

**Workmen's Compensation Act, Construction Of—War,
European Suspension of Statute—Claim By Beneficiaries Of
Residents of Belligerent Countries.**

How claims to beneficiaries of residents of belligerent countries and those affected by the European war should be paid by the Industrial Accident Board.

April 9, 1920.

Hon. A. E. Spriggs, Chairman,
Helena, Montana.

Dear Sir:

This office has had under consideration for some time the question of what compensation should be allowed surviving widows and beneficiaries, residents of European countries where the claimants have failed to present a claim for compensation within six months, as required by Section 10-A of the Workman's Compensation Act. It appears that you have some twenty-five or twenty-six of these cases divided as follows:

Fourteen cases arising in Austria between May 8, 1916, and April 6, 1917, when war was declared on that Country. Three cases where the surviving widow is a resident citizen of Greece. Two of these three cases it appears were cases in which a claim was filed more than one year after the accident, and the other case, nine months thereafter. In each case the widow insists under oath that it was impossible for her to file claim sooner on account of postal facilities making it impossible to either receive or transmit letters. Three cases for compensation where the surviving widow is a resident of Russia. In two of these cases the claim was received two years after the accident, and in the third case fifteen months thereafter. Also three cases in which the surviving widow is a resident of Russian Finland. In these cases it appears that relatives

of the widows, residing in Butte, have furnished you with the addresses and advised you as to their families, and have also advised you that they have not been able to communicate with these relatives since the year 1915.

It seems that the Counsel or agent of the Country in which these claimants reside has, in a number of them, filed claims on their behalf, and you wish to know whether these are valid claims. You wish to know whether, in the cases of surviving widows and beneficiaries of Austria, Germany and Bulgaria, where the accident occurred more than six months prior to the declaration of war by the United States in April 1917, whether claims filed within the last ninety days were filed in time. You also wish to know if the World War, commencing in 1914, served to abate or suspend the statute of limitations provided under Section 10-A of the Act, with all the countries of the world, until such war was finally declared ended. The provisions of Section 10-A, prior to amendment on March 4th, 1919, provided:

"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."

It will be noted that this section did not require the claim to be presented in writing or to be under oath, neither did it require the claim to be presented by someone legally authorized to act for the claimant. Apparently for this reason this section was amended and now provides that the claim must be presented in writing under oath to the employer, the insurer, or the Board, either by the claimant or someone legally authorized to act for him in his behalf, in addition to what it formerly provided. All that appears to be necessary under Section 10-A prior to amendment was that the claim be presented within the six months following the happening of the accident. It might be presented by anyone, and was not even required to be in writing.

In the case of *Mattwiczuk vs. American Car and Foundry Company*, Michigan, 155 N. W. 412, a case arose in which a claim was made on the request of a brother of the beneficiary who resided in Poland. The Michigan State statute required the claim to be presented and signed by the person injured, or by a person in his behalf, or in the event of his death, by his beneficiaries or by some person in their behalf. Subsequent to the presenting of the claim which was done within a few days after the happening of the accident, the brother of the widow communicated with her in Poland, and she prepared and forwarded a Power of Attorney. This Power of Attorney, however, did not arrive until after the expiration of the six months period provided in the Michigan statute. The Michigan court in deciding this case said:

"What was done gave to the employer every opportunity to investigate the accident, and knowledge of all material things relating thereto, as fully as though the application had been made in a formal way by the widow on the day when the letter was written. The next day after the accident the employer was notified of it, the result of it, the time and place and cause of its happening, and of the persons who were de-

pendent. This notice was given, not by an outsider, but through the brother-in-law of the deceased, the brother of the widow. What was done was notice of a claim by the deceased's dependents made by a person in their behalf. We think it too technical to say that a notice and claim made within twenty-four hours after the accident, caused to be given as in this case in behalf of the widow who could not make the claim herself because of the distance from where she lived, which action was ratified by her on being advised of the situation, must fail because ratification did not reach this country within six months from the time of the happening of the accident. To so hold would not be to hold according to the letter and spirit of the Employer's Liability Act."

It will be noted that our Section 10-A made no provision as to who the claim would be presented by. I am, therefore, of the opinion that any claim filed under the provisions of Section 10-A, which gave notice of the dependents and an opportunity to investigate sufficiently, complied with its provisions and constitutes a claim properly presented within the meaning of this section. This action, however, should be properly ratified and no compensation paid except to the duly authorized agent or Power of Attorney of the claimant.

Whether the World War in itself was a sufficient excuse for failure to comply with the provisions of Section 10-A is a more difficult question. Section 6463 of the Revised Codes provides:

"When a citizen is an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action."

The provisions of this section would suspend or toll the statute during the period of war as to alien citizens who are residents of those countries with which we are at war, on claims arising during the war or within six months prior thereto, providing the claims are filed within six months after the termination of the war as to those claims arising during the war, and within such period of time as would make six months as to those claims arising prior to the war added to the time less than six months during which the statute ran prior to declaration of war. This question was before the Supreme Court of West Virginia in the case of Pocarddi vs. Ott, West Va. 98 S. E., 69. The question there was whether a claim delayed on account of the existence of a state of war, not between the United States of America and the Kingdom of Italy where the claimant resided, but between the United States and the Central Powers of Europe, did not reach this country within six months,

"On the proposition involving the existence of a State of war it is sufficient to answer that the rule or principle invoked is not applicable except as between citizens of opposing or belligerent states, and when the Courts of one country are closed to the citizens of the other. As the Kingdom of Italy and the

Government of the United States were not at war between themselves, but were united against a common enemy, the rules of international law so appeared to have no application."

"In some of our State Courts and in the United States Courts an important exception to this rule has been adopted which although not within the letter is perhaps within the spirit of the statute of the several states and other saving clauses, which is that the statute does not run during a period of civil war as to matters in controversy between citizens of the opposing belligerents; but as this exception is predicated upon the ground that the Courts are not open to belligerents it does not apply to questions arising between residents of the same State or as to those who are not residents of either belligerent sections. The general rule is that whatever the Courts may think the Legislature would have done if it had foreseen a certain contingency, yet the case coming fairly within the limitation imposed by the State cannot be excepted from its operation unless it also comes fairly within the exceptions named therein. In other words, as the Legislature makes the law and the Courts apply it they cannot extend it to cases to which it does not apply or except from its operation cases clearly within its provision and not excepted from its operation."

Wood on Limitations, Section 6.

The effect of this rule would be to place our former enemies in a more advantageous position than our former allies. This does not seem just especially in view of the fact that much of the territory of our former allies was actually occupied by former enemies, and all communication and intercourse with the outside world was absolutely precluded by reason of such occupation. Nevertheless no exception seems to have been heretofore made on this account. To recapitulate, any claim made under the provisions of Section 10-A prior to amendment would sufficiently comply with this provision whether made by Consular Agent, relative, or friend, providing it is subsequently supported by sufficient and satisfactory proof, before compensation being made, and compensation should only be made to duly authorized agents of the claimant.

In the cases of claims of alien citizens of those countries with which we were at war, arising during the period of war, the statute would be suspended during such time and these claims may be filed within six months after its termination, and as to claims arising in these countries prior to our declaration of war, the time should be computed by adding the period which expired prior to the declaration of war to such period as would make six months subsequent to the termination of war. As to all other cases where the claimant is an alien residing outside the United States, and where no claim has been filed, I am unable to find any case which holds that a delay caused by war would suspend the running of the statute except as to claims of citizens of those countries with which we were at war as heretofore indicated.

The application of this rule to cases of this class seems hard and unjust and out of harmony with the spirit of the Act, and while a strict construction of the foregoing principles of law might deprive these

claimants of compensation, yet the compensation act has always received a liberal construction, and in equity and justice these claims should be paid.

I am returning your letters and files to you herewith.

Respectfully,

S. C. FORD,

Attorney General.

Bonds, Issuance Of In Installments—County Commissioners, Power Of.

The Board of County Commissioners has authority to issue bonds in installments in payment for work on highways.

April 10, 1920.

Mr. J. M. Fabian, Chairman,
County Commissioners,
Butte, Montana.

Dear Sir:

I have your letter of March 20th, in which you inquire as to whether or not you have the authority to issue bonds to Marco Medin & Company, in installments for construction of highways for which this Company was the successful bidder.

You are advised that you have authority to issue the amount of bonds voted accepting the contractor's bid therefor, and issue the same in installments as the work progresses. This is, I understand from your letter, what you desire to do. In other words the issuance of the bonds in installments and delivery thereof to the contractor is to be a payment as the work progresses.

You have this authority under Chapter 172 of the Session Laws of 1917, and also under Section 2908 of the Revised Codes of 1907.

Respectfully,

S. C. FORD,

Attorney General.