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Workmen's Compensation--Causal Connection Between Employment Coronary Occlusion

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Kentucky, unlike some other states,[15] has not limited the authority to halt drivers under the display statutes to the state police. It seems that this would be further protection. Due to the superior training and selection practices employed by that agency, as well as their uniform operation and statewide control, these officers should be less likely to conduct an illegal search.

In the principal case the court was confronted with the problem of balancing relative interests. On one hand was the question of whether to encroach on the liberties and freedoms of motorists; on the other was the question of how to make the highways safer for motorists. It seems that a sound decision was reached by the court. As a result of modern vehicle operation, thousands of lives and dollars are lost annually on the public highways largely because of incapable drivers. Presumably, many of these incapable drivers are unlicensed. If these drivers are excluded from driving on the highways, this will have the effect of reducing the number of highway accidents.

The effect of the holding in the principal case is to impose another of a growing number of restraints upon a citizen's right to free movement.[16] While it may be only a minor inconvenience in most instances, the present Kentucky statutory provisions allow a possibility for the arbitrary and unreasonable exercise of police powers. To curtail this possibility, it seems that the display statute should be re-drafted to include a short time period before charges can be brought under it and to limit the authority to set-up these road blocks to the Kentucky State Police.

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WORKMEN'S COMPENSATION—CAUSAL CONNECTION BETWEEN EMPLOYMENT CORONARY OCCLUSION.—Claimant, employed as a loader operator in a coal mine, became ill while at work. He was having difficulty breathing because of smoke blown upward through the mine spaces from a burning cable. An ensuing examination disclosed arteriosclerosis and a myocardial infarction, but this heart condition had developed over a number of years. The claimant offered medical testimony that the smoke from the burning cable and the stress of the work triggered the attack. The defense offered medical testimony that this heart attack would have or could have occurred irrespective of the stress, but did not deny that the work or conditions under which it was performed

[15] See Tenn. Code Ann. §59-709 (Supp. 1962).

[16] Another example of restraint upon freedom of movement can be found in KRS 433.236 which allows a peace officer or a merchant to detain one whom he has probable cause to believe is a shoplifter.

may have contributed in some way to the attack. The Workmen's Compensation Board dismissed the claim and claimant appealed. The circuit court remanded with directions to compensate claimant. Appeal was then taken to the Court of Appeals. *Held*: Affirmed. "When the responsive effort demanded of an employee's physical mechanism in order to do his work contributes to a seizure that would not have occurred at that time except for that effort however easy and routine it may be, the resulting disability is in some degree attributable to the work and is compensable."[1] *Johnson v. Stone*, 357 S.W.2d 844 (Ky. 1962).

The Kentucky Workmen's Compensation Act provides that a claimant must show: (1) traumatic injury by accident, and (2) causal connection between the work and the injury before receiving compensation for accidental injury.[2] As to the first requirement, the Court of Appeals has held that competent medical testimony establishing that the exertion from a specifically identified effort contributed to a disabling heart attack will support a finding of accidental injury,[3] and that such an injury is traumatic.[4] As to the second requirement, the Court of Appeals has formulated in the principal case a test for determining causal connection between the work and the cardiac disability as follows: "[D]id the work or conditions under which it was performed contribute in any way to the attack?"[5] If the question is answered in the affirmative, compensation is awarded on the basis of the proportionate contribution of the injury to the disability.

The Court of Appeals has defined workmen's compensation as being designed to indemnify an employee from financial loss resulting from exposure to industrial hazards.[6] The rationalization is that such injuries are part of the cost of the product. But more than one-half of all deaths in the United States result from cardiovascular diseases, and these deaths may occur when the victim is completely at rest.[7] Taking this factor into consideration it is difficult to reconcile the test for causation formulated in the principal case with the generally accepted definition of the scope of workmen's compensation legislation.[8] The

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[1] Johnson v. Stone, 357 S.W.2d 844, 846 (Ky. 1962).
[2] Ky. Rev. Stat. [hereinafter referred to as KRS] 342.005(1).
[3] Terry v. Associated Stone Co., 334 S.W.2d 926 (Ky. 1960).
[4] Grimes v. Goodlett, 345 S.W.2d 47 (Ky. 1961).
[5] Johnson v. Stone, 357 S.W.2d 844, 846 (Ky. 1962).
[6] Tyler-Couch Const. Co. v. Elmore, 264 S.W.2d 56 (Ky. 1954).
[7] American Heart Association, Cardiovascular Diseases in the United States, Facts and Figures (March 1958).
[8] "Workmen s compensation is a mechanism for providing cash wage benefits and medical care to victims of work-connected injuries, and for placing the cost of the injuries ultimately on the consumer " 1 Larson, Workmen's Compensation Law $1.00 (1952).

fact that cardiovascular diseases account for such a high percentage of deaths seems to indicate that disability or death resulting from cardiovascular disease does not usually result from an industrial hazard. This type of disability would better fit into the category of hazards to which the general public is ordinarily exposed. If the type of injury sustained in the principal case becomes compensable then workmen's compensation is no longer a device for compensating injuries resulting from employment but becomes insurance. Such compensation cannot be rationalized as part of the cost of the product.

To show causal connection between the work and the disability in Kentucky, the claimant must prove that the injury (1) arose out of, and (2) occurred in the course of employment.[9] The court in the principal case looked only to the "in the course of" requirement. With reference to causation the court stated that, "[W]hat we want to know is whether it is likely that the work had anything to do with bringing on the attack at the particular time in question."[10] This refers only to the time, place and circumstances under which the injury occurred, *i.e.*, "in the course of."[11]

In a recent case the Court of Appeals expressed its view regarding the "arising out of" requirement its as follows:

> The phrase arising out of employment refers to cause of accident and requires a causal relationship between accident and employment, and the test of whether accident arose out of employment is whether cause of accident had its origin in a risk connected with employment and injury flowed from such source as a natural and rational consequence.[12]

In determining whether the injury flowed from risk connected with employment courts generally look to see whether the claimant was subjected to an unusual strain[13] or a risk peculiar to the employment.[14] The court in the principal case did not require anything unusual or peculiar to the employment in order to establish causal connection. This failure to satisfy the "arising out of" requirement in effect over-

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[9] KRS 342.005(1).

[10] Johnson v. Stone, 357 S.W.2d 844, 846 (Ky. 1962).

[11] "As used in Compensation Act arising out of' refers to origin or cause of injury, and 'in the course of' refers to the time, place, and circumstances under which injury occurs, so that an injury occurring in course of employment may, but need not necessarily, arise out of employment; whereas an injury arising out of the employment, almost necessarily occurs in the course of it." W T. Congleton Co. v. Bradley, 259 Ky. 127, 81 S.W.2d 912 (1935).

[12] City of Prestonsburg v. Gray, 341 S.W.2d 257 (Ky. 1960).

[13] Unusual is used here in relation to the "arising out of" requirement. Larson discusses the unusual exertion cases under the accident requirement; however, he also points out that the problem is really one of "arising out of" *i.e.*, causal connection between the employment and the injury. 1 Larson *op. cit. supra* note 8, §38.81.

[14] See generally, 58 Am. Jur. *Workmen's Compensation*, §257 (1948).

rules a long line of Kentucky cases holding that the terms "arising out of" and "in the course of" are not synonymous and that both must be present to allow recovery.[15]

The court could have reached the same result in the principal case without such broad extension of workmen's compensation coverage.[16] The testimony of one of claimant's physicians, which the court apparently ignored, was that breathing of air contaminated by smoke fumes would be a factor conducive to the type of attack suffered by claimant.[17] This is sufficient to satisfy the "arising out of" requirement in that the smoke is not a strain or risk to which members of the general public are ordinarily exposed. In light of this the court should have asked whether the disability resulting from a pre-existing disease was precipitated by either a risk peculiar to the employment of the claimant or unusual strain.[18] The court could have found such a risk in the smoke fumes. This would avoid the extension of workmen's compensation coverage to include any disability resulting from any effort expended while at work, however easy and routine it may be, and at the same time apply a test which satisfies the requirement that the injury arise out of the employment.

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[15] Masonic Widows and Orphans Home v. Lewis, 330 S.W.2d 103 (Ky. 1959); Maddox v. Heaven Hill Distilleries, Inc., 329 S.W.2d 189 (Ky. 1959); Wilde v. University of Louisville, 327 S.W.2d 739 (Ky. 1959); Stapleton v. Ford Junction Coal Co., 247 S.W.2d 372 (Ky. 1952); Phil Hollenbach Co. v. Hollenbach, 181 Ky. 262, 204 S.W 152 (1918).

[16] For support of this extension see Note, 49 Ky. L.J. 394 (1961). *Contra:* Comment, 50 Ky. L.J. 415 (1962).

[17] Johnson v. Stone, 357 S.W.2d 844, 845 (Ky. 1962).

[18] The following hypothetical situation should clarify the suggested interpretation of "unusual" as applied to the "arising out of" requirement. A, employed as a fireman on a steam engine, suffers a heart attack while shoveling coal into the engine, and it it shown that the heat and stress of the work precipitated pre-existing disease into disability. Recovery should be allowed because the general public is not exposed to this type of strain. Unusual strain should not be defined as unusual for A, but unusual as compared with the strain to which the general public is exposed. On the other hand, B, employed as a drug store clerk, who has a heart attack while ringing up a sale on a cash register, should not receive compensation even if it is shown that the disability was precipitated by the strain of ringing up the sale. This strain is not unusual as compared with the strain to which the general public is exposed.