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Evolution of the "Accident" Requirement in Workmen's Compensation Practice

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It is a customary statutory mandate that in order to be compensable under a Workmen's Compensation Act an injury must be sustained by the employee "by accident." The language of the Kentucky statute itself has not been watered down at all, but in recent years the plain meaning of the phrase has suffered such erosion in judicial review that it is now equated with such phrases as "specifically identified effort" and "work connected disability." The purpose of this article is to trace the process by which this material change has occurred.

The requirement that a compensable injury be accidental in character has been adopted by most legislative and judicial bodies which have considered the subject. The usual statutory phrase, taken from the original British act, is injury "by accident."1

The earliest Workmen's Compensation Act in Kentucky provided that:

"It [the act] shall affect the liability of the employers subject thereto to their employees for personal injuries sustained by the employee by accident arising out of and in the course of his employment or for death resulting from such accidental injury; provided however, that personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, . . ."2

The Court of Appeals in an early case stated that the word "accident," as employed in the first section of the Act, means "something unusual, unexpected, and undesigned."3 In a later case alleging an occupational disease, thus invoking the requirement that the injury be traumatic as well as accidental, "traumatic

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3 Phil Hollenbach Co. v. Hollenbach, 181 Ky. 262, 204 S.W. 152 (1918).
injury” was said to “imply the presence of physical force.”

In the same opinion the Court again defined accidental as “an unusual, unexpected and undesigned event,” and further observed that in order for the accident requirement of the statute to be met, the episode must be traceable “to a definite time, place, and cause.” In Kentucky Stone Co. v. Phillips, the Court stated flatly that in order for an injury to be classified as the result of an “accident” within the meaning of the Act, it must not only be traceable to a definite time, place, and cause, but “… must be assignable to a determinate or single act, identified in space or time.”

This view was maintained as late as 1954 in a case involving the development of a ganglion cyst on the employee’s wrist while sanding gun-stocks at work, the Court held that since the condition developed gradually over a period of time, it failed to satisfy the statutory requirement. The Court emphasized that the cyst was not connected with “any particular injury and it is not traceable to any definite time,” and further, that “no definite blow, jerk or strain to the wrist” has been established. The opinion clearly reflected an intention on the part of the Court to require the happening of a specific incident at a definite time. Thus, it was pointed out that although the claimant “did not notice the cyst until the morning of April 12th, and although it may have appeared suddenly at that time,” it was apparent that the cyst was merely the tangible evidence of a condition caused by the repeated use of the wrist over a period of weeks.

The first indication of a trend away from strict construction of the statute was discernible in Rowe v. Semet-Solvay Division Allied Chemical & Dye Corp., where the employee simply indicated that he experienced pain in his back while loading the last car and was unable to pinpoint the injury to a more specific time.

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5 Great Atlantic and Pacific Tea Co. v. Sexton, 242 Ky. 266, 46 S.W.2d 87, 88 (1932).
6 Id. at 89.
7 Id. at 89.
8 Id. at 748.
9 Id.
10 Id.
11 Id.
12 268 S.W.2d 416 (Ky. 1954).
or to any single act; and in *Ironton Fire Brick Company v. Madden* where the employee, after helping other workmen move heavy slate for an undisclosed period of time, announced that his back was hurting and that he would have to rest. In both instances these meager facts were considered sufficient to satisfy the "accident" requirement of the Act.

Finally, in *Adams v. Bryant* the Court, while retaining the fiction that an accident must be traceable to a definite time and place, enlarged the time element to a period of twenty-four hours, during which the employee exerted himself in an effort to rescue fellow employees who were trapped in a mine. The *Adams* case represents a distinct turning point and requires some elaboration. On February 14, 1950, four employees, including Bryant, were working in Adam's mine when a cave-in occurred. Bryant's father-in-law was trapped and another employee was killed. Bryant and the fourth man were not injured and they immediately began efforts to rescue the entombed men. The rescue endeavors continued for twenty-four hours during which time Bryant worked both sides inside and outside the mine without rest. On the following day and almost exactly twenty-four hours after commencement of the rescue operations, Bryant collapsed as he was leaving the mine. He died five or six hours later. A physician testified that he died from "overexertion, exposure and nervous shock."

The Board denied the claim of Bryant's dependents on the ground that his death was not the proximate result of a personal injury sustained by the employee by accident and was not of a traumatic nature. The Court of Appeals on review pointed out that the "personal injury" requirement of the statute, where no disease was involved, did not necessitate "traumatic injury" and accordingly had no difficulty in finding that Bryant had sustained an injury. It was stated that:

> [T]he word injury, when used without any qualifying words, such as traumatic, is to be given its broadest possible scope.

... [T]he Legislature did not intend to limit injuries in the

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13 285 S.W.2d 897 (Ky. 1955).
14 274 S.W.2d 791 (Ky. 1955).
15 Id. at 792.
absence of a disease to only those injuries of a traumatic nature.\textsuperscript{16}

After reaching the opinion that Bryant died as a result of a "personal injury," the Court then approached the question of whether such injury was accidental. Noting the previous decision defining accident as something "unusual, unexpected, and undesigned . . . traceable to a definite time, place, and cause,"\textsuperscript{17} the Court jumped to the conclusion that Bryant's shock, overexertion and exposure were, indeed, within the meaning of the word accident, "at least to the extent that it was unexpected and unforeseen."\textsuperscript{18} The Court had more difficulty, however, in tracing Bryant's "accident" to a definite time and place. The twenty-four hour period during which he worked at the rescue operation was considered short enough or limited enough to satisfy the definite time requirement. Finally, the Court embraced the view that the injury need not "result from a single and a specific occurrence in order to pin down the cause of it."\textsuperscript{19}

A considerable amount of statutory destruction was accomplished in the Bryant opinion. With one blow the definite \textit{time, place, and cause} requirement was stretched beyond recognition and the determinate or single act condition was totally abolished. It would now be but a short step to the present practice of equating "accident" with what the Court terms a "specifically identified effort" or "work-connected disability."

In an effort to retain the prior construction of the requirement of an accidental cause, the General Assembly, in the 1956 legislative session, amended KRS § 342.005(1). The Court had stated in Bryant that the statute required a traumatic injury only on the question of causation of disease, not of the accidental nature of any injury. Accordingly, the legislature moved to remove this rationale of the Bryant decision by adding the word "traumatic" in front of the words "personal injury." The effective date of this amendment was August 1, 1956, but such amendment was disposed of quite easily by the Court by simply characterizing

\textsuperscript{16} Id. at 793.
\textsuperscript{17} Id. at 794.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
"traumatic" as a "slippery word." In *Terry v. Associated Stone Company*, *Grimes v. Goodlett and Adams*, and *Johnson v. Stone*, the Court developed the present rule that the strain or exertion causing injury need not be "unusual." On the contrary, it was held that "a specifically identified effort" which contributes to injury or damage is sufficient.

In *Johnson v. Stone*, the Court observed that if a previously disabled knee, for instance, should be dislocated "in the routine act of stooping to retrieve a pencil from the office floor," it would constitute a compensable injury. Here, any connotation of trauma, overexertion or unusual strain is abolished. The test is simply whether a specifically identified effort, "however easy and routine it may be" has contributed to a disability that would not have otherwise occurred at that time. The Court states frankly that what it wants to know is "whether it is likely that the work [not accident] had anything to do with bringing on the attack at the particular time."

In *Trailer Convoys, Inc. v. Holsclaw*, a badly divided Court handed down a decision which probably represents the extreme result of the judicial trend to eliminate the accident requirement from the Workmen's Compensation Act. The facts of that case are simple and brief. The appellee's decedent was a long-haul truck driver employed by Trailer Convoys, Inc. At the time of his death, Holsclaw was enroute from Kentucky to California where he was to deliver a trailer. When he reached a point near Santa Rosa, New Mexico, he had to stop and wait in line for a traffic interview which was being conducted by the New Mexico Highway Department. While stopped and waiting, he experienced a cerebral hemorrhage, went into a coma, and never regained consciousness. There was no trauma, no injury and no accident.

In the majority opinion in *Trailer Convoys* the Court was

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21 334 S.W.2d 926 (Ky. 1960).
22 345 S.W.2d 47 (Ky. 1961).
23 357 S.W.2d 844 (Ky. 1960).
25 357 S.W.2d 844 (Ky. 1962).
26 Id. at 846.
27 Id.
28 Id.
29 419 S.W.2d 563 (Ky. 1967).
content simply to consider the above facts as sufficient to establish compensability under the rationale of Terry and Grimes. In fact, it was observed in one of the concurring opinions that but for Terry and Grimes there would not even be an inference from which the Court might assume that a "traumatic personal injury [was] sustained by the employee by accident." It was further stated in that concurring opinion that the proof was not convincing "that any event had occurred to or involved Holsclaw other than the customary and usual experience of a driver of a truck." The writer of this opinion, although concurring with the majority, stated that, except in cases of occupational disease, he

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\ldots \text{would hold that the Act is not intended to embrace injury or death unless there is sufficient evidence that it resulted from an unusual occurrence, as contrasted with the normal stresses and strains related to the job and the mundane routine activities connected with the work in which the employee is engaged.}^{32}
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In a strong dissenting opinion it was stated that the Court had so long disregarded the statutory language on this point that it was now, "awarding compensation for the death of an employee because per chance he just happened to have a cerebral hemorrhage while on the job." This dissenter noted that "trauma" and "accident" had been defined and defined many times in the past, but that the former still meant "a personal injury resulting from an external force" and the latter still means "something unusual, unexpected and undesigned" in respect to cause as distinguished from result. Finally, it was observed that there has been "a wilful and capricious judicial determination to defy the legislature and not to apply the plain and simple requirements of a statute" and that "[a] more glaring example of the abuse of judicial power can be found nowhere in the law of the state."

Are we to conclude from these decisions that mere presence on the job coupled with the first experience or awareness by the

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30 Id. at 565.
31 Id. at 566.
32 Id.
33 Id. at 567.
34 Id. at 570.
35 Id.
employee of a physical abnormality is tantamount to the occurrence of a traumatic personal injury by accident? Perhaps not. In *Dupriest v. Tecon Corporation*, the employee collapsed while working and died as a result of heart failure. It was a hot day and the employee was assisting in loading steel piling on a truck by means of a crane. There was no evidence of any particular strenuous activity on the part of the employee at the time of and prior to his collapse. The Circuit Court set aside the Board's award of compensation benefits to the widow and this was affirmed by the Court of Appeals on the ground that there was not substantial evidence that the employee's death was work connected. In *Hutchinson v. Skilton Construction Company*, the employee died shortly after arriving upon the job on a particular morning. The testimony was indefinite as to whether the employee did any work on the morning of his fatal attack. The medical proof conclusively established that the decedent met his death as a result of advanced coronary artery arteriosclerosis. The Board, the Circuit Court and the Court of Appeals rejected the contention that "mere presence on the job, accompanied by the stress and strain that goes with construction employment, is sufficient to support an award." The Court of Appeals observed that "the law clearly requires an applicant to meet the burden of proof by showing that the decedent's death from a heart attack was work connected. . . ." Finally, in *Hudson v. Ownes*, the Court laid down the rule that:

... where the physical effort of a man's work precipitates his internal breakdown resulting in disablement, he has sustained a compensable personal injury within the meaning of our compensation law. Once a condition is accepted as a personal 'injury' it is necessarily accepted as traumatic.

The Court specifically rejected the so-called "usual" and "unusual" strain test and noted unconcern with exercises in semantics over the word "accidental." In short, if an injury or abnormality can

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36 396 S.W.2d 778 (Ky. 1965).
37 417 S.W.2d 142 (Ky. 1967).
38 Id., at 143.
39 Id.
40 439 S.W.2d 565 (1969).
41 Id., at 568.
be traced to the performance of an employee’s work, the claim will be compensable.

We have, indeed, come a long way from the statutory mandate of “traumatic personal injury . . . by accident.” An *unusual* happening is no longer required, the episode need not be traceable to *a definite time and place*, and there need not be evidence of an *external force*. The magic phrases of compensability are now “work-connected event” and “work-connected disability.” The passage of time will undoubtedly teach us whether or not this progressive evolvement is one of wisdom.