

10-1-1959

## Workmen's Compensation—State Retirement System: Finality of Comptroller's Determination of Nature of Accident

Buffalo Law Review

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### Recommended Citation

Buffalo Law Review, *Workmen's Compensation—State Retirement System: Finality of Comptroller's Determination of Nature of Accident*, 9 Buff. L. Rev. 217 (1959).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol9/iss1/129>

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decision in the *McFall* case and sustained the third party complain in *Merriweather* on the sole basis of the allegation of an express contract between the shipowner and the employer.

The decision in this case points up the necessity for parties dealing with employers covered by the Longshoremen's Act to be certain that their transactions are evidenced by a valid and enforceable contract. For the benefit of such employers and parties dealing with them, it is desirable that such a contract contain express terms covering the employer's duty to indemnify against damages paid to an injured employee.

STATE RETIREMENT SYSTEM: FINALITY OF COMPTROLLER'S DETERMINATION OF NATURE OF ACCIDENT

Section 61 of the Retirement and Social Security Law provides that an "accidental death benefit" shall be payable upon the death of a member of the New York State retirement fund if the Comptroller shall determine that he died before the effective date of his retirement "as the natural and proximate result of an accident sustained in the performance of duty." In *Croshier v. Levitt*,<sup>50</sup> the decedent, 57 years of age, had been a forest ranger for the State Conservation Department. His death was caused by a heart attack while fighting a forest fire. He had a history of heart trouble for which on one previous occasion he had been hospitalized.

The decedent's widow, claiming that his death was the result of an accident, applied for the benefits allowed under Section 61. The Comptroller rejected the claim on the ground that decedent's death was not due to an accident. The Appellate Division annulled the Comptroller's determination,<sup>51</sup> and this appeal was taken. The Court of Appeals reversed in a 4-3 opinion, holding,

the mere fact that the medical and physiological facts are not seriously in dispute does not convert the ultimate issue of whether the death was "the natural and proximate result of an accident" into a pure question of law on which this Court has the final word.<sup>52</sup>

Section 74 of the above Act gives the Comptroller "exclusive authority" in determining all applications for such a benefit.<sup>53</sup> The problem is, what did the Legislature mean by "exclusive authority"? Does this allow the Comptroller to establish a definition of accident for purposes of this Act or is he bound by the standards used in similar fields such as Workmen's Compensation? It is significant to note, as did the majority in this case, that in *Nash v. Brooks*,<sup>54</sup> it was held that an Industrial Board determination of accidental injury in a Workmen's Compensation proceeding was to be binding upon the medical board of the Retirement System. The Legislature changed this result

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50. 5 N.Y.2d 259, 184 N.Y.S.2d 321 (1959).

51. *Croshier v. Levitt*, 5 A.D.2d 941, 172 N.Y.S.2d 344 (3d Dep't 1959).

52. *Croshier v. Levitt*, *supra* note 50.

53. N.Y. RETIREMENT AND SOC. SEC. LAW § 74.

54. 276 N.Y. 75, 11 N.E.2d 545 (1937).

by amending the law to provide that the Comptroller is to have "exclusive authority" and that no decision by the Workmen's Compensation Board shall be binding on him.<sup>55</sup> A number of decisions subsequent to this change are helpful in determining what the Legislature intended to accomplish. In *McCadden v. Moore*,<sup>56</sup> a police officer was permanently injured due to a coronary attack suffered while shovelling snow in the performance of his duty. The Comptroller denied his application for accidental disability benefits. The Appellate Division confirmed the determination and in its opinion stated, "the duty of determining the question of fact as to whether or not an employee has sustained accidental injury is for the Comptroller." Similarly, in *Odell v. McGovern*<sup>57</sup> and *Morrissey v. McGovern*,<sup>58</sup> where the Comptroller had held there had been no accident, recovery was denied. In the latter case, the Appellate Division said,

It is now settled that the Comptroller has the power to determine that strain or over-exertion resulting in a heart attack does not constitute an accident for purposes of administering the retirement system, notwithstanding the fact that it may constitute an accident for Workmen's Compensation purposes.<sup>59</sup>

Implicit in these decisions is a recognition of the fact that in determining whether a particular injury was the result of an accident for purposes of Section 61, the Comptroller can apply a more strict test than can a Workmen's Compensation Board.

The Appellate Division, in the instant case, annulled the Comptroller's determination, purporting to follow *Owens v. McGovern*.<sup>60</sup> There, a surveyor, while working on rough terrain in adverse weather conditions, suffered a fatal heart attack. The Comptroller found the death not to be the result of an accident. He had refused, however, to admit medical testimony on the point. The Court of Appeals, Desmond, J., remanded the case saying, "a claim of an 'accident' consisting of a heart injury cannot be sustained without medical testimony."<sup>61</sup> In a concurring opinion, Judge Fuld agreed with the disposition of the appeal on this point, but also added that this did not mean that the Comptroller must find the existence of an accident. He pointed out that it is only necessary that the evidence be admitted and then if different inferences may reasonably be drawn, the Comptroller is free to make a determination. "If his findings and conclusions find support in the record, the courts have no alternative but to accept them."<sup>62</sup> Clearly, then, accepting either opinion of the *Owens* case does not require any departure from the views expressed in the cases previously discussed.

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55. *Supra* note 53.

56. 301 N.Y. 760, 95 N.E.2d 819 (1950).

57. 308 N.Y. 678, 124 N.E.2d 319 (1954).

58. 1 A.D.2d 746, 146 N.Y.S.2d 865 (3d Dep't 1955).

59. *Id.* at 747, 146 N.Y.S.2d 866.

60. 309 N.Y. 449, 131 N.E.2d 729 (1956).

61. *Ibid.*

62. *Supra* note 60.

The dissenting opinions all take the position that a question of accident *vel non* is one of law. Accordingly, they argue, since the evidence does not support the Comptroller's conclusion, it is erroneous and the Court may overturn it. The main difficulty with this position is that it finds no support in the prior decisions of the Court. An issue raised in Judge Dye's dissent is that even though the Comptroller is not bound to accept a Workmen's Compensation determination, he is still bound to use the same definition of "accident." If this were so, then a determination by the Comptroller would necessarily have to be consistent with a finding of the Workmen's Compensation Board. The legislature, however, has expressly provided that the findings need not be consistent. The only logical explanation is that the legislature intended that different criteria would be used in each instance.

At first glance, the result seems harsh since it makes it almost impossible to receive accidental death benefits in cases where a heart attack is caused by over-exertion. However, it should be noted that this does not deny compensation altogether as it would in Workmen's Compensation cases. Here, the fact of an accident only pertains to the amount which will be paid. The beneficiary will still receive some benefits even though the death was not caused by an accident.

## MISCELLANEOUS

### ARBITRATION—SPECIFIC PERFORMANCE OF EMPLOYMENT CONTRACT

The petitioner entered into an eleven year employment contract with the defendant corporation. Included in the contract was an agreement that if the petitioner should be declared permanently disabled he would receive a reduced compensation for the next three years and the contract would be terminated. The contract also provided that any controversy arising should be settled by arbitration in accordance with the American Arbitration Association rules. The directors of the corporation made a determination that the petitioner was permanently disabled and that his services should be terminated. The petitioner disputed the finding of permanent disability and the resulting difference of opinion was submitted to arbitration. The arbitrators held in favor of petitioner on the issue and ordered petitioner's reinstatement.

The Supreme Court at Special Term granted the petitioner's motion to confirm the arbitrator's award and denied a cross motion to vacate it. This ruling was affirmed by the Appellate Division and was upheld by the Court of Appeals, 4-2, in *Staklinski v. Pyramid Electric Company*.<sup>1</sup>

The basic issue involved in this case is whether a court may, on an application to confirm an arbitration award, enter a decree of specific performance

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1. *Staklinski v. Pyramid Electric Co.*, 10 Misc. 2d 706, 172 N.Y.S.2d 224 (Sup. Ct. 1958), *aff'd* 6 A.D.2d 565, 180 N.Y.S.2d 20 (1st Dep't 1958), *aff'd* 6 N.Y.2d 159, 188 N.Y.S.2d 541 (1959).