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# Workmen's Compensation - Requirement of Causal Connection Between Employment and Injury

Thomas S. Erickson S.Ed.
*University of Michigan Law School*

WORKMEN'S COMPENSATION—REQUIREMENT OF CAUSAL CONNECTION BETWEEN EMPLOYMENT AND INJURY—Plaintiff-employee was compensated for injuries received when she slipped on a patch of ice and fell on defendant-employer's premises while going from her work to eat lunch in defendant's cafeteria. On appeal, *held,* reversed. At the time of the injury plaintiff was not rendering any service to her employer. There was no causal connec-

tion between employment and injury, and the injury did not arise out of and in the course of her employment as required by statute. *Mack v. Reo Motors, Inc.*, 345 Mich. 268, 76 N.W. (2d) 35 (1956).

It has been assumed that the requirement in cases of this type of causal connection between employment and injury is a constitutional one,[1] although that assumption is of doubtful validity.[2] Such a requirement does exist by statute in forty-one states because of the phrase "arising out of" in their workmen's compensation laws,[3] for this phrase is interpreted to require a causal relation.[4] To determine causal connection in so-called "intermission" cases where, as in the principal case, the injury occurs during an interval between periods of actual work, courts usually apply either an employer-benefit test or an incident-to-employment test.[5] Under the former test, if the employee is performing a function of benefit to the employer at the time the injury occurs, the necessary causal relation exists and he will be compensated.[6] Under the incident test, if, during the intermission, the employee is doing some act which could be considered one of the "incidents of his employment," there is enough of a causal connection to allow compensation.[7] Some courts that have used the former test have taken a liberal view of benefit, and have not required that it be a direct one to the employer. They have found benefit when the employee was not doing the job for which he was employed at the time of the injury but was leaving work for lunch,[8] returning after the intermission,[9] or engaging in recreation during the intermission.[10] In the principal case, however, the Michigan court continued to apply a more limited concept of benefit, and denied recovery.[11] It would be well if the Michigan court would reject

1 Cudahy Packing Co. v. Parramore, 263 U.S. 418 (1923).

2 O'Leary v. Brown-Pacific-Maxon, 340 U.S. 504 (1951).

3 1 LARSON, WORKMEN'S COMPENSATION LAW §6.10 (1952).

4 Casey v. Hanson, 238 Iowa 62, 26 N.W. (2d) 50 (1947). Four states, North Dakota, Texas, Pennsylvania, and Washington, and the United States Employee's Compensation Act have dropped the "arising" phrase completely. 1 LARSON, WORKMEN'S COMPENSATION LAW §6.10 (1952). Where this wording is absent, there is no such prerequisite to recovery. Lippman v. North Dakota Workmen's Compensation Bureau, 79 N.D. 248, 55 N.W. (2d) 453 (1952). But see Fassig v. State, 95 Ohio St. 232, 116 N.E. 104 (1917), where a causal connection was required even without the phrase.

5 These tests are not used exclusively in the "intermission" cases referred to above, however, but are applied also to other types of compensation cases. E.g., in Olson v. Trinity Lodge, 226 Minn. 141, 32 N.W. (2d) 255 (1948), the incident test was used in a preparation for work case, and in Wamhoff v. Wagner Electric Corp., 354 Mo. 711, 190 S.W. (2d) 915 (1945), the employer-benefit rule was used where the employee was doing personal work while on the job.

6 Kern v. Southport Mill, Ltd., 174 La. 432, 141 S. 19 (1932). See Hart, "Limitation on Compensability: Arising out of Employment," 4 NACCA L.J. 37 (1949).

7 Kubera's Case, 320 Mass. 419 at 420, 69 N.E. (2d) 673 (1946).

8 Clark v. Employers Liability Assurance Corp., (La. App. 1946) 27 S. (2d) 464.

9 Nagle's Case, 310 Mass. 193, 37 N.E. (2d) 474 (1941); Travelers Ins. Co. v. Smith, 91 Ga. App. 305, 85 S.E. (2d) 484 (1954).

10 Thomas v. Proctor & Gamble Mfg. Co., 104 Kan. 432, 179 P. 372 (1919) (although here the court felt the benefit test was only an extension of the incident theory).

11 The Michigan court had previously rejected the more liberal view followed in the cases cited nn. 8, 9, and 10 supra. Cf. Mack v. Reo Motors, Inc., 345 Mich. 268, 76 N.W.

such a narrow and antiquated interpretation of the workmen's compensation law, for which it has been soundly criticized,[12] and adopt the incident rule to determine causation. It is by far the broader of the two rules,[13] and would undoubtedly have allowed recovery in the principal case and similar situations.[14] The incident doctrine is preferable to a broad definition of the benefit test, for even a liberal view of benefit may deny recovery in situations like the principal case.[15] Admittedly, the Michigan court is governed by a statute requiring causal connection, and perhaps the letter of the act has been assiduously complied with. However, by the acceptance of available and recognized principles such as the incident test the court could also comply with its spirit. Certainly the result reached in the principal case is not in accord with the purpose of the workmen's compensation laws, viz., to spread the human costs of production,[16] nor with the trend of construing the acts liberally in order that what they intend to give to employees will not be withheld by the courts.[17] It has been said that the incident test has been so extended that it does away with the causal requirement altogether.[18] This is certainly not the case, however, for the doctrine definitely requires a showing of some connection between the injury and the employment,[19] and might thus be properly invoked by the Michigan court in applying the statute interpreted in the principal case.

*Thomas S. Erickson, S.Ed.*

(2d) 35 (1956); Salmon v. Bagley Laundry Co., 344 Mich. 471, 74 N.W. (2d) 1 (1955); Luteran v. Ford Motor Co., 313 Mich. 487, 21 N.W. (2d) 825 (1946).

12 17 NACCA L.J. 25 (1956).

13 "It is now well settled by the overwhelming weight of authority that all types of incidents, personal, habitual, contractual, or simply reasonable under the circumstances, may well arise out of the employment." Horovitz, "The Litigious Phrase: 'Arising out of' Employment," 3 NACCA L.J. 15 at 61 (1949).

14 Reynolds v. Oswego Falls Corp., 264 App. Div. 965, 37 N.Y.S. (2d) 167 (1942); Puffin v. General Electric Co., 132 Conn. 279, 43 A. (2d) 746 (1945).

15 Cf. Gay v. Aetna Casualty & Surety Co., 72 Ga. App. 122, 33 S.E. (2d) 109 (1945).

16 See dissent in Salmon v. Bagley Laundry Co., note 11 supra.

17 Nicholson v. Industrial Commission, 76 Ariz. 105, 259 P. (2d) 547 (1953).

18 Hilyard v. Lohmann-Johnson Drilling Co., 168 Kan. 177, 211 P. (2d) 89 (1949). Southern Cotton Oil Co. v. Bruce, 249 Ala. 675, 32 S. (2d) 666 (1947).

19 See Robertson v. Express Container Corp., 13 N.J. 342, 99 A. (2d) 649 (1953). It has been predicted by one writer in this field that eventually courts will not require proof of a causal relation. Brown, "'Arising out of and in the Course of the Employment' in Workmen's Compensation Laws," 8 WIS. L. REV. 217 (1933). The United States Supreme Court has given support to this view by holding that the test of recovery is not a showing of causal relationship between employment and injury, but rather a showing that the obligations or conditions of employment create a zone of danger from which the injury arises. O'Leary v. Brown-Pacific-Maxon, note 2 supra. States without the causation requirement have also expediently and fairly settled hard cases on the basis of the in-the-course-of-employment test alone. Lippman v. North Dakota Workmen's Compensation Bureau, note 4 supra; Hunter v. American Oil Co., 136 Pa. Super. 563, 7 A. (2d) 479 (1939). This test requires only that the injury occur within the period of employment at a place where the employee may reasonably be in performing his duties or activities incidental thereto. It is submitted that the causation prerequisite has only confused litigation since its inception. See Cardillo v. Liberty Mutual Ins. Co., 330 U.S. 469 (1947). It could well be done away with altogether, for the zone-of-danger or in-course-of-employment tests should be sufficient to protect the employer from being treated as an absolute insurer.