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Workmen's Compensation--Mental and Emotional Attitude of Employee Considered Factor in Recovery

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est in oil and gas leases is a purchaser for value within the meaning of the recording statutes. *Carter Oil Co. v. McQuigg,* 112 F.2d 275 (7th Cir. 1940). The courts are in accord that purchasers of real property interests under oil and gas leases are entitled to rely on the record title, and are not subject to the secret equities of third persons. *Angichiodo v. Cerami,* 28 F. Supp. 720 (W.D. La. 1939). Though subsequent purchasers are clearly bound by the record title, it would seem that they would not be bound by alterations in respect to the property where the record title was not changed to conform with such a modification.

With the above possible exception, a consideration of the recording statutes in their full context makes it manifest that there would be great doubt that the modification agreement would be covered thereunder. This result could be reached only if the West Virginia court should regard the lessee's interest as a real property interest. There is clearly some doubt that they would so hold. The dissent's deficient quotation of the recording statute leads not only to an erroneous oversimplification of the law, but also to a most confusing analysis of the position of this case in regard to the recording statutes. The conflict in factual statements in the two opinions renders a firm resolution of this case in the mind of the reader extremely difficult and speculative.

L. B. S.

WORKMEN'S COMPENSATION—MENTAL AND EMOTIONAL ATTITUDE OF EMPLOYEE CONSIDERED FACTOR IN RECOVERY.—Appeal from a workmen's compensation award to *D* who suffered a heart attack which, according to expert medical testimony, could have been caused by the mental and emotional strain of her job, coupled with her pre-existing hypertension. She later died. *Held,* that where an employee's disability or illness is aggravated by mental and emotional strain on the job leading to resulting injury or death, the injury is compensable even in the absence of direct physical activity as a factor contributing to the disability. *Ins. Dep't of Mississippi v. Dinsmore,* 102 So. 2d 691 (Miss. 1958).

The principal case represents a departure from the prevailing line of authority in compensation cases for two reasons: it considers the worker's mental and emotional attitude toward, and the emotional demands of his job, then allows recovery in the absence of direct physical activity as a factor in the injury.

Few reported cases have considered mental or emotional strain in deciding a workmen's compensation case, and objectively, the heart attack does not qualify as an injury.

" 'Injury' as used in Workmen's Compensation Act comprehends a physical or traumatic damage or harm accidental in character and as a result of external and accidental means in the sense of being the result of a sudden mishap, occurring by chance, unexpectedly and not in the usual course of events at a particular time and place." *Drips v. Industrial Comm'n*, 165 Ohio St. 407, 135 N.E.2d 873 1956). In the principal case no injury of the type defined occurred. In *E. Boggart Co. v. Industrial Comm'n*, 290 Ill. 530, 125 N.E. 254 (1919), it was stated: "An 'accident' within the Compensation Act is an injury traceable to a definite time, place, and cause, and occurring within the course of employment." In the principal case no accident of the type defined occurred. There was no physical activity of the type usually connected with accidents.

In *Holt v. Acme Mattress Co.*, 40 Hawaii 660 (1955), a case involving a person with hypertension, where recovery was denied in the absence of overexertion or direct physical activity preceding a cerebral attack, it was held that for an injury to be compensable it must have occurred by accident, arising out of and in the course of his employment; all three factors must be present or recovery will be denied. In *West v. North Carolina Dep't of Conservation & Dev.*, 229 N.C. 232, 49 S.E.2d 398 (1948), the court held that a heart attack is not an accident within the meaning of the workmen's compensation acts. There is general agreement for the principle stated in *In re Smith*, 72 Idaho 8, 236 P.2d 87 (1951), which requires exertion beyond normal duties of employment leading to a heart attack before the accident is compensable. The case does not mention mental and emotional attitude toward one's job as a factor to be considered in determining whether the accident is compensable.

In *Wiltcher v. National Transp. Co.* 130 N.Y.S.2d 586, 124 N.E.-2d 317 (App. Div. 1954), recovery was allowed where excitement and emotional strain led to a heart condition. However, the injury in that case was directly connected with physical activity of a nature not usually found in the claimant's ordinary work, hence, an accident in the usually accepted definition used in workmen's compensation cases. In the principal case, there was no physical activity of an unusual nature.

In *Ingolls Shipbuilding Corp. v. Howell,* 221 Miss. 824, 74 So. 2d 863 (1954), the court held that if an employee's work causes or in any manner contributes to a heart attack, compensation may be awarded.

In essence, the decision in this case seems to be a liberal interpretation of a minority view and is out of line with most precedent in workmen's compensation cases. Sympathy for the deceased claimant may have influenced the decision in this case. Both liberal construction of workmen's compensation statutes and sympathy used to broaden the law are condemned in workmen's compensation cases. In *Nollett v. Holland Lumber Co.,* 141 Neb. 538, 4 N.W.2d 554, 556 (1942), it was stated: ". . . . the statute cannot be liberalized by judicial interpretation to allow non-compensable claims." In *Lutheran v. Ford Motor Co.,* 313 Mich. 487, 21 N.W.2d 825, 828 (1946), it was stated: "The workmen's compensation law is not designed as a complete substitute for life insurance, or sick and accident insurance, for employees, nor can sympathy be allowed to broaden its express provisions." The *Dinsmore* case seems to have violated both principles.

West Virginia adheres to a liberal construction of the workmen's compensation law with certain reservations. In *Young v. State Compensation Comm'r,* 121 W. Va. 126, 8 S.E.2d 517 (1939), it was stated that the Workmen's Compensation Act should be given a liberal construction, but it may not be extended to permit consideration of a claim which the statute in effect says shall not be compensated. In *Martin v. State Compensation Comm'r,* 107 W. Va. 582, 587, 149 S.E. 824 (1929), it was held that the fact that an employee was suffering from a pre-existing ailment does not dispense with the necessity of showing that the injury was actually caused by an accident or injury received in the course of and arising out of his employment. In *Gilbert v. State Compensation Comm'r,* 121 W. Va. 10, 1 S.E.2d 167 (1939), it was held a dilation of the heart was a compensable injury where an unusual strain occurred. No West Virginia case has considered emotional or physical strain in compensation cases or allowed recovery for a heart attack in the absence of physical activity. West Virginia, though adhering to a liberal construction of its compensation statute, seems to require an accident in the usual meaning of the term and direct physical activity before it will allow recovery for a heart attack or aggravation of a pre-existing injury or condition in the employees.

The principal case seems to be subject to criticism for two reasons. It has liberally construed a minority view and considered fac-

tors not usually considered in compensation cases. No one would advocate denying compensable claims; however, attempts to make all claims compensable regardless of how remotely connected with employment should be condemned.

J. J. P.

ABSTRACTS OF RECENT CASES

CONSTITUTIONAL LAW—DELEGATION OF POWER—SCHOOL BOARD TAX ON RECORDATION OF INSTRUMENTS.—The clerk of the county court refused to admit petitioners' deed to record, unless petitioners paid an additional fee which the clerk asserted was due by virtue of an ordinance adopted by the county board of education. The state legislature had delegated to the boards of education the power to impose by ordinance a recording fee for county school fund purposes. The state constitution gave the legislature the power to provide for the support of free schools and for raising funds therefor in each county, by authority of the people thereof. Petitioners applied for a writ of mandamus to require the clerk to record the deed. *Held,* mandamus granted. An act which delegates to county boards of education the power to impose taxes upon the recordation of instruments is unconstitutional under W. VA. CONST. art. 5, § 1, relating to separation of power, and art. 12, § 5, concerning the responsibility of the legislature for the support of free schools. *State ex rel. Winter v. Brown,* 103 S.E.2d 892 (W. Va. 1958).

In West Virginia the right of the legislature to delegate taxing power to school boards must be based upon a state constitutional provision. A board of education may exercise the taxing power only under a delegation by the legislature which does not contravene the constitution. The validity of this delegated taxing power of the boards of education was expressly made contingent upon a favorable majority vote of the people of the county. This decision, however, does not impair the power and authority of county boards of education to levy taxes for the support of free schools. For further discussion and cases see: 47 AM. JUR. *Schools* § 78 (1943); 51 AM. JUR. *Taxation* § 144 (1944); 11 AM. JUR. *Constitutional Law* § 223 (1937); Annot., 113 A.L.R. 1416 (1938). See also, *Warden v. County Court,* 116 W. Va. 695, 183 S.E. 39 (1935).

A. G. H.