation for influenza that resulted in pneumonia. In City and County of San Francisco v. Industrial Accident Commission, 183 Cal. 273, 191 P. 26 (1920), and in Engels Copper Mining Co. v. Industrial Accident Commission, 183 Cal. 714, 192 P. 845 (1920), *P* contracted influenza working in hospital where many patients were so infected and the court allowed compensation. See 105 A. L. R. 1408 at 1411 (1936) and 11 A. L. R. 785 at 790 (1921) for some collected cases. But see Smith's Case, (Mass. 1940) 30 N. E. (2d) 536, recently decided, in which the court distinguished between germ disease and personal injury, refusing compensation for death from tuberculosis contracted by inhalation while decedent was employed in a tuberculosis hospital.

[14] No more seems to be required here than the workmen's compensation legislators intended. 1 HONNOLD, WORKMEN'S COMPENSATION 280 (1917); 1 SCHNEIDER, WORKMEN'S COMPENSATION, 2d ed., 513 (1932). However, such a statute as this is rather unusual.

[15] See the dissenting opinion, which stresses this point particularly.

[16] See note 2, supra.