Opinion No. 25

Workers Compensation—Theory and Purpose of Act—Pensions and Benefits—Termination of Compensation.

Held: That under the provisions of the Workmen Compensation Act a claimant entitled to compensation shall not have such compensation terminated on the ground that the claimant is receiving a pension or other benefits not derived from the act itself, or on the ground that the claimant is now residing in a private home for the aged.

May 12th, 1949.

Mr. Walter P. Coombs
Chairman, Industrial Accident Board
Helena, Montana

Dear Mr. Coombs:

You have presented for my opinion the following set of facts:

"G" was accidentally injured in an accident. There is no question regarding the Board's liability for the accidental injury. it appears that since the injury "G" is now drawing a miners pension. The question is whether compensation should be continued in light of the fact that he is now drawing said miners pension.

The second set of facts involve claimant "M", who received an accidental injury and was awarded compensation. After, the injury "M" entered the Masonic Home. "M" is fully cared for in the Home without expense to himself, and under the rules of the institution, he is required to turn over any property or income he may have. The question is presented as to whether or not compensation payments should be continued in light of the above facts.

At the outset, it is well to consider the spirit and purpose of the Workmen's Compensation Act. It has been said that:

"The intention of the act is to secure workmen and their dependants against becoming objects of charity, by making reasonable compensation for all such calamities as are incidental to the employment. Injuries to servants are no longer the result of fault or negligence, but are considered as the product of the industry itself. Such injuries enter like any other item into the cost of production or of transportation, and ultimately are charged to the con-

sumer of the manufactured goods or to him who secured the transport thereof." 28 R.C.L. 2, (Workmen's Compensation Act) pp. 713, 714.

In order to carry out the spirit and purpose of the Workmen's Compensation Act, it must of necessity require a liberal construction by the Industrial Accident Board, as well as the Courts. In order to assure liberal construction of the act, the Legislature specifically set out in Section 2964, Revised Codes of Montana, 1935, the following:

> "Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court."

The Supreme Court of the State of Montana has on numerous occasions cited the above statute to sustain their liberal construction whenever the act or any part thereof was in issue. (Wirta v. North Butte Mining Co., et al., 64 Mont. 279, 291; 210 Pac. 332; Maki v. Anaconda Copper Mining Co., 87 Mont. 314, 321; 287 Pac. 170; Sykes v. Republic Coal Co., 94 Mont. 239, 244; 21 Pac. (2d) 732).

The discussion above is summarized very clearly in the case of Clark v. Olsen, 96 Mont. 417, 422; 31 Pac. (2d) 283. In this case the Supreme Court stated:

> "As was said in Dosen v. East Butte Copper Mining Co., 78 Mont. 579, 254 Pac. 880, 886, it has been the constant endeavor of this court, in obedience to the statutory direction, and also in view 'of the rationale of the legislation, to interpret the provisions of the act (Workmen's Compensation Act) liberally with a view to accomplish the result intended.' The theory of the act is that the loss suffered by the injury shall not be borne by the employee alone except as he may be compensated by a suit at law, and the inadequacy of that remedy has been denounced in vigorous language. (Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 119 Pac. 554; Lewis & Clark County v. Industrial Accident Board, 52 Mont. 6, 155 Pac. 268, L.R.A. 1916 D.) Nor shall he become a charge upon the public generally (Shea v. North Butte Mining Co., 55 Mont. 522, 179 Pac. 499, 503; State ex rel. Loney v. Industrial Accident Board, 87 Mont. 191, 286 Pac. 408), that is, an object of public charity; rather, he shall 'commensurate in some degree to the disability suffered, 'be compensated by the industry and indirectly by the public. The idea is that the industry which bears the expense of its mechanical wreckage shall also care for its human wreckage. Thus it is required that the industry proceed with justice and humanity. (Moffet v. Bozeman Canning Co., 95 Mont. 347, 26 Pac. (2d) 973). (Citations supplied.)

With the purpose, spirit and liberality of the construction of the act in mind, it becomes easier to construe the hypothetical set of facts, as set out above, within the terms of the Workmen's Compensation Act.

The Workmen's Compensation law of the State of Montana provides that an employee who has elected to come under the provisions

thereof and has received an injury, arising out of and in the course of his employment, is entitled to compensation in the amount and manner as prescribed by law.

Section 2911 of the Revised Codes of Montana, 1935, is as follows:

> "Every employer who shall become bound by and subject to the provisions of compensation plan number one, and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two, and the Industrial Accident Fund where the employer of the Injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any."

It is admitted in the hypothetical set of facts that the Board in both cases was liable for the injuries. In other words, both employees had elected to come under the provisions of the act and had received an injury "arising out of and in the course of employment."

After the Industrial Accident Board determines that an employee is entitled to compensation under Section 2911, Supra, it is their duty to determine the amount of compensation which is set out by law in Sections 2913, 2914, 2915, 2920 of the Revised Codes of Montana, 1935, and the amendments thereto. Under the above enumerated sections the compensation payable is arrived at by using a percentage of the weekly wage received at the time of the injury up to a maximum amount therein set out.

The Supreme Court of Montana held in the case of Meznarich v. Republic Coal Co., 101 Mont. 78, 93; 53 Pac. (2d) 82, that:

> "Aside from the loss of members of the body, the extent of a man's disability is determined by answering the questions as to whether or not he is able to earn wages by labor, and if so, how his earning capacity compares with that before the injury. If he is still able to earn something as wages, his disability is partial; if not, it is total. (Gailey v. Peet Bros. Mfg. Co., 98 Kan. 53, 157 Pac. 431; Sinnes v. Duggett 80 Wash. 673, 142 Pac. 5)."

To this same effect see Lunardello v. Republic Coal Co. 101 Mont.. 94, 100; 53 Pac. (2d) 87.

It is submitted that compensation provided for in the Act is in no sense to be construed as damages for the injury, but as compensation for the injuries received (Wirta v. North Butte Mining Co., et al., 64 Mont. 279; 291; 210 Pac. 332) measured on the basis of his relative economic position in the community, viz: the amount of his wages.

(Chisholm v. Vocational School for Girls, 103 Mont. 503, 513, 64 Pac. (2d) 838)

At this point it should be noted that in the determination of compensation, there is no provision under the act which provides that the Board shall deny compensation on the grounds that the claimant may have other insurance, benefits or savings, or be the recipient of a pension.

The question is then presented as to whether or not the Board should terminate compensation, which is admittedly due a claimant, on the ground that such claimant is now entitled to a pension or other benefits.

In the case of Ogden Union Ry. & Depot Co. v. Industrial Commission, 38 Pac. (2d) 766, 768, 85 Utah 124, the Court had a similar question before it and held that:

> "Plaintiff contends that because "P" is an inmate of a government hospital at Sheridan, Wyoming, is receiving $40.00 a month from the government and hospital treatment and care, he is not entitled to any compensation as long as so cared for. There is no merit in this contention. The statute provides that every employee coming within the terms of the statute who is injured by accident arising out of or in the course of his employment (note the similarity to Section 2911, Supra) shall be entitled to receive and be paid such compensation for loss sustained as shall be awarded under the proceedings prescribed and provided by the law applicable to the case. R. S. Utah 1933, 42-1043. As well argue that, if one has separate income from savings or investments or which friends provide or if annuities or pensions are paid to an injured or disabled employee, no compensation should be allowed until such sources of support, maintenance or relief are exhausted. Such is not the purpose of the statute. The purpose of the statute is to reimburse the injured employee for loss of earning power, and to provide for certain care and expenses within the measure and amounts provided by the statute."

In Ex parte Gude & Co., 105 So. 657, 659; 213 Ala. 584, the Supreme Court stated:

> "It may be said that as a matter of public policy statutes will not be so construed, unless clearly so written, as to make continued payment of compensation dependent upon indigence after the right to compensation has attached. Such a rule would tend to encourage thriftlessness and pauperism. In keeping with authorities elsewhere, we hold that continued compensation during the statutory period is not conditioned upon continued dependency upon the bounty thus provided, and ceases only upon the events named in the statute."

For other cases on this same point see:

Leaves v. Midvale Co., At, 698, 162 Pa. Super, 393. Shelby Mfg. Co. v. Harris, 44 N. E. (2d) 315, 112 Ind. A. 179. Madison Equip. Co. v. Industrial Comm. 20 N. W. (2d) 121, 247 Wis 517.

In Chisholm v. Vocational School, et al., 103 Mont. 503, 64 Pac. (2d) 838, the Montana Supreme Court stated that:

"The fact that in the instant case the injured employee had, at the time she presented her claim for compensation, a sum of money which might prevent her becoming a burden on society, is no more pertinent when she received that sum as a result of negotiations with the insurance carrier, not liable, than if it had been the result of frugal living resulting in the building up of a reserve fund from wages theretofore paid."

In conclusion, it is my opinion that under the Workmens Compensation Act of Montana, and the facts heretofore presented, the claimant's right to compensation is not affected in question one, by the fact that such claimant is drawing a pension, or in question two, by the fact that such claimant is residing in a Masonic Home.

There is no statutory provision that allows the Board to terminate the compensation on the ground that the claimant is now receiving a pension or on the ground that the claimant is residing in a private home for the aged. There is no double recovery from a single employer involved and the payment of compensation would not result in an inequitable or unfair recovery by the claimant.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.