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# Workmen's Compensation Act--Time of Accrual of Liability--Silicosis--Meaning of "in the Same Employment"

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mitting payments of compensation and other duties. Then, "if the circumstances of this case were such that the employer should be charged with misleading or duping the employee," the employer's conduct, constructively that of the commissioner, should estop the commissioner to deny that timely filing of the application had in fact been made.

The case of *Robinson v. State Compensation Comm'r*,<sup>9</sup> is an example of conduct not sufficient to constitute an estoppel. Where the claimant failed to file application for readjustment of his compensation claim within the one-year period prescribed by statute, the commissioner's letter, to the effect that the claimant had been amply compensated for the loss of an eye and that the defect of vision of the other eye was in no way connected with the injury, was not sufficient to estop him to deny that a proper claim had in fact been filed. In this case the court states in express terms a limitation on this principle of estoppel which may or may not have been implied in the earlier decisions. In the language of the court: "An employee . . . who seeks to have his case reopened for an additional award by an oral request within the statutory period . . . must make an affirmative showing that following such request and within the limitation period, the commissioner pursued such a course of conduct that he is estopped to deny that a proper application had in fact been filed."

The essence of the *Turner* decision, the principal case, is that the conduct of the commissioner unintentionally misled the claimant and caused him to waive a "substantial right." The case indicates no significant departure from the policy enunciated in the cases discussed; rather, it assumes its role as another thrust in the direction of liberal application of the workmen's compensation law.

G. S. B.

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WORKMEN'S COMPENSATION ACT—TIME OF ACCRUAL OF LIABILITY—SILICOSIS—MEANING OF "IN THE SAME EMPLOYMENT".—Claimant had been employed for well over two years as a coal loader for different companies in West Virginia and during all that time had been exposed to silicon dioxide dust. When in the employ of his last employer for considerably less than two years he was disabled by reason of developing silicosis and he sought compensation from the commissioner. The silicosis section of the West

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<sup>9</sup> 11 S. E. (2d) 111 (W. Va. 1940).

Virginia Workmen's Compensation Law contains the following words: "Provided, however, that compensation shall not be payable for the disease of silicosis, or death resulting therefrom, unless the employee has been exposed to the inhalation of silicon dioxide dust in harmful quantities over a period of not less than two years in the same employment in this state."<sup>1</sup> Held, that the provision should be construed as requiring the applicant to have been exposed for two years previous in the same type or nature of work and should not be restricted to occupation for that time under the same employer. *Hodges v. Workmen's Compensation Comm'r.*<sup>2</sup>

This seems to be the first time that any court has been called upon to determine the meaning of these words, but it appears that the court, in judging the intention of the legislature, reached the only reasonable conclusion. To construe the provision as requiring employment under the same employer for two years would in many cases deprive the applicant of any chance of recovering compensation although it appears clear that the legislature intended compensation to be available in such cases. If the contrary interpretation were to be given the words, a workman who had been employed for many years in an occupation exposing him to silicosis could not recover compensation unless he had worked for the same employer for not less than two years.

Although the instant decision is therefore sound, it too may give rise to many harmful possibilities. The last employer of the disabled workman is the one whose rating will be affected,<sup>3</sup> and as a consequence employers may be inclined to refrain from hiring workmen who have been exposed to silicon dioxide dust while in the employ of others or to discharge such of their own employees as have been exposed to silicosis for only a little less than the two-year requirement. This phase of the workmen's compensation law therefore seems to be in need of legislative attention.

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<sup>1</sup> W. VA. CODE (Michie, 1937) c. 23, art. 6, § 5.

<sup>2</sup> 17 S. E. (2d) 450 (W. Va. 1941).

<sup>3</sup> *Renfro v. Pittsburgh Plate Glass Co.*, 130 S. W. (2d) 165 (Mo. 1939); *Johnson v. London Guarantee & Accident Co.*, 217 Mass. 388, 104 N. E. 735 (1914). This proposition was assumed to be the law in the principal case.