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Workmen's Compensation - Injuries at Home Arising Out of and In the Course of Employment

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WORKMEN'S COMPENSATION—INJURIES AT HOME ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—Plaintiff was employed as defendant's bookkeeper. With the consent of the employer, she had done all of the bookkeeping at home for several years. As she was about to start her work one night, plaintiff discovered that her husband's oily rifle was lying on the couch where she usually sat. In picking up the rifle to move it to its proper place in the closet, plaintiff accidentally fired the gun, causing an injury which resulted in the amputation of her left thumb. The lower court decided that the injury was one arising out of and in the course of plaintiff's employment for which compensation should be given. On appeal, with the state supreme court evenly divided, four to four, *held*, affirmed. *Joe Ready's Shell Station and Cafe v. Ready*, (Miss. 1953) 65 S. (2d) 268 (1953).

The Mississippi Workmen's Compensation Act is typical in that it allows compensation only for those injuries "arising out of and in the course of employment."[1] The "arising-out-of" and "in-the-course-of" tests of compensable injury have been applied separately by the courts,[2] even though they are related in purpose. Activities related in time, place, or circumstance to the duties of employment are in the course of employment, even though their benefit to the employer may be slight or incidental.[3] Activities preparatory to performing

[1] 5A Miss. Code Ann. (1942) §6998-04.

[2] Hopkins v. Michigan Sugar Co., 184 Mich. 87, 150 N.W. 325 (1915); Seger v. Keating Implement Co., (Neb. 1953) 60 N.W. (2d) 598.

[3] Wamhoff v. Wagner Electric Corp., 354 Mo. 711, 190 S.W. (2d) 915 (1945).

the duties of employment can be in the course of employment,[4] and the performance of such activities in the home does not take them out of that category,[5] particularly when there is regularity in the work done at home.[6] Activities can be in the course of employment even though their performance benefits the employee as well as the employer,[7] although such is not the case where it is clear that the personal objectives of the employee are predominant and the act would have been done regardless of the fact of employment.[8] Injuries arising out of employment must bear a causal relation to employment.[9] This is important since the purpose of the workmen's compensation laws is to place on industry only the expense which is an incident of industrial risks.[10] Thus it is possible for the injury to occur in the course of employment and still not be compensable when the risk is personal to the employee.[11] In determining whether the risk is industrial or personal, it is necessary to look at the relationship between the employer and the employee. If the employer has directed the employee to do the particular act which results in the injury, it seems clear that it should be treated as an industrial risk.[12] At the other extreme, where the employer expressly forbids the employee to do the act, it seems equally clear that the resultant injury should be treated as a personal risk.[13] Many cases, however, lie in between these extremes and involve situations in which the employer either permits or acquiesces in the action of the employee. In such cases it would seem important to consider whether the activity from which the injury arose was either a necessary part of or incidental to the duties of employment, or whether the injury arose from a hazard voluntarily assumed by the employee.[14] In one accidental shooting case, the officer of a corporation dealing in realty took his own gun to the office for the purpose of selling it. Compensation was denied for the fatal injury to the official caused by the discharge

[4] Leilich v. Chevrolet Motor Co., 328 Mo. 112, 40 S.W. (2d) 601 (1931); Cahill's Case, 295 Mass. 538, 4 N.E. (2d) 332 (1936).

[5] Employers Liability Assurance Corp. v. Henderson, 37 Ga. App. 238, 139 S.E. 688 (1927); Security Union Ins. Co. v. McClurkin, (Tex. Civ. App. 1930) 35 S.W. (2d) 240.

[6] 1 LARSON, WORKMEN'S COMPENSATION §18.32 (1952).

[7] State Employees' Retirement System v. Industrial Accident Commission, 97 Cal. App. (2d) 380, 217 P. (2d) 992 (1950).

[8] Marks v. Gray, 251 N.Y. 90, 167 N.E. 181 (1929). Cf. Martin v. Hasbrouck Heights Building Loan and Savings Assn., 132 N.J.L. 569, 41 A. (2d) 898 (1945). See annotations in 59 A.L.R. 370 (1929); 66 A.L.R. 756 (1930).

[9] McNicol's Case, 215 Mass. 497, 102 N.E. 697 (1913); Hickman v. Detroit, 326 Mich. 547, 40 N.W. (2d) 722 (1950).

[10] Glasser v. Youth Shop, Inc., (Fla. 1951) 54 S. (2d) 686.

[11] Such is the case when an employee carries a homemade bomb to work for no known reason and it explodes. Bogavich v. Westinghouse Electric and Mfg. Co., 162 Pa. Super. 388, 57 A. (2d) 598 (1948).

[12] Proctor v. Hoage, (D.C. Cir. 1935) 81 F. (2d) 555; Matter of Redner v. Faber & Son, 223 N.Y. 379, 119 N.E. 842 (1918). Cf. Glasser v. Youth Shop, Inc., note 10 supra.

[13] Atlantic Refining Co. v. Sheffield, 162 Ga. 656, 134 S.E. 761 (1926). Cf. Krajeski v. Beem, (Neb. 1953) 60 N.W. (2d) 651.

[14] Industrial Commission of Ohio v. Gintert, 128 Ohio St. 129, 190 N.E. 400 (1934); Seger v. Keating Implement Co., note 2 supra.

of the gun.[15] But compensation was allowed in a case involving a similar injury in which the employee of his own accord carried a gun to protect the money and equipment in the employer's bakery truck.[16] The facts in the principal case suggest that the employer permitted but did not require the employee to work at home, thereby indicating that working at home was for the convenience of the employee rather than for the benefit of the employer. If this is true, it follows that the removal of the gun was an incident of a benefit enjoyed by the employee, i.e., working at home, rather than an incident of the duties performed for the employer.[17] Although the employer might have been liable had the same situation occurred in his place of business,[18] it seems questionable whether liability should fasten on him in a case in which he had no control over the circumstances which engendered the injury when (1) the employment duties were performed away from the employer's place of business solely for the convenience of the employee, and (2) the employee probably would have been injured in the same way even in the absence of the employment. The principal case would seem to have presented to the court a particularly good opportunity for saying that the injury arose from a personal risk rather than from a hazard of employment and for that reason was not compensable.

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[15] Hicken v. Ebert-Hicken Co., 191 Minn. 439, 254 N.W. 615 (1934).

[16] Nurmi v. Industrial Accident Commission and Moore, 137 Cal. App. 221, 30 P. (2d) 529 (1934).

[17] Industrial Commission of Colorado v. Anderson, 69 Colo. 147, 169 P. 135 (1917); Scanlon v. Herald Co., 201 App. Div. 173, 194 N.Y.S. 663 (1922). Cf. Haggar v. Tanis, 320 Mich. 295, 30 N.W. (2d) 876 (1948).

[18] Matter of Martin v. Plaut, 293 N.Y. 617, 59 N.E. (2d) 429 (1944). Cf. Workmen's Compensation Board v. Canadian Pacific Ry. and Noell, [1952] 3 D.L.R. 641.