Workmen's Compensation Act—Waiting Period—Medical and Hospital Services.

Section 16 (f), 16 (g) and 16 (c) of the Workmen's Compensation Act, Chapter 96 of 1915 Session Laws, construed.

April 7, 1917.

Industrial Accident Board,
Helena, Montana.

Gentlemen:

You have submitted to me the following questions in connection with the interpretation of Section 16 (f), 16 (g) and 16 (h) of the Workmen's Compensation Act:

I.

(a) "Who pays the cost of medical treatment when the employee suffers no loss of time, or earning power, account the accident, or injury?

(b) "Is the Act predicated upon loss of time and earning power as to medical aid, as well as compensation, or does the injured employee receive free medical treatment regardless of whether he loses time or not account the accident?

(c) "Does the two weeks medical attendance date from the occurrence of the injury or from the date when medical attendance is found necessary?"

II.

(a) "How shall the waiting period, of two weeks during which no compensation shall be paid, be determined?

(b) "Does it mean that disability, or incapacity, resulting from accident is a necessary factor in making up the two weeks, or not?

(c) "Does the two weeks waiting period begin to run from the time of the occurrence of the accident or from the time of the injured employee leaves work as a result of the injury? If it begins to date from incapacity does it include either consecutive or non-consecutive days up to the fourteen days limit?"

The above mentioned Sections provide as follows:

"Section 16 (f). During the first two weeks after the happening of the injury, the employer or insurer, or the accident fund, as the case may be, shall furnish reasonable medical and hospital services and medicines as and when needed, in an amount not to exceed fifty dollars in value, except as otherwise in this Act provided, and when the employer is a party to a hospital contract, unless the employe shall refuse to allow them to be furnished.

"Section 16 (g). No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of Section 16 (f)."

"Section 16 (h). Compensation for all classes of injuries shall run consecutively and not concurrently, and as follows: First, the two weeks medical and hospital services and medicines as provided in Section 16 (f), unless the employe is a contributor to a hospital fund, as otherwise in this Act provided; after the first two weeks, compensation as provided in Section 16 (a), or 16 (b), or 16 (c)."

Section 16 (a) provides the compensation for an injury producing temporary total disability; Section 16 (b) provides compensation for

an injury producing permanent total disability, and Section 16 (c) provides compensation for an injury producing partial disability and Section 16 (d) provides the compensation for an injury causing death. The Act does not provide any compensation for pain and suffering, for an injury unaccompanied by loss of earnings. See Honnold on Workmen's Compensation, Section 177.

The contention is made that an employer cannot be called upon to furnish medical and hospital services and medicines as a part of the compensation and as provided in Section 16 (f) unless there has been an injury resulting in some loss of time or earning power, on the ground that the injury referred to in Section 16 (f) means an injury which causes either temporary total disability, permanent total disability, or partial total disability or death, for which compensation is provided in Sections 16 (a), 16 (b), 16 (c) and 16 (d).

I am unable to agree with this view. I believe the statute should receive a much more liberal construction. It was said in the case of the City of Milwaukee v. Miller, 154 Wis. 652; 144 N. W. 188; L. R. A. 1916 A 1, Ann. Cases, 1915 B, 847; 4 N. C. C. A. 149:

> "A law, however much needed for the promotion of the public welfare, and however wisely framed, may be so unsatisfactory by the spirit of it not sufficiently pervading its administration, as to largely defeat its purpose and create danger of its abrogation and a return to the distressing situations which gave rise to the effort for relief. Any such result in the particular instance would be such a public calamity that everyone in authority having to do with determining the precise scope of the law, in letter and spirit, and applying it, should be alert, at all times, to the importance of not affording any reason to attempt such result, and of making the wisdom embodied in the legislation so significant that no considerate person will indulge the thought of even a partial backward step toward the old system, characterized by incalculable waste, to the detriment of every consumer of the products of human energy. * * *
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> "The foregoing seems legitimate as indicating the atmosphere, so to speak, in which the questions here presented, especially those of statutory construction, should be examined. The conditions giving rise to a law, the faults to be remedied, the aspirations evidently intended to be efficiently embodied in the enactment, and the effects and consequences as regards responding to the prevailing conceptions of the necessities of public welfare, play an important part in shaping the proper administration of the legislation."

This case was cited in Honnold on Workmen's Compensation, Section 193 at page 688:

> "The common legislative requirement that the employer bear the burden of reasonably necessary medical and surgical treatment of his injured employe was not intended as a charity to one, or as a penalty to the other, but as the recognition of the economic truth that such expense is a legitimate element

in the cost of production, and should be placed upon the product as directly as practicable, using the employer as the first necessary step. The legislative idea is that an employer is so specially interested in his injured employe being restored as soon as practicable as to be most likely to provide proper medical and surgical treatment. * * * *"

It was said by our own Supreme Court in the case of Lewis and Clark County v. Industrial Accident Board, 52 Mont. at 10 and 11:

"The fundamental difference between the conception of liability and compensation is found in the presence in the one, and the absence from the other, of the element of actionable wrong. The common-law and liability statutes furnished an uncertain measure of relief to the limited number of workmen who could trace their injuries proximately to their master's negligence. Compensation laws proceed upon the theory that the injured workman is entitled to pecuniary relief from the distress caused by his injury, as a matter or right, unless his own willful act is the proximate cause, and that it is wholly immaterial whether the injury can be traced to the negligence of the master, the negligence of the injured employee or a fellow-servant, or whether it results from an act of God, the public enemy, an unavoidable accident, or a mere hazard of the business which may or may not be subject to more exact classification; that his compensation shall be certain, limited by the impairment of his earning capacity, proportioned to his wages, and not dependant upon the skill or eloquence of counsel or the whim of caprice of a jury; that as between workmen of the same class who suffer like injuries, each shall receive the same compensation, and that, too, without the economic waste incident to protracted litigation and without reference to the fact that the injury to one may have been occasioned by the negligence of the master, and to the other by reason of his own fault."

In view of the foregoing it would appear to me that reasonable medical hospital services and medicines were intended to be included as a part of the compensation to be furnished the injured employe, in accordance with Section 16 (f) and 16 (h), in cases where the injured employe suffers no loss of time or earning power. Section 16 (f) provides that the employer or insurer, or the accident fund, as the case may be, **shall** furnish reasonable medical and hospital services and medicines during the first two weeks after the happening of the injury. The furnishing of such medical attention to an injured employe is one of the main features of the Act. It was said by Ernest Freund, a representative of the American Association of Labor Legislation, at the hearing held before the Employer's Liability and Workmen's Compensation Commission appointed by Congress:

"I believe that relief plans ought to be encouraged, because the administrative features of some of these relief plans are very admirable and not embodied in all of the laws. Some relief plans are more effectual than any State law I have seen.

> Nothing is more important in a compensation plan than the very initial point of seeing that immediate medical aid be given the injured employee and that a medical investigation should be made. There is nothing more important than that phase—first aid."

My answer to questions 1 (a) and 1 (b), then, would be that the employer or insurer, or accident fund, as the case may be, should furnish reasonable medical and hospital services and medicines in an amount not to exceed $50.00, in case an employe is injured although he suffers no loss of time or earning power. In Hurle's case, 217 Mass. 223 at 226, the Court recognizes the distinction between an injury and the accident causing the injury. And in Johnson's case, 217 Mass. 388 at 391, the Court held that the Industrial Accident Board was warranted in finding that the injury was received when the employe became sick and unable to perform labor, and that until then he had received no personal injury. The words "after the happening of the injury" as used in Section 16 (f) mean after the accident or injury has manifested itself, and the employe has thereby become incapacitated for work. It is noted that the word "injury" and not accident is used throughout the Act. And therefore, in answering the question 1 (c), the furnishing of the medical attention should date from the time when it becomes necessary, and when the injury manifests itself, and likewise as to question 2 (a) as to the beginning of the two weeks period during which no compensation shall be paid.

If the injury was not of such a nature as to cause a total or partial disability for which the injured employe would be entitled to compensation under Sections 16 (a), 16 (b) and 16 (c), then the two weeks free medical attention would constitute the entire remuneration. But if he suffers a total or partial disability, then he would be entitled to the two weeks free medical attention after the manifestation of the injury, and if the disability continues thereafter, he would receive compensation under the Act. What I have said above applies equally to the remaining questions submitted, and I am of the opinion that the waiting period would begin at the time the injury manifests itself and would continue for fourteen consecutive days thereafter.

Respectfully,

S. C. FORD,

Attorney General.