5-1-1954

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WORKMEN'S COMPENSATION†

ALLEN CLEMENTS*

SIGNIFICANT DECISIONS

What constitutes an accident?—The most controversial question in Workmen's Compensation Law has ever been “What constitutes an accident?” The Supreme Court of Florida, in 1942, decided this question in Duff Hotel v. Ficara,1 when it held that an unexpected injury received in the ordinary performance of a duty in the usual manner is an injury by accident, without showing anything fortuitous. Eight years later, the court, in Brooks-Scanlon Inc. v. Lee,2 held that there must be an accident preceding the injury and that the injury itself cannot constitute the accident. In Peterson v. City Commission3 it was held that an injury to a knee from the strain of squatting was not an injury by accident. These conflicting decisions caused great confusion in the administration of the compensation law and brought about extensive litigation.

La Viness v. Mauer4 stated, “Obviously there was no accident preceding the heart attack and we have unequivocally held that the injury itself will not suffice to constitute the accident.” A back injury sustained in lifting a ladder did not constitute an accident either.5

In 1952, in a decision now generally referred to as the Bonnie Gray case,6 the court held that an arm injury resulting from lifting a can of waffle batter was compensable and that the unexpected result of lifting the can was an injury by accident. Justice Roberts wrote in the opinion:

The statement that ‘the injury itself cannot suffice for, or constitute, the accident,’ appearing in the Brooks-Scanlon case, . . . and a few other opinions of this court, was perhaps an unfortunate use of language. It was not intended that such statement should be construed as requiring a showing of an unexpected cause of the injury, such as a slip, fall or misstep; it was intended only to require the claimant to make a showing of some event or circumstances connected with his work to which his injury can be directly attributed, in accordance with the rule that the claimant is required to show that the accident or injury happened not only in the course of claimant's employment but arose out of it. Travelers Ins. Co. vs. Taylor, 147 Fla. 210, 3 So.2d 381.7

†For a complete analysis up to 1950, see Burton, Florida Workmen's Compensation 1935 to 1950, 5 Miami L.Q. 24.
*Member of the Florida Bar.
1. 150 Fla. 442, 7 So.2d 790 (1942).
2. 44 So.2d 650 (Fla. 1950).
3. 44 So.2d 423 (Fla. 1950).
4. 53 So.2d 113 (Fla. 1951).
7. Id. at 651.
We wish to make clear, however, that we do not interpret the Workmen's Compensation Law, F.S.A. Sec. 440.01 et seq., as requiring that an injury 'by accident' proceed from an unexpected cause. Section 440.02(19) of the law defines 'accident' as 'an unexpected or unusual event, happening suddenly.' The Thorndike-Barnhart Dictionary defines 'event' as '1. a happening, 2. result; outcome.' To like effect are the definitions given in The Oxford English Dictionary and Bouv. Law Dict., Rawle's Third Revision, p. 101. It is enough, then, if there is an unexpected result, even though there was no unexpected cause, such as a slip, fall or misstep, in order to constitute an 'accident' within the meaning of the Workmen's Compensation Law; and insofar as the McNeill and Peterson cases, . . . hold that an injury is not compensable if it happens while the claimant is performing his ordinary work in the usual manner, these decisions are hereby modified, and we re-affirm the rule laid down in Duff Hotel Co. vs. Ficara . . . that an unexpected injury received in the ordinary performance of a duty in the usual manner is an injury 'by accident' within the purview of the Workmen's Compensation Law, without the showing of anything fortuitous.8

A rehearing was granted in the Bonnie Gray case. Upon rehearing in April, 1953, the Supreme Court en banc adhered to its former opinion.9 At the same time the court reaffirmed its decision by holding that back injuries resulting from strain in doing work in the usual manner were compensable as injuries "by accident."10

The ruling in the Bonnie Gray case on rehearing was a four to three decision, but the legislature, shortly thereafter, amended the compensation act so as to make the definition therein of an accident to expressly conform to the construction placed thereon by the Supreme Court. The statute was amended to read:

'Accident' shall mean only an unexpected or unusual event or result, happening suddenly. A mental or nervous injury due to fright or excitement only or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or narcotic drugs, shall be deemed not to be an injury by accident arising out of the employment. Where a pre-existing disease is accelerated or aggravated by accident arising out of and in the course of the employment, only acceleration of death or the acceleration or aggravation of disability reasonably attributable to the accident shall be compensable.11

Substantial evidence rule.—The Supreme Court adopted the substantial evidence rule to be followed by the full commission in reviewing

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8. Ibid.
9. See note 6 supra.
10. Benjamin Falk v. Clyde R. Balch, 64 So.2d 658 (Fla. 1953); Chas. B. Vitale v. Wm. Haeser, 64 So.2d 657 (Fla. 1953).
11. FLA. STAT. § 440.02 (19) (1953).
the compensation orders of the deputy commissioners, and to be followed by the circuit courts in reviewing the compensation orders of the full commission, and to be followed by the Supreme Court in reviewing the compensation orders of the circuit courts. The findings of fact made by a deputy commissioner should not be reversed unless it is made to appear that these findings of fact are not sustained by competent, substantial evidence. Justice Hobson's opinion stated:

Thus it may be seen that under the law now existing and which existed at the time the instant matter was first lodged with the Florida Industrial Commission, the deputy commissioner is charged with the duty of not only holding a hearing and making findings of facts, but it is also his obligation to enter the compensation order. Consequently, his position under the law is somewhat analogous to that of a Chancellor, and the full Commission occupies a position which in many ways is similar to that of an appellate court. After the deputy commissioner has held a hearing, made his findings of facts and entered the compensation order and a review is requested, the full Commission should adhere to the findings of fact so made by the deputy commissioner unless there is no competent substantial evidence to sustain them. This is so because of the aforementioned fact that under the law the deputy commissioner is the only person charged with the burden and the responsibility of hearing the witnesses and making findings of facts. It is patent that the full Commission functions much in the same manner as does an appellate court, although it is quasi judicial rather than strictly so.

Ever since this leading decision the Supreme Court has consistently adhered to the substantial evidence rule.

Modification of awards.—The Workmen's Compensation Law of Florida contains a provision vesting the Florida Industrial Commission with continuing jurisdiction to review a "compensation case" within two years after the last payment of compensation whether or not a compensation order has been issued, and to issue a new compensation order, on the ground of change of conditions or because of a mistake in a determination of fact. In one case, a compensation order of a deputy commissioner denying further compensation was affirmed by the full commission, but no appeal was taken therefrom. Within the statutory period a petition to review the case was filed by the injured employee on the ground that

13. Id. at 745.
14. See Roberts v. Wofford Beach Hotel, 67 So.2d 670 (Fla. 1953); Smith v. Packer Displays, Inc., 67 So.2d 323 (Fla. 1953); Faulk and Coleman v. Harper, 62 So.2d 62 (Fla. 1952); Sargent v. Evening Independent, 62 So.2d 58 (Fla. 1952); Carnage v. City of Arcadia, 62 So.2d 40 (Fla. 1952); American Airmotive Corp. v. Moore, 62 So.2d 37 (Fla. 1952); State Road Dept. v. Peper, 62 So.2d 34 (Fla. 1952); Anderson v. Anderson, 60 So.2d 160 (Fla. 1952); Evans v. Miami, 60 So.2d 20 (Fla. 1952); Williamson v. Willard, 59 So.2d 865 (Fla. 1952); Crescent City v. Green, 59 So.2d 1 (Fla. 1951).
15. FLA. STAT. § 440.28 (1951).
there was a mistake in the determination of the nature and extent of claimant's physical injury. A hearing was held and the deputy commissioner found that a mistake in the determination of a fact had been made and that the petitioner was entitled to further compensation. On appeal the full commission reversed the order of the deputy commissioner and dismissed the cause. The order of the full commission on appeal was affirmed by the circuit court. The order of the circuit court on appeal was affirmed by the Supreme Court which held that the deputy commissioner was without authority to review the order of the deputy commissioner and the full commission, but was limited to finding a mistake in the determination of fact.

The Supreme Court further found that a mistake in the determination of a fact cannot be established by accumulative evidence that adds nothing new to the evidence originally taken. This decision appears to be a limitation of the jurisdiction of the commission imposed by the Florida Supreme Court.

Evidence introduced at a hearing on a petition for modification of a compensation order on the ground of a mistake in determination of a fact, necessarily has to be accumulative or controvert that already taken and upon which was based the finding of fact sought to be corrected or set aside on the review of the case as a whole.

**Noteworthy Opinions**

The order of the deputy commissioner requiring the furnishing of further medical treatment was upheld in a case where claimant's resultant thrombophlebitis could not be cured and the carrier had expended over $4,000 for medical treatment.\(^\text{17}\)

When a person knows that he is allergic to certain substances and knowingly accepts employment requiring exposure to such substances, dermatitis resulting from such exposure is not compensable as an accidental injury or occupational disease because it is a condition voluntarily incurred by the claimant.\(^\text{18}\)

An employee, in descending the stairs at his home to have breakfast, slipped and fell, sustaining a fractured shoulder. The injury was held not to be compensable even though the employee had worked on the books of the company that morning and was carrying the daily record book of the company and other papers of the company in a folder at the time he fell and was so injured.\(^\text{19}\) In holding that there was no causal connection between the employment and the injury, the supreme court reasoned, “The appellant was not on the stairs because of his employment;

\(^{17}\) Di Giorgio Fruit Corp. v. Pittman, 49 So.2d 600 (Fla. 1951).
\(^{18}\) Reed v. Brinson Electric Co., 50 So.2d 877 (Fla. 1951).
\(^{19}\) Glasser v. Youth Shop, 54 So.2d 686 (Fla. 1951).
he would have been there in any event, regardless of whether he had brought his work home from the store.

An employee on a special mission was injured by reason of his driving an automobile 75 to 80 miles per hour, in violation of the statute pertaining to excessive speed and reckless driving on the public highway. He was denied compensation by reason of the provision of the compensation act: "No compensation shall be payable if the injury was occasioned primarily by (the employee's) willful refusal to observe a safety rule approved by the commission or required by statute, and brought prior to the accident to the knowledge of the employee." However, the death of an employee was held compensable when occasioned by the employee driving his car 80 miles per hour because of fright, said action not constituting willful refusal to observe a safety rule required by statute.

A permanent partial disability rating of 50 per cent of the body as a whole was based on the medical testimony that the injured employee was 50 per cent disabled from any, or all types of work. The Supreme Court in upholding the award of the deputy commissioner stated, "Our consideration then narrows to one law, Section 440.02 F.S.A.: 'Disability means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury.'"

Where an employee received a jolt in a traffic accident suffering therefrom an emotional shock, but no physical injury, the court held that the claimant was affected with nothing more than a mental or nervous injury due to fright or excitement which is not an injury by accident under the express provision of the compensation act, "a mental or nervous injury due to fright or excitement only . . . shall be deemed not to be an injury by accident arising out of the employment."

Refusal to undergo a serious or major operation by an injured employee, who is genuinely afraid of the operation, will not defeat his right to compensation.

An injured employee under the compensation act has complete control of litigation against a third party for damages on account of the injury. The compensation insurance carrier cannot intervene or be made a party to the litigation without the consent of the employee.

A nine year old boy was employed in violation of the child labor law. The employer was held liable for damages. The Supreme Court held that

the employer cannot hide behind the protective provision of the workmen's compensation act.\textsuperscript{27}

A caddy was engaged by a player on a municipal golf course from a caddy pen maintained by the municipality. The court held he was not a city employee, but the employee of the player who hired, controlled and paid him.\textsuperscript{28}

Compensation at a minimum rate of $8.00 per week was awarded to a part time employee. This decision\textsuperscript{29} of Division A appears contra to the holding of the Supreme Court \textit{en banc},\textsuperscript{30} reversing the deputy commissioner's award to another part time employee of compensation at the rate of $8 per week and changing the rate to $18.60 based on the full time weekly basis of $36.00.

The Statute of Limitations runs against all persons whether under disabilities or not, because there is no saving clause in the statute with reference to the time of filing appeals or petition for review or for modification of a compensation order.\textsuperscript{31} Appeals in compensation cases must be perfected strictly in accordance with the provisions of the Workmen's Compensation Law\textsuperscript{32} and not in accordance with the so-called Uniform Appeals Act.\textsuperscript{33} An appeal from the circuit to the Supreme Court was dismissed on the ground that the notice of appeal was not filed within the time prescribed by the Workmen's Compensation Law.\textsuperscript{34} Petition for a writ of certiorari, also filed by appellants, was denied because review by the Supreme Court of a circuit court order can only be by statutory appeal. Failure of the appellant to name any return day in the notice of appeal from the commission to the circuit court was held fatal.\textsuperscript{35}

\textbf{Legislative Enactments}

Several amendments to the Florida Compensation Law were enacted in the 1953 session of the legislature. The time for filing medical reports was shortened. In order to hold the employer liable for medical treatment of an injured employee, it is now necessary that the doctor file his medical report with the commission and the employer within 20 days following the first treatment of the injury.\textsuperscript{36}

Added to the provisions for the determination of pay are those for part time workers:

\begin{quote}
If it be established that the injured employee was a part-time worker at the time of the injury, that he had adopted part-time
\end{quote}

\textsuperscript{27} Smith v. Arnold, 60 So.2d 281 (Fla. 1952).
\textsuperscript{28} Miami v. Fulp, 60 So.2d 18 (Fla. 1952).
\textsuperscript{29} Jackson v. Chas. F. Conner, 62 So.2d 26 (Fla. 1952).
\textsuperscript{30} Perrin v. Tanner, 46 So.2d 886 (Fla. 1950).
\textsuperscript{31} Faulk and Coleman v. Harper, 62 So.2d 62 (Fla. 1952).
\textsuperscript{32} Smith v. Fletcher Motor Sales, 62 So.2d 60 (Fla. 1952).
\textsuperscript{33} Fla. Laws 1945, c. 22854.
\textsuperscript{34} Boca Raton Club v. Duff, 63 So.2d 624 (Fla. 1953).
\textsuperscript{35} Lipkin v. Roxy Cleaners & Laundry, 67 So.2d 660 (Fla. 1953).
\textsuperscript{36} Fla. Laws 1953, c. 28241.
employment as his customary practice, and that under normal conditions he probably would have remained a part-time worker during the period of disability, these factors may be considered in arriving at his average weekly wages. For the purpose of this subsection the term "Part-time Worker" means an individual who customarily works less than the full-time hours or full-time work week of a similar employee in the same employment because unable or unwilling to accept full-time work, and does not include any employee who was working on a part-time basis because (a) his employer failed to provide full-time work for him, (b) he was unable to obtain full-time work, or (c) his attendance at school or college did not permit full-time employment.

Employees at a state tuberculosis sanitarium or hospital having tuberculosis prior to employment by the state tuberculosis board, will not be entitled to compensation on account of their pre-existing tuberculosis being aggravated by the employment.

In death compensation cases, the limit for funeral expenses was increased from $150 to $350.

The circuit courts of this state were given jurisdiction to enforce compensation orders which have been filed, upon the application by the commission or any beneficiary of such order. The procedure so authorized provides for the issuance of a rule nisi to the employer or carrier to show cause why a writ of execution should not be issued and for the issuance of a writ of execution or such other provision or final order as may be necessary to enforce the terms of the defaulted compensation order, if the proper cause be not shown that execution should not issue.

The period for filing a petition for modification of compensation order was extended from one year to two years.

The penalty for double liability in compensation cases where minors are injured in employment in violation of the child labor laws of Florida, was modified so as to leave the amount of penalty to be imposed in each case to the discretion of the commission, but not to exceed double the amount otherwise payable.

Employees of the state, political subdivisions and public or quasi public corporations, will draw full compensation, and no deduction in the amount thereof will be made by reason of any sums received from any pension or other benefit fund. Such deductions were required before the act was so amended.

To the attorneys, the most important changes in the compensation act were the amendments in reference to the review of compensation

orders. The old law authorized review of the order of the deputy commissioner by the full commission, on application for review by one of the parties; and the review of the order of the full commission by the circuit court of the county where the accident occurred, upon a statutory appeal; and review of the order of the circuit court by the Supreme Court upon another statutory appeal. By Chapter 28241, Laws of Florida, 1953, the two statutory appeals were abolished and review of the orders of the full commission by the Supreme Court on petition for a writ of certiorari was authorized in lieu thereof. In the opinion filed January 8, 1954, in the case of Elizabeth Wilson v. McCoy Manufacturing Company, Inc., and Florida Industrial Commission, the Supreme Court ruled that the legislature did not have the power to provide for a review of the orders of the Florida Industrial Commission by writ of certiorari because the power to issue these writs is placed in the Supreme Court by the Constitution itself and the Supreme Court alone had the power to prescribe the procedure it shall follow in the exercise of its constitutional powers.

Accordingly, the Supreme Court adopted certain rules in amplification of Rule 28, governing common law certiorari, by adding three paragraphs dealing generally with certiorari in industrial cases and particularly with transcript in such cases. Said rules are set forth and explained in the opinion in the said case.

44. Fla. Stat. § 440.27 as amended (1953).