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Workmen's Compensation—Suicide

Paul A. Foley

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THE COURT OF APPEALS, 1954 TERM

be under order of the Board of Fire Commissioners³⁸ to qualify for compensation under either Workmen's Compensation Law or General Municipal Law, although case law appears contra.³⁹

Suicide

In *Graham v. Nassau & Suffolk Lighting Company*,⁴⁰ an employee died by falling into the stack of a superheater, the accident itself being unwitnessed. The court held (4-3), reversing the Appellate Division⁴¹ and reinstating the award of the Workmen's Compensation Board, that the presumption that this was an accidental injury and not suicide was not overcome by substantial evidence to the contrary.

Workmen's Compensation Law §21 provides: "It shall be presumed in the absence of substantial evidence to the contrary . . . (3) that the injury was not occasioned by the wilful intention of the injured employee to bring about the injury or death of himself . . ." While this presumption may not substitute for proof of accident, nevertheless it may be overcome only by substantial evidence to the contrary.⁴² Where there is such evidence the presumption fails, and the burden reverts to the claimant.⁴³

The dissent,⁴⁴ relying on the opinion in the Appellate Division, contends that evidence in the form of a death certificate listing death as suicidal, a recent divorce decree against the deceased, and the physical *difficulties* of falling accidentally into the superheater was such substantial evidence to the contrary. The majority contends that the physical dimensions of the superheater did not make an accident of this type improbable, and evidence of the lack of suicidal tendencies on the part of the deceased, and of his plan to remarry after the divorce, made motivation a question of fact for the Workmen's Compensation Board whose decision was to be final.⁴⁵

The instant case is illustrative of the difficulty the courts have had in deter-

38. Town Law §176 (11) authorizes the Board of Fire Commissioners to provide for public inspections and parades.

39. See note 34, *supra*.

40. 308 N. Y. 140, 123 N. E. 2d 813 (1954).

41. 283 App. Div. 228, 126 N. Y. S. 2d 666 (3rd Dep't 1954).

42. *McCormack v. National City Bank of New York*, 303 N. Y. 5, 94 N. E. 2d 887 (1951).

43. *Magna v. Hagerman Harris Co.*, 258 N. Y. 82, 179 N. E. 266 (1932).

44. Lewis, C. J., and Fuld and Van Voorhis, JJ.

45. Workmen's Compensation Law §20 provides: ". . . the decision of the Board shall be final as to all questions of fact." mining when evidence reaches the level of "substantial evidence to the contrary,"

mining when evidence reaches the level of "substantial evidence to the contrary," but it is suggested that the majority decision in the instant case is the most cogent resolution of fact and law.⁴⁶

Silicosis—Date of Disability

Workmen's Compensation Law §44-a provides that "the employer in whose employment an employee was last exposed to an injurious dust hazard shall be liable for the payments required by this chapter when disability . . . of the employee shall be due to silicosis or other dust disease."

In *Dunleavy v. Walsh, Connelly, Senior & Palmer*,⁴⁷ claimant was permanently disabled with silicosis from a prior employment without his knowledge and now seeks an award against his latest dust-exposure employer. The Court unanimously reversed the Appellate Division⁴⁸ (which had affirmed a denial of an award by the Workmen's Compensation Board) and held that the policy behind this section was to award disability payments for silicosis only when there was actual inability to work, and then against the latest employer.

The Workmen's Compensation Board found that total disability occurred before claimant entered into the employ of respondent. Disablement from an occupational disease is an accident,⁴⁹ and the date of disability shall be such date as the Board may determine on hearing the claim,⁵⁰ with the only limitation that the Board's decision be based on substantial evidence.⁵¹ The court contends, however, that since partial disability for silicosis is not compensable⁵² and since the carrier of the latest employer against whom an award is given will be reimbursed out of the special disability fund after 260 weeks,⁵³ the Legislature recognized the progressive character of silicosis and intended it should be compensable whenever an employee should become totally unable to work. Protection of employers against fraud may be found in the provision of the act providing that compensation will not be given to an employee who at the time of his employment wilfully and falsely represents in writing that he has not previously suffered from the disease which caused his disability.⁵⁴

46. See *Epstein v. City of New York*, 283 App. Div. 751, 128 N. Y. S. 2d 67 (1954), and *Dubinsky v. Kofsky*, 242 App. Div. 342, 275 N. Y. Supp. 365 (3rd Dep't 1934), where unwitnessed deaths were found to be accidental rather than suicide.

47. 309 N. Y. S. 127 N. E. 2d 727 (1955).

48. 284 App. Div. 1075, 136 N. Y. S. 2d 31 (3rd Dep't 1954).

49. Workmen's Compensation Law §38.

50. Workmen's Compensation Law §42.

51. *Cole v. Saranac Lake General Hospital*, 282 App. Div. 626, 125 N. Y. S. 2d 891 (3rd Dep't 1953).

52. Workmen's Compensation Law §39; *Cifolo v. General Electric Co.*, 305 N. Y. 209, 112 N. E. 2d 197 (1953).

53. Workmen's Compensation Law §15 (8) (ee) and 44-a.

54. Workmen's Compensation Law §43.