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Workmen's Compensation - Compensability of Injuries Resulting from Physical Examinations

Michael M. Lyons
University of Michigan Law School

WORKMEN'S COMPENSATION—COMPENSABILITY OF INJURIES RESULTING FROM PHYSICAL EXAMINATIONS—Plaintiff, a dairy worker, suffered an infection in her left arm as a result of submitting to a Wassermann test as ordered by her employer. The county board of health required dairy workers to take the test as a condition of their employment and the order was issued in pursuance thereof. Plaintiff filed a claim for compensation under the state Workmen's Compensation Act[1] which was rejected by her employer but sustained upon a hearing before the state commission. Defendant's exceptions were overruled on appeal to the superior court. On appeal to the supreme court, *held,* reversed. The injury did not arise out of and in the course of the employment and therefore is not compensable under the act. *King v. Arthur,* 245 N.C. 599, 96 S.E. (2d) 846 (1957).

Under the Workmen's Compensation Acts, an injury, to be compensable, must have arisen out of and in the course of the employment.[2] In the case of an injury resulting from an examination which is required or requested by the employer, the origin of the impetus for the examination seems to be the decisive factor in determining if this requirement is met.[3] If the employer, of his own volition, orders or requests his employees to submit to an examination, an injury resulting therefrom is compensable.[4]

1 N.C. Gen. Stat. (1953) §97-2(f).

2 See 1 LARSON, WORKMEN'S COMPENSATION LAW §6.00, p. 41 (1952).

3 E.g., Industrial Commission v. Messinger, 116 Colo. 451, 181 P. (2d) 816 (1947); Alewine v. Tobin Quarries, 206 S.C. 103, 33 S.E. (2d) 81 (1945).

4 Alewine v. Tobin Quarries, note 3 supra; Sanders v. Children's Aid Society, 238 App. Div. 746, 265 N.Y.S. 698 (1933); Texas Employers' Insurance Association v. Mitchell,

If, however, the employer merely acts in pursuance of a public law or at the request of a public authority, the courts generally hold that resulting injuries are not compensable.[5] The reasoning of the courts is that if the examination is at the instance of the employer, it is then a precautionary measure serving his interests and is therefore activity in the course of the employment. On the other hand, if the impetus for the examination comes from a public law or authority, the examination is solely for the benefit of the general public and thus devoid of any connection with the employment.[6] The principal case is in line with the authorities in that the employer ordered his employees to take the Wassermann test only because a regulation of the board of health required him to do so. However, application of this "original impetus" test to determine compensability seems unjustifiable. It is not uncommon for a state to require various precautionary measures of employers engaged in activities that may endanger the general public if a high degree of care is not exercised. In effect, the state is expanding the scope of the employer's activities in the interest of public welfare as a valid exercise of its police powers. Accordingly, a more realistic test would be to determine if the examination is occasioned by the particular type of work done, or merely by the fact that the employee is a member of the general public. For example, if a board of health, in its quest to have the general public examined, requests employers to have their employees cooperate, a resulting injury would not be compensable.[7] In such case, the examination is not prompted by the type of work in which the employee is engaged, but rather by the fact that he is merely a member

(Tex. Civ. App. 1930) 27 S.W. (2d) 600. See Saintsing v. Steinbach Co., 1 N.J.S. 259, 64 A. (2d) 99 (1949), and Smith v. Brown Paper Mill Co., (La. App. 1934) 152 S. 700, where the courts held that mere urging by the employer was sufficient to link the examination with the employment since this was coupled with the fact the employer would be indirectly benefited by less absenteeism and better employee relations.

5 Industrial Commission v. Messinger, note 3 supra (statute required all persons engaged in the handling of food to be examined); Jefferson Printing Co. v. Industrial Commission, 312 Ill. 575, 144 N.E. 356 (1924) (employer acted in response to a request from the commissioner of public health); Krout v. J. L. Hudson Co., 200 Mich. 287, 166 N.W. 848 (1918); Smith v. Seamless Rubber Co., 111 Conn. 365, 150 A. 110 (1930) (employer urged his employees to submit to a vaccination which was requested by the board of health). See annotation, 69 A.L.R. 863 (1930). See also 1 LARSON, WORKMEN'S COMPENSATION LAW §27.32, p. 416 (1952). *Contra,* Neudeck v. Ford Motor Co., 249 Mich. 690, 229 N.W. 438 (1930), where, as in the Krout case, the employer strongly urged his employees to submit to a vaccination at the request of the board of health. However, this case was distinguished from the Krout case on the basis that the company's physician had administered the vaccination rather than a public agency, and that there was less pressure on the employer to comply—a distinction of dubious validity.

6 Krout v. J. L. Hudson Co., note 5 supra. Alewine v. Tobin Quarries, note 3 supra, in which the court reviewed the authorities and reaffirmed the application of the "original impetus" test. See 1 LARSON, WORKMEN'S COMPENSATION LAW §27.32, p. 417 (1952).

7 See Krout v. J. L. Hudson Co., note 5 supra, for this type of fact situation. In these circumstances the "original impetus" and "causal relation" tests would bring the same result.

of the general public and there is a better chance that he will submit if efforts are channeled through his employer. The proposed test is not unique in this area. It has been applied in the analogous so-called "public service" cases where an employee is injured while pursuing an activity which is not within the usual scope of his employment but required of him by public law. In those cases the courts have held that if his employment was responsible for his being subjected to the law which required him to perform the public service, then injuries arising out of that public service would be compensable.[8] For example, where a taxicab driver, under his statutory duty, drove in pursuit of a criminal when ordered to do so by the police, and was injured during the chase, such injury was held compensable.[9] The court reasoned that the driver's particular employment required his driving on the public streets where he would be in constant danger of being ordered by the police to drive in pursuit of criminals. The causal relation between the nature of his employment and the public service from which the injury arose rendered the injury compensable. This "causal relation" test, if applied to the facts of the principal case, would have resulted in compensation since the Wasserman test was undoubtedly required because of the nature of the employment—the relatively great danger that a diseased dairy worker could infect the public through the handled milk.

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[8] See Egan's Case, 331 Mass. 11, 116 N.E. (2d) 844 (1954), where the court quotes with approval, "The inquiry has been whether his employment exposed him to the risk, whatever it was, which actually caused the injury." See 1 LARSON, WORKMEN'S COMPENSATION LAW §28.32, p. 441 (1952).

[9] Babington v. Yellow Taxi Corp., 250 N.Y. 14, 164 N.E. 726 (1928).