Workmen's Compensation Act—Filing Claim for Compensation.

Section 10 (a) requiring a claim to be presented within six months, does not require that a formal written claim for compensation be presented to the Board.

June 6, 1918.

Industrial Accident Board,
Helena, Montana.

Gentlemen:

"You have requested my opinion upon the question of what constitutes presenting claim within the meaning of Section 10 (a) of the Workmen's Compensation Act. It appears from your letter that you have several cases pending involving this matter.

In the first case, the widow of Prosper St. George claims compensation on account of the death of her husband who was a suicide, alleged to have been caused by injuries sustained in the Pennsylvania Mine fire of February 14, 1916, it being claimed that the fire caused his mental derangement and attending suicide on March 1st following. The accident was not reported by the employer because of the claim that there was no accident suffered by the deceased. The widow filed notice of death as provided in Section 17 (g), but has not filed the regular claim for compensation upon the blank form provided by the board for compensation, although such form was sent to her. It appears, however, that within the six months' period an agent of the widow called upon your Board in person and advised that the widow proposed to make claim for compensation, and that he and the widow had personally notified the claim agent of the employer of that fact, all of which is substantiated by letters now on file with your Board.

In the second case, Bert Campbell was accidentally killed on January 29, 1917. Claim for compensation was filed by his alleged wife, which was accepted, and compensation was paid without protest. After the payment of compensation to the alleged wife in a lump sum, a brother of the deceased telegraphed the Board that the parents would claim his estate, and on March 4th again telegraphed that there was no record in Colorado of a marriage license having been issued to the

deceased, and also that there was no record of a divorce having been granted the alleged widow from her former husband. This telegram was immediately answered and the entire matter explained to the brother by the Board, with instructions as to how the parents should proceed. On March 23rd, the brother advised the Board that the parents were dependent upon the decedent. On April 14, 1917, an attorney wired the Board that he was representing the parents and that he would forward proper petition and proof. The letters and telegrams of the Board were not answered and on January 30, 1918, a year after the death of the deceased, the parents filed claim for compensation, such claim being dated March 31, 1917, but not being presented to the Board until January 30, 1918.

In the third case, James W. Noland claims to have suffered an accident on November 15, 1915, which resulted in the loss of the sight of one of his eyes. Claim for compensation was filed over a year after the occurrence of the accident. The reason assigned for not filing claim before is that the accident did not become manifest until several months after the happening of the injury and that it was several months subsequent to that date that loss of sight ensued, and that it was about eight months after the accident before the claimant realized that he was entitled to compensation for the loss of the sight of his eye, and that claim for compensation was filed within six months from that time.

In the fourth case, Arthur J. Evans was accidentally killed on July 17, 1917, while in the employ of a sub-contractor from a contractor with Yellowstone County. Claim for compensation was filed by the father as a major dependent on April 4, 1918, over eight months after the happening of the accident. The Board had no notice of the accident until the filing of the claim for compensation. It is claimed by the attorney for the father that he was not aware at the time of the death of his son that he was engaged in an employment calling for compensation, and that the filing of a claim within any specified time is not vital for the reason that the employer was a contractor of a public corporation and thereby under the law without any act of his.

Section 10 (a) of our Workmen's Compensation Act is as follows:

> "In case of personal injury or death, all claims shall be forever barred unless presented within six months from the date of the happening of the accident."

Section 17 (g) provides that no claims to recover compensation, for injuries not resulting in death, shall be maintained unless within sixty days after the occurrence of the accident a notice in writing containing certain information shall be served upon the employer or the insurer, provided however, that actual knowledge of such accident on the part of such employer or his managing agent or superintendent in charge of the work shall be equivalent to such service. The notice of injury provided under Section 17 (g) and the claim for compensation under Section 10 (a) are two distinct requirements. See In Re. Bloom, 222 Mass. 434, 111 N. E. 45. Although actual knowledge of the accident and injury is made equivalent to notice under Section

17 (g), there is no such provision with reference to Section 10 (a). The Kansas Compensation Act provides that the absence of notice or any defect shall not be a bar, unless the employer has been thereby prejudiced or if the failure to make a claim was occasioned by mistake, physical incapacity, or other reasonable cause. But our Act contains no such provisions. The only exception to Sec. 10 (a) is found in Sec. 10 (b) with reference to incompetents and minors under sixteen years of age. So that the Kansas cases of Roberts v. Charles Wolff Packing Co., 95 Kan. 723, 149 Pac. 413, Ackerson v. National Zinc Co., 96 Kan. 781, 153 Pac. 530, and Halverhout v. Southwestern Milling Co., 97 Kan. 484, 155 Pac. 916, holding under the facts in each case that the presentation of claim for compensation had been waived, would not be in point under our Act.

The reasons for specifying a limited period within which to present claims for compensation is stated in Ehrhart v. Ind. Acc. Com. (Cal.) 158 Pac. 193, on pages 194 and 195, as follows:

> "One of the purposes of the time limit imposed by the various subdivisions of Section 16 was to cause an early submission to the commissioners of the injuries to the employe, so that the commissioners by their own observation and with the aid of expert testimony might determine, not only the condition of the applicant at that time, but the probable future results of the accident. This policy is manifest from the fact that where no disability has occurred at the time of the hearing, but is likely to do so in the future, the commission may retain jurisdiction. In other words, prompt inquiry regarding the *injuries* in all their details by the commission was evidently intended by the lawmakers.
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> "Another object of a prompt investigation of the results of an accident is to put the commission and the indemnitor in a position to discover any attempt either unduly to extend the period of payment or to fix upon the employer the burden of paying for the results of a later casualty."

It was held in Knoll v. City of Salina, 98 Kan. 428, 157 Pac. 1167, that a claim for compensation need not be in writing, if an oral demand is made within the time. To the same effect is Gailey v. Peet Bros. Mfg. Co., 98 Kan. 53, 157 Pac. 431, in which the court said on page 432:

> "The evidence of the plaintiff tends to prove that he talked with the defendant's superintendent within the three months after the injury was received about compensation for that injury, and asked the superintendent if he was going to give the plaintiff any recompense for his hand. This certainly fills the requirement of the statute so far as a claim for compensation is concerned. To require a more specific claim for compensation compels the injured employe to employ a lawyer so as to get his claim for compensation technically within the language of the statute."

See also Suburban Ice Co. v. Industrial Board, 274 Ill. 630, 113 N. E. 979, and Sillix v. Armour & Co., (Kan.) 160 Pac. 1021. In Shafer

v. Parke, Davis & Co., (Mich.) 159 N. W. 304, the court said on page 305:

> "Inasmuch as employes, as a class, are not skilled in the niceties of language or judicial procedure, and as the law was intended to provide a speedy and inexpensive way for determining the compensation, any notice and any claim, made within the time limited, ought to be considered sufficient if it fairly gives the employer such information as the law intends."

In Matwiczuk v. Am. Car & Fdy. Co., (Mich.) 155 N. W. 412, it appeared that deceased employe had a wife and family in Poland. On his death, and on the next day, his brother-in-law employed an attorney, who wrote a letter notifying the employer of the death at a certain hour and day, that the cause was improper insulation of electric wires, and that deceased had a family in Poland dependent on him, and asking compensation. A power of attorney ratifying such act was executed and mailed in Poland by the wife to the brother-in-law within six months, but reached him after the expiration of that period. It was held that as the statute must not be technically construed, the notice given was sufficient, since it gave the employer full opportunity to investigate the accident. And that to hold otherwise would not be according to the letter or the spirit of the Act.

In Re. Carroll, (Mass.) 114 N. E. 285, it appeared that an employee of a manufacturing company on October 21, 1912, hurt her back by lifting a heavy box. She went home and was unable to work for four weeks. At the expiration of that time she returned to work and continued to work until April 7, 1915, at which time she found that she was no longer able to work and left her employment. Since then she has done no work. At no time has she filed a written notice of her injury. It was held that the time when she became incapacitated to do any work on account of the injury was not the date of its "occurrence," and that her claim for compensation should have been made within six months from the first occurrence of her injury.

The Massachusetts Act provides that the claim shall be filed with the Board within a certain specified time, but that the failure to make such claim within the period prescribed shall not be a bar to the maintenance of proceedings under the Act if it is found that it was occasioned by mistake or other reasonable cause. But it was held in McLean's case, 223 Mass. 342, 111 N. E. 783, that ignorance of the statutory requirement is not a mistake within the meaning of this exception. In Haiselden v. Industrial Board, 275 Ill. 114, 113 N. E. 877, it was held that the requirement of the Act that no proceedings for compensation thereunder shall be maintained unless claim for compensation has been made within six months after accident, etc., is mandatory, and a claim not presented is barred, even though the delay in presentation was due to the injured man's having mistakenly presented his claim to the wrong person, thinking him his employer.

In Red River Lumber Co. v. Pillsbury, (Cal.) 161 Pac. 982, the Court said:

> "The language of our statute is that the right to institute the proceeding is 'wholly barred' by the lapse of time. This does not mean that the provision relates back and avoids the claim from the beginning, or forfeits the right. The use of the word 'barred' in itself implies that the lapse of time constituting the bar must be raised in some manner as a defense. If the bar is not raised, it will be of no avail."

In Bushnell v. Industrial Board (Ill.), 114 N. E. 496, it appeared that a carpenter engaged in tearing up a floor in a building twisted his leg, but the injury was slight and did not prevent him from continuing at work for some time, though he limped. He made no claim on the master on account of such injury, though informing the foreman, who noticed him limping, that he had twisted his leg, and later told the foreman that he had a game leg. The Court held that while the Workmen's Compensation Act is liberal in its provisions as to the character of the notice to be given, providing that no defect or inaccuracy shall bar proceedings, the mere statement by the carpenter was not formal notice of the accident or claim for compensation within 30 days thereafter, as required by Section 24 and so no compensation could be allowed.

The Court further held that making claim within six months after an injury is jurisdictional and the defect is not waived by failure to raise the point.

In R. F. Conway Co. v. Industrial Board, (Ill.) 118 N. E. 705, it was held that where the employee asked his foreman and an attorney of the employer whether he was under the Compensation Act and they informed him that he was and assured him that his claim would be paid, there was a sufficient "claim" for compensation under Workmen's Compensation Act, requiring claim for compensation within six months; as to ask for a right as due is to make a claim of that right.

In the first case above referred to, I am of the opinion that the claim has not been barred by virtue of Section 10 (a). It appears that your Board was advised in person of the claim of the widow and also that the widow personally notified the claim agent of the employer of that fact. It therefore occurs to me that the question for determination by your Board in this case is whether or not the death of the deceased employee arose out of and in the course of his employment.

I am likewise of the opinion that in the second case the claim for compensation is not barred by the provisions of Section 10 (a), as the Board was fully advised within the six months' period of limitation that the parents of the deceased employee would claim compensation.

The third case presents a very difficult situation. It is possible that under a strict interpretation of the provisions of Section 10 (a) of the Act, this claim has been barred. But it is the general rule that compensation acts should receive a very liberal interpretation for the protection of an injured employee. It appears that the claimant presented his claim for compensation within six months after the time that the injury became manifest, and I am therefore of the opinion

that this is a compliance with the spirit of the Act and that his claim for compensation should be considered.

In the fourth case, I am of the opinion that the right to compensation has been barred by virtue of Section 10 (a). It appears that the Board had no notice of the accident and knew nothing whatever about it until over eight months after the happening of the accident. Ignorance of the statutory requirements cannot operate as any excuse.

Respectfully,

S. C. FORD,

Attorney General.