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Workmen's Compensation -- Injury by Accident -- Strain and Exertion

hide behind the protective provisions of the Workmen's Compensation Act."[20]

While the present decision was equitable in that a holding to the contrary would have limited recovery to funeral expenses,[21] the far-reaching effects of the decision might bring future inequities. That a child may be forced to pursue his common law remedy is evident, and it appears that the court in deciding the instant case in a just manner has assumed the prerogative of legislation.

WORKMEN'S COMPENSATION — INJURY BY ACCIDENT — STRAIN AND EXERTION

Claimant, a waitress, while in the course of her employment, received an arm injury by lifting a heavy container. She seeks recovery under the Florida Workmen's Compensation Act.[1] *Held*, that claimant is entitled to compensation. An unexpected injury received in the usual performance of an ordinary duty falls within the meaning of "injury by accident." *Bonnie Gray v. Employers Mutual Liability Insurance Co.*, —— So.2d —— (Fla. 1952).*

The term "accident" has been a part of Workmen's Compensation law since its adoption in England in 1897,[2] and is to be found in most compensation statutes today.[3] The states which have not adopted the term by statute have done so by judicial interpretation.[4] "Accident" has been defined as an unexpected incident which occurs unintentionally.[5] The Florida act, in particular, provides that an "accident" is "an unexpected or unusual event, happening suddenly."[6] No stated period can be termed "sudden" as it depends upon the circumstances of each case.[7] Two elements have been held to be necessary for an accident: (1) an unexpected cause,[8] such as a slip, fall or misstep[9] and (2) an unexpected

20. Smith v. Arnold, 60 So.2d 281, 283 (Fla. 1952).
21. The parents were certainly not dependent on the child.

*Editor's note: This case is scheduled for rehearing and has not been reported by publication deadline.

1. FLA. STAT. § 440.01 *et seq.* (1949).
2. Burton, *The Dilemma of Accident In Workmen's Compensation Laws* (Address at the Tenth Annual Meeting of the American Association of State Compensation Insurance Funds, Miami Beach, Florida, November 1952).
3. 1 LARSON, WORKMEN'S COMPENSATION LAW 511 § 37.10 (found that "accident" appears as a noun or modifier in forty-two Workmen's Compensation Act statutes).
4. See note 2 *supra*.
5. 1 LARSON, *op. cit. supra* note 3, § 37.00; BLACK, LAW DICTIONARY 30 (4th ed 1951).
6. FLA. STAT. § 440.02 (19) (1949); Burton, *Florida Workmen's Compensation 1935 to 1950*, 5 MIAMI L.Q. 81, § IV (1950).
7. Kress & Co. v. Burkes, 153 Fla. 868, 16 So.2d 106 (1944).
8. See note, 17 FLA. L.J. 28 (1943).
9. *Compare* Cleary Bros. Construction Co. v. Nobles, 156 Fla. 408, 23 So.2d 525 (1945), *with* Davis v. Artley Construction Co., 154 Fla. 481, 18 So.2d 255 (1944).

result.[10] However, the present trend has been to modify the rule so that only (2) is necessary.[11]

By statute, the term "injury" means personal injury by accident.[12] "Injury by accident" covers injuries, the means or cause of which are accidents, or which are accidents in themselves.[13] Thus the phrases "injury by accident" and "accidental injury" mean nothing more than "accident" as used in the popular sense.[14]

Where the disease of a claimant causes an accident which results in an injury, there will be no compensation awarded.[15] However, where the accident or the event aggravates a pre-existing disease, and occurs under such conditions that relief would have been granted had no disease been involved, compensation will be granted.[16] Where an employee sustains exposure greater than that of the general public, a resulting accident is held to be compensable.[17] All courts agree that where there is a slip, fall or misstep, and an injury results, it will be compensable.[18] It is in the lifting and overexertion cases where the major problem arises. It has been held that a heart attack,[19] cerebral hemorrhage,[20] injured knee,[21] back [22]or any other injury not brought on by a strained or awkward position[23] connected with the employment, is not an accidental injury.

Florida, prior to the immediate case, required in most instances that

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Contra: Duff Hotel v. Ficara, 150 Fla. 422, 7 So.2d 790 (1942) (lifting injury held accident).

10. Tallahassee v. Roberts, 155 Fla. 815, 21 So.2d 712 (1945) (nothing unusual happened; held no accident); Travelers Insurance Co. v. Shepard, 155 Fla. 576, 20 So.2d 903 (1945); Duff Hotel v. Ficara, 150 Fla. 422, 7 So.2d 790 (1942); Lakeland v. Burton, 147 Fla. 412, 2 So.2d 731 (1941).

11. Bonnie Gray v. Employers Mutual Liability Insurance Co., So.2d (Fla. 1952).

12. FLA. STAT. § 440.02 (6) (1949).

13. HOROVITZ, CURRENT TRENDS IN BASIC PRINCIPLES OF WORKMEN'S COMPENSATION 495 (1947).

14. Clover, Clayton & Co. v. Hughes, (1910) A.C. 242; 3 B.W.C.C. 275, 282; 1 LARSON, *op. cit. supra* note 3, at 513 § 37.20.

15. See Cleary Bros. Construction Co. v. Nobles, 156 Fla. 408, 23 So.2d 525 (1945) (physical condition because of disease was such that slight exertion might have produced the same result).

16. Davis v. Artley Construction Co., 154 Fla. 481, 18 So.2d 255 (1944) (diseased employee received an injury which caused his death earlier than it would have occurred had the disease progressed naturally); Protectu Awning Shutter Co. v. Cline, 154 Fla. 30, 16 So.2d 342 (1944); Charles A. Stewart Co. v. Dobson, 153 Fla. 693, 15 So.2d 481 (1943); Allen v. Maxwell Co., 152 Fla. 340, 11 So.2d 572 (1943). *See dissent,* United States Casualty Co. v. Maryland Casualty Co., 55 So.2d 741, 746 (Fla. 1951). See 1 SCHNEIDER, WORKMAN'S COMPENSATION LAW 517 § 138 (2nd ed. 1932).

17. See Davis v. Artley Construction Co., 154 Fla. 481, 18 So.2d 255 (1944) (workman became ill while working in a hot box car); Alexander Orr Jr., Inc. v. Florida Industrial Commission, 129 Fla. 369, 176 So. 172 (1937) (plumber suffered from heat exhaustion while using a blow torch).

18. See note 2 *supra.*

19. Le Viness v. Mauer, 53 So.2d 113 (Fla. 1951).

20. *Compare* note, 3 FLA. L. REV. 390 (1950), *with* Davis v. Artley Construction Co., 154 Fla. 481, 18 So.2d 255 (1944).

21. Peterson v. City Commission, 44 So.2d 423 (Fla. 1950).

22. *Compare* McNeill v. Thompson, 53 So.2d 868 (Fla. 1951), *with* Crawford v. Benrus Market, 40 So.2d 889 (Fla. 1949).

23. McNeill v. Thompson, 53 So.2d 868 (Fla. 1951).

there be an accident *precedent* to the injury before compensation would be awarded.[24] The reason advanced for this line of decisions is that the legislature intended that the benfits of the act should be limited, not tantamount to the expansive provisions of accident and health insurance policies.[25] Furthermore, the legislature, by defining and framing the terms "accident"[26] and "injury"[27] under separate paragraphs, has indicated that they are independent terms and that there should be a distinction between them.[28] There is support for the proposition that the accident is the *cause* and the injury the *effect*; never is the effect the cause.[29]

The opposite view, that the injury can be simultaneous with the accident, was first expressed in *Fenton v. Thorley*,[30] one of the forerunners of workmen's compensation decisions, wherein it was said that the word "accident" is used to denote both the cause and the effect. Perhaps the *contra* decisions were reached because the courts failed to recognize that in lifting and exertion injuries, the cause and result are simultaneous, and that there is an internal, instead of the usual external, injury.[31]

The court in the present case, following the majority view, held that to prove an accident the claimant only need show that there was an unexpected result.[32] The theory is that the court in the past in stating that the injury itself could not suffice for, or constitute, the accident,[33] intended only to require the showing of some event or circumstance related to the claimant's work to which his injury would be directly attributed.

By holding that an injury in itself can constitute an accident, the Florida Supreme Court has made compensation available for many persons who previously could not collect for their injuries of strain and exertion under the Florida Workmen's Compensation Act.[34]

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24. McNeill v. Thompson, 53 So.2d 868 (Fla. 1951); Le Viness v. Maurer, 53 So.2d 113 (Fla. 1951); Brooks-Scanlon v. Lee, 44 So.2d 650 (Fla. 1950); Peterson v. City Commission, 44 So.2d 423 (Fla. 1950); Tallahassee v. Roberts, 155 Fla. 815, 21 So.2d 712 (1945) (compensation denied when fireman slipped vertebra leaving bed to answer fire alarm); Travelers Insurance Co. v. Shepard, 155 Fla. 576, 20 So.2d 903 (1945); General Properties Co. v. Greening, 154 Fla. 814, 18 So.2d 908 (1944); Kress & Co. v. Burkes, 153 Fla. 868, 16 So.2d 106 (1944).

25. *See* Peterson v. City Commission, 44 So.2d 423, 425 (Fla. 1950) (dissenting opinion); General Properties Co. v. Greening, 154 Fla. 814, 18 So.2d 908 (1944); Protectu Awning Shutter Co. v. Cline, 154 Fla. 30, 16 So.2d 342 (1944).

26. See note 6 *supra*.

27. See note 12 *supra*.

28. Brief for Appellees, pp. 9, 12, 13, BonnieGray v. Employers Mutual Liability Insurance Co., note 11 *supra*.

29. *Id.* at 12.

30. (1903) A.C. 443; 5 B.W.C.C. 1.

31. See note 2 *supra*.

32. *Accord:* Duff Hotel v. Ficara, 150 Fla. 422, 7 So.2d 790 (1942).

33. McNeill v. Thompson, 53 So.2d 868 (Fla. 1951); Le Viness v. Mauer, 53 So.2d 113 (Fla. 1951); Brooks-Scanlon v. Lee, 44 So.2d 650 (Fla. 1950); Peterson v. City Commission, 44 So.2d 423 (Fla. 1950).

34. See note 2 *supra* (estimated that ninety percent of the strain and exertion cases in Florida had been denied to date).