EIGHTH REPORT

OF THE

Industrial Commission of Colorado

DECEMBER 1, 1923

TO

DECEMBER 1, 1924

Administering:

Workmen's Compensation Act
Industrial Relations Act
State Compensation Insurance Fund
Colorado Minimum Wage Law

44
BRADFORD-ROBINSON PTG. CO.
DENVER COLORADO

EIGHTH REPORT

OF THE

Industrial Commission of Colorado

DECEMBER 1, 1923

TO

DECEMBER 1, 1924

Administering:

Workmen's Compensation Act
Industrial Relations Act
State Compensation Insurance Fund
Colorado Minimum Wage Law

INDUSTRIAL COMMISSION OF COLORADO

WILLIAM I. REILLY, Chairman

JOSEPH C. BELL
Commissioner

THOMAS ANNEAR
Commissioner

HERBERT E. CURRAN
Secretary

WM. F. MOWRY
Referee and Chief of Claim Dept.

FEAY B. SMITH
Assistant Referee

WILLIAM L. HOGG
Ass't Chief of Claim Dept.

THOS. P. KEARNEY
Mgr. State Compensation Ins. Fund

HOWARD W. REDDING
Ass't Mgr. State Compensation Ins. Fund

GERTRUDE A. LEE
Secy. Minimum Wage Commission.

WM. R. SHAW, Chief Statistician

LETTER OF TRANSMITTAL

Office of Industrial Commission of Colorado,
State Office Bldg., Denver,
December 20, 1924.

TO HIS EXCELLENCY,
THE GOVERNOR OF COLORADO,
State Capitol Building,
Denver, Colorado.

Sir: In accordance with the provisions of law creating the Industrial Commission of Colorado, we have the honor to transmit herewith the report of the acts and proceedings of the Commission for the period from December 1, 1923 to December 1, 1924, all of which is submitted for your consideration.

WM. I. REILLY, Chairman,
JOSEPH C. BELL,
THOMAS ANNEAR,
Commissioners.

H. E. CURRAN, Secretary.

STATEMENT

The Compensation Law has been much improved by legislative enactments since its first adoption. Carefully considered experience will always show defects, making amendments necessary. Theory may seem perfect—a little experience demonstrates its danger. The Legislature should demand the experience of the board administering the act before adopting amendments thereto, to gain the benefit of the board's experience.

This Commission has never recommended to the legislative body either an increase or a decrease of benefits under the law. The amount of benefits is purely a matter of legislative judgment. Each legislator is familiar with life's problems, and his best judgment should be his answer. The law should be fair to all parties. The general public does not realize that the board must administer the law as it is, and has no power to change it. The board is blamed for defects that appear in the course of administration. A fair law requires no excuses, commands pride, and begets efficiency.

The Compensation Law must be fair to humanity and industry—sentiment for the one must not create injustice to the other.

Benefits under the law are not paid by the insurance company—simply guaranteed. The industry pays the benefits and the cost of the guaranty. Premiums paid to the insurance carrier are a part of the cost of production, the same as labor, in fact, a part of the labor cost which the ultimate consumer pays. Except interstate commerce carriers, farm and ranch labor and domestic servants, practically all the citizens of this State are under the Compensation Law, and nearly every dollar spent for luxuries or necessities carries a percentage of compensation expense. The law affects every legislator and is a matter of personal interest and personal pride with him.

We wish to call the attention of the Legislature to the seeming conflict between Sections 55 and 58-a. Section 55 provides for an immediate lump sum settlement to be paid upon remarriage of the husband or wife of a deceased employe. Section 58-a provides for the termination of all compensation upon remarriage. This conflict should be cleared by either repealing Section 55 or amending Section 58-a.

The maintenance and some of the construction work on our highways are done by the counties through the aid of State funds distributed by the Highway Department. The county does the work and bills the Highway Department for all or an agreed portion of the total cost. The question has been raised as to whether the county or the Highway Department must pay for the cost of compensation to the employes engaged in such work. No premium has been paid to the State Compensation Insurance Fund

WORKMEN'S COMPENSATION INSURANCE—PREMIUM INCOME AND LOSSES--COLORADO

PREMIUM INCOME

GROUP	1915 Premium Income	1916 Premium Income	1917 Premium Income	1918 Premium Income	1919 Premium Income	1920 Premium Income	1921 Premium Income	1922 Premium Income	1923 Premium Income	Totals‡ Premium Income	1924* Premium Income
Stock Companies	$ 32,602.56	$475,402.36	$ 664,049.89	$ 854,239.28	$ 818,782.86	$ 906,639.75	$ 931,622.93	$ 590,611.51	$ 665,509.93	$5,939,461.07	$----------
Mutual Companies	163,526.58	254,351.63	303,466.36	382,528.75	313,432.55	602,262.10	416,087.25	330,407.73	402,663.69	3,068,726.64	----------
State Comp. Ins. Fund	46,710.00	134,371.41	192,328.45	370,593.75	267,612.12	460,116.11	364,009.52	339,537.41	404,562.16	2,579,840.93	401,447.33
Totals	$242,839.14	$864,125.40	$1,159,844.70	$1,607,361.78	$1,399,827.53	$1,869,017.96	$1,711,719.70	$1,260,556.65	$1,472,735.78	$11,588,028.64	----------

LOSSES PAID

GROUP	1915 Losses Paid†	1916 Losses Paid†	1917 Losses Paid†	1918 Losses Paid†	1919 Losses Paid†	1920 Losses Paid†	1921 Losses Paid†	1922 Losses Paid†	1923 Losses Paid†	Totals‡ Losses Paid†	1924* Losses Paid†
Stock Companies	$1,738.02	$128,719.80	$191,556.57	$243,915.88	$294,156.65	$356,059.22	$389,800.87	$385,124.75	$199,806.15	$2,190,877.91	$----------
Mutual Companies	2,637.46	23,188.98	58,546.16	74,003.02	98,135.51	111,893.71	130,440.08	141,611.72	134,095.21	774,556.85	----------
State Comp. Ins. Fund	2,563.65	28,535.76	12,497.24	51,391.68	86,546.79	128,333.71	168,340.20	178,710.00	201,169.98	887,797.01	224,475.33
Totals	$6,939.13	$180,444.54	$292,599.97	$369,315.58	$478,546.95	$596,286.64	$688,581.15	$705,446.47	$535,071.34	$3,153,231.77	----------

*Figures not available for 1924 business. State Fund figures are for eleven months only.
†Losses paid include only actual payments and do not include amounts set aside for reserves to cover incurred liabilities.
‡Totals for period, August 1, 1915, to December 31, 1923.

since July 1, 1923, upon this class of work, and the yearly premium for the year ending July 1, 1924, is approximately $22,000.00. The Legislature should decide whether the premiums are to be paid out of the revenues of the State Highway Department or the several counties or through legislative appropriation.

WORKMEN'S COMPENSATION INSURANCE PREMIUM INCOME AND LOSSES, COLORADO

The distribution of premium income and losses paid for Workmen's Compensation Insurance in Colorado since the passage of the law in 1915 is shown in the insert table following page 4, which divides the total business handled into three groups, namely: Stock companies, mutual companies and the State Compensation Insurance Fund.

By reference to this table it will be noted that an increase of $212,179.13 in premium income for 1923 over the year 1922 is shown, which may be distributed on a percentage basis, as follows: Stock companies, 35.3%; mutual companies, 34.1%; State Compensation Insurance Fund, 30.6%. A total increase of $129,624.87 is given in the amount of losses paid during 1923 over the year 1922, stock companies and the State Fund showing increases while the mutual companies show a decrease.

Figures for the year 1924 (*) are not available at the present time. However, the business of the State Compensation Insurance Fund for the first eleven months is included for comparative purposes.

SELF-INSURANCE

The following is a list of the employers to whom self-insurance permits have been granted, all of which expire July 31, 1925, unless sooner terminated by order of the Commission:

American Bridge Company.
American Smelting and Refining Company.
American Telephone and Telegraph Company.
The Calumet Fuel Company.
Chicago Bridge and Iron Works.
Colorado Fuel and Iron Company.
The Colorado Portland Cement Company.
The Colorado Springs and Interurban Railway Company.
The Colorado Supply Company.
The Colorado and Utah Coal Company.
The Denver Tramway Company.
E. I. duPont de Nemours & Company.
The Empire Zinc Company.
General Electric Company.
The Golden Cycle Mining and Reduction Company.
Griffin Wheel Company.
The International Realty Company.
The Juanita Coal and Coke Company.

The Keystone Mining Company.
The Mountain States Telephone and Telegraph Company.
The Myron Stratton Home.
National Biscuit Company.
The Pike's Peak Consolidated Fuel Company.
The Public Service Company of Colorado.
The Rocky Mountain Coal and Iron Company.
Standard Oil Company (Indiana).
The United Oil Company.
The United States Portland Cement Company.
United States Zinc Company.
The Victor-American Fuel Company.
Western Electric Company, Incorporated.
The Western Union Telegraph Company.

Security held in trust by the Commission to cover incurred losses and to guarantee payment of compensation to become due from self-insurers:

Indemnity Bonds:		
Surety companies and all other sureties	$715,000.00	
Secured by government bonds and other securities of a par value of $113,250.00	100,000.00	$ 815,000.00
U. S. bonds deposited to provide a catastrophe fund		28,300.00
Reserve to Cover Incurred Losses:		
Cash	$ 14,787.88	
U. S. bonds	997,500.00	
U. S. certificates	5,000.00	
Other securities	95,500.00	1,112,787.88
		$1,956,087.88

Several of the above named self-insurers carry catastrophe insurance covering their liability for any accident above $25,000.00, with varying limits of liability from $150,000.00 to $750,000.00.

EX-MEDICAL PERMITS

There are in effect at this time 336 ex-medical permits, divided among the following operations:

Coal mining	131
Metal mining and reduction of ores	127
Public utilities	11
Miscellaneous	67
	336

An ex-medical permit issued by this Commission is, in effect, granting the privilege to such employer to be its own insuranee carrier covering the liability of said employer under the medical provisions of the statute.

The Commission has recently been requiring employers applying for an ex-medical permit to furnish financial statements, but even with this added precaution the Commission has found that it is not always safe to issue an ex-medical permit, even though the financial statement on its face seems to justify the same. The Commission has therefore recently been requiring a number of applicants for ex-medical permits to file a bond in the sum of $1,000.00, guaranteeing the payment by such employers of the obligation imposed upon them by the law for the medical aid required. Personal sureties have been accepted on such bonds when accompanied by financial statement seeming to justify such approval.

BENEFICIARIES' TRUST DEPOSITS

The following is a tabulation of the moneys deposited to the credit of dependents, and which draw interest at the rate of four per cent per annum. These deposits are protected by surety bond given by the respective depositories and held by the Commission:

Total amount deposited	$79,056.84
Number of accounts	219
Number of withdrawals	17
Amount of withdrawals	$3,265.35
New accounts opened in 1924	19
Accounts closed in 1924	4
Largest account	$2,040.27

We have one account on which a regular monthly withdrawal of $15.00 is being made, which item has not been included in the figures given above for withdrawal amount and number of withdrawals.

STATE COMPENSATION INSURANCE FUND

During the past year it has been found necessary to adjust the premium rates under the various classifications of industry in this State, with the approval of the Industrial Commission, in order to serve two purposes.

First, in order to adjust the relative cost of Workmen's Compensation Insurance among the various industries in accordance with the latest indications of the relative hazard between the various classifications of risk.

Second, to provide the increased premium necessary as the result, not only of increase in benefits contained in the amendments to the Workmen's Compensation Act, effective August 1, 1923, but also of the general increase in cost of workmen's compensation noticed by all companies in all parts of the country, and, of course, as far as we are concerned, especially in Colorado.

The new manual of classifications and rates submitted to the Industrial Commission by all the private companies operating in Colorado went into effect on July 1, 1924.

While the State Compensation Insurance Fund adopted the new manual, nevertheless it was felt that the increase in rates requested by the private companies was more than sufficient to take care of the elements mentioned above. The Fund, therefore, submitted rates 15% under the private company rates, except for a few classifications where special rates were submitted. The Fund rates under the old manual were 10% lower than the private company rates.

At the present time, therefore, the State Fund is writing Workmen's Compensation Insurance at a net reduction under the private company rates of approximately 28½%, as the 15% dividend to private employers is being maintained.

The Fund is still the leading carrier of Workmen's Compensation Insurance in Colorado among the lines in which it competes with the private companies. A very pertinent indication of the increasing confidence of the employers of the State in this Fund is the fact that the volume of manufacturing and mercantile risks insured in the Fund at the present time exceeds the volume of metal mining business. The metal mining industry has insured with the Fund almost as a unit ever since the law went into effect, whereas the miscellaneous lines were obtained by individual risks.

The present distribution of the business of the Fund has resulted in a constantly increasing ratio of accidents reported to premiums received. Many more minor accidents occur in the same volume of business in the miscellaneous lines than in the mining risks where the number of accidents is less but the severity much

greater. This does not necessarily result in an increase in the amount of losses incurred, but it does result in an increase in the expense of operating the claim division of the Fund.

In past reports I have repeatedly called attention to the necessity for a change in the method of providing for the operating expenses of the Fund, which, of course, are being paid from the income of the Fund and are therefore not a drain upon the taxpayers of the State.

At the present time the Legislature determines definitely at each session a fixed amount of money which the Fund may spend for operating expenses from its income, during the ensuing biennial period, which amount bears no particular relation to the volume of business written by the Fund.

In any business the operating expense is a fluctuating amount bearing a direct proportionate relation to the volume of business done. This proportion of operating expenses to income will, of course, vary between industries. However, in a given industry the proportion of operating expenses to income will not vary materially among the various companies in that industry which do business upon the same basis.

Hence, we find that in the insurance business the companies writing Workmen's Compensation Insurance are divided roughly into three classes, namely, stock companies, mutual companies and state funds. The stock company expense ratio is approximately 40% of premium income. This proportion will not vary materially between companies.

The operating expenses of mutual companies average about 25%, and, similarly, this ratio will not vary appreciably among individual companies of this type.

The most economical form of Workmen's Compensation Insurance carrier in this country up to the present time is the state fund. The average expense ratio of these funds will not exceed 15%.

It is obvious, therefore, that no definite money limit should in advance be placed upon the operating expense of a competitive insurance business, but that the item of operating expenses should be as flexible as the item of premium income, to which it bears a direct relation.

There seems to be no logical reason why the Workmen's Compensation Act of this State should not be amended so that the necessary expenses of the State Fund may be paid from its income, the same as are the medical and compensation payments.

Inasmuch as the surplus of the Fund passed the half-million-dollar mark last year, the contribution to surplus from the premium income of the Fund was reduced.

STATE COMPENSATION INSURANCE FUND

Statement of Income and Disbursements December 1, 1923, to November 30, 1924

Income

Premiums Written		$421,842.32
Interest Received		67,504.54
Received from Premiums previously charged off as uncollectible		40.82
Redemption of Warrants:		
State of Colorado		125,374.08
County, City, Town, School Districts, etc		6,895.96
		$621,657.72
Due from State Treasurer, Custodian, Nov. 30, 1923	$35,480.14	
Premiums outstanding Nov. 30, 1923	30,524.12	
		66,004.26
		$687,661.98

Disbursements

Compensation and Medical Paid		$245,464.13
Dividends Paid Policyholders		48,894.11
Operating Expenses		27,084.74
Premium charged off (uncollectible)		1,726.85
U. S. Government Bonds Purchased		134,585.63
State of Colorado Bonds Purchased		55,560.40
Accrued Interest on Bonds Purchased		1,922.91
State of Colorado Warrants Purchased		118,964.67
Registered County, City and School District Warrants received for Premiums held as Investment		5,037.57
		$639,241.01
Balance Nov. 30, 1924:		
Due from State Treasurer, Custodian	$27,404.50	
Unpaid Premiums	21,016.47	
		48,420.97
		$687,661.98

STATE COMPENSATION INSURANCE FUND

Statement of Admitted Assets and Liabilities as of November 30, 1924

Assets

		Market Value Nov. 30, 1924 Not Exceeding Par
Bonds:		
U. S. Government:		
$ 60,000.00	First Liberty Loan converted 4¼%	$ 60,000.00
365,000.00	Second Liberty Loan, 4¼%	365,000.00
123,200.00	Third Liberty Loan, 4¼%	123,200.00
597,900.00	Fourth Liberty Loan, 4¼%	597,900.00
302,500.00	Treasury 1947-52, 4¼%	302,500.00
State of Colorado:		
$ 5,400.00	Series 1919, 3%	5,157.00
5,800.00	Series 1910, 3%	4,640.00
79,000.00	Series 1914, 4%	79,000.00
1,850.00	Highway 1931-51, 5%	1,850.00
46,000.00	Highway 1932-52, 5%	46,000.00
	Total Bonds	$1,585,247.00
Warrants:		
	State of Colorado, 4%	84,498.76
	County, City, Town, School District, etc, 6%	4,738.75
	Total Invested Assets	$1,674,484.51
	Due from State Treasurer, Custodian	27,404.50
	Interest Accrued	10,153.52
	Unpaid Premiums (Less Private Premiums Outstanding more than 90 Days, $3,815.94)	17,200.53
	Total Assets	$1,729,243.06

Liabilities

Reserve for Losses	$ 978,574.77
Unearned Premiums	68,366.30
Reserve for Dividends	46,921.45
Estimated Expenses, Bills, Accounts, etc., due or accrued	1,500.00
Total Liabilities	$1,095,362.52
Surplus over all Liabilities	633,880.54
Total	$1,729,243.06

COMPARISONS—YEARS 1921, 1922, 1923, 1924

	1921	1922	1923	*1924
Premiums written	$ 364,009.52	$ 339,537.41	$ 404.562.16	$ 404,447.33
Interest earned	44,534.03	57,855.63	63,953.41	63,832.37
Total assets	1,180,443.77	1,370,700.12	1,537,669.69	1,729,243.06
Invested assets	807,271.64	1,305,896.04	1,482,868.36	1,674,484.51
Net surplus	344,146.71	468,691.71	534,847.47	633,880.54
Compensation and Medical paid	168,340.20	178,710.00	201,054.98	224,475.33
Reserve for losses	771,632.95	832,481.42	893,014.48	978,574.77
Dividends paid private assured	37,903.99	28,011.86	31,306.74	32,217.02
Dividends paid public assured	36,306.01	158.04	33,331.61	9,745.83

PREMIUM INCOME

1915 (5 months)	$ 49,758.19
1916	134,371.41
1917	192,328.45
1918	370,593.75
1919	267,612.12
1920	460,116.11
1921	364,009.52
1922	339,537.41
1923	404,562.16
1924 (11 months)	404,447.33

*Note: 1924 figures are for 11 months only.

CLAIM DEPARTMENT

The Claim Department administers the Compensation Law of Colorado. It receives and files all reports required by law, including first reports of accidents, supplemental reports, physicians' reports, admissions of liability, all receipts for compensation payments, claims for compensation, final receipts for compensation, lump sum applications, and conducts all hearings relating to compensation claims.

The following statement shows the volume of work handled during the current year:

First reports of accidents filed	17,513
Supplemental reports examined and filed	19,800
Physicians' reports examined and filed	12,150
Admissions of liability investigated, approved and filed	4,836
Receipts for compensation payments, examined, recorded and filed	25,000
Claims for compensation filed and investigated	5,660
Lump sum applications filed and investigated	165
(Lump sum applications granted, 112; denied, 53)	
Hearings held	1,957
(Of which 963 were held in Denver and 995 outside of Denver)	

The number of hearings noted does not take into account continuances had following the original hearing, nor does it include those cases which are taken up by agreement of the parties who waive the statutory period of time. The increased appropriation given two years ago has permitted hearings to be held more frequently in the various parts of the State. The present arrangement contemplates hearings in the leading industrial centers every sixty days. Hearings in the outlying counties are held two or three times per year, as against the former practice of holding hearings once a year.

The total number of awards issued was 2,750. Of this number 2,232 were referee awards and the remainder were awards made by the Commission after reviewing the award of the referee.

One hundred seventy-four petitions for review of the referees' awards were filed, and of this number 53 were granted by the Commission, while in the remainder of the cases the referees' awards were affirmed.

A comparison of the work required in 1924 with the work performed in 1923 shows the following increase during 1924:

First reports of accidents	2,151
Admissions of liability	981
Claims	353
Awards	245

A more detailed statement prepared by the statistician covering the work of this department will be found beginning on page 28 of this report.

LUMP SUM SETTLEMENTS

Numerous applications for lump sum settlements were made during the year. These appear in the statistical tables, and were based upon a wide diversity of purposes. The greater number of those granted were for the purchase of real estate or the payment of indebtedness thereon. A few were allowed for going into business, although many were denied which were based upon the same reason. Quite a number were granted for the purpose of paying passage to foreign counties, of which the applicants were natives. When such sums were granted and provided for the payment of the balance due, the Commission satisfied itself that the claimants actually returned to their home countries by providing for the payment of the balance after their arrival in their native country. Other applications were granted for the purchase of cows, horses, chickens, trucks and other means of making a livelihood.

Others were denied because of the indefiniteness of the purposes for which the claimant desired the settlements. Applications for deposits in banks, at interest were invariably denied, as were those for investment in securities of speculative value.

While errors may have crept into some decisions on lump sum settlements, since each case must necessarily be determined upon its own merits, yet on the whole the Commission feels that the lump sum provision of the law is a desirable feature, and that it has been administered in the best interest of the parties concerned.

DECISIONS OF INDUSTRIAL COMMISSION

COMPENSATION CLAIM DEPARTMENT

Commencing on page 18 will be found a digest of those cases decided during the current year which involve questions of law, or new rulings upon the construction of the law. Routine cases not involving any particular question are not digested nor indexed. Each case as digested has been given a consecutive index number for the purposes of this report only, and the references under the various headings refer to the index number used in this report.

INDEX

COMPENSATION AWARDS

—A—

Index No. 1, Claim No. 22464. Francisco Acosta, Deceased; Filipa Acosta, Widow, in behalf of herself and Minor Children, Dependents, Claimants, vs. The Rocky Mountain Fuel Company, Employer, and Employers' Mutual Insurance Company, Insurer, Respondents.

CONTRACT WORK CONSTRUED AS WORK FOR WAGES. Award entered February 16, 1923, awarded compensation to the dependents and determined wage history under the provisions of subdivision (c) of Section 47. This finding was reversed by the Supreme Court and the case remanded for determination of wage history as provided by subdivision (b), Section 47. The decision of the Supreme Court held that the decedent was not in business for himself while he was engaged in the beet fields taking care of beets by the acre, but that such work was work for wages. Final award entered February 18, 1924, was based on wage rate fixed by decedent's earnings for the six months prior to his death.

Index No. 2, Claim No. 30056. Roy Anderson, Claimant, vs. Bourk-Donaldson-Taylor, Inc., Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

FREEZING AS AN ACCIDENT. The claimant, a truck driver, drove to Fitzsimons Hospital with a load of groceries. In opening some crates of lettuce he got his gloves wet. He started on his return to Denver and his gloves froze. He then drove with his bare hands and froze his fingers. It was held that this accident arose out of and in the course of claimant's employment.

Index No. 3, Claim No. 27473. Frank L. Arters, Claimant, vs. P. W. Pittman, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Claimant was injured July 13, 1923. His injury consisted of being overcome by the heat of the day and falling from the roof of the building where he was working to the ground, a distance of some fifteen feet. Hearing before the Referee was held July 15, 1924, and compensation awarded for temporary disability. Petition for review prayed that the Referee's award be set aside and respondents be given further opportunity to present evidence herein.

Held, that the respondents have had ample time within which to prepare their defense. Further held that the facts stated constitute an accident as defined by law. Temporary compensation ordered paid and further hearing ordered to determine permanent disability.

—B—

Index No. 4, Claim No. 29325. L. H. Balfe, Claimant, vs. John Moore, Employer, and Continental Casualty Company, Insurer, Respondents.

INTEREST ON UNPAID COMPENSATION. The insurance carrier has failed to file notice of contest, and having paid no compensation, interest at 8% was ordered paid on each installment of compensation from the date same became due until paid.

Index No. 5, Claim No. 24819. Ann Beirne, Claimant, vs. Mutual Oil Company, Employer, and Southern Surety Company, Insurer, Respondent.

SETTLEMENT WITH THIRD PARTY. Claimant having settled with a third party for an amount in excess of that allowed for compensation under the Workmen's Compensation Act, her claim for compensation was denied.

Index No. 6, Claim No. 33083. Camillo Bianchi, Deceased; Lucy Bianchi, Sister, in behalf of herself and Minor Nieces and Nephews, Dependents, Claimants, vs. The Colorado Fuel and Iron Company, Employer, Self-Insurer Respondent.

VIOLATION OF A SAFETY RULE. The decedent violated a safety rule by riding a loaded trip out of his entry. The rule against riding loaded trips was known to him and was enforced by the employer. Compensation payments to the dependents were, therefore, reduced 50%.

Index No. 7, Claim No. 7101. Frederick Brabant, Claimant, vs. The Ley-

den Coal Company, Employer, and The Employers Mutual Insurance Company, Insurer, Respondents.

ATTORNEY'S FEES PAYABLE TO ESTATE OF DECEASED ATTORNEY. Claimant was awarded compensation for permanent total disability. Ten per cent attorney's fees granted to James J. McFeeley, now deceased, as provided by the 1919 Law. McFeeley died February 13, 1924. Held, that the executrix of the attorney's estate was entitled to receive the 10% allowance from each compensation payment.

Index No. 8, Claim No. 28615. Robert Bunten, Claimant, vs. The Canon-Reliance Coal Company, Employer, and The Employers Mutual Insurance Company, Insurer, Respondents.

ACCIDENT AS DEFINED BY LAW. Claimant was injured August 27 1923. His injury consisted of an abcess in the palm of the left hand caused by the constant jar of the pick handle which he was using. Under direction from the District Court of Denver, held, that the claimant had not sustained an accident as defined by law. Compensation denied.

Index No. 9, Claim No. 29379. Carrol M. Burch, Deceased; Eula Burch, Widow, Dependent, Claimant, vs. Moffat Tunnel Commission, Employer, and State Compensation Insurance Fund, Insurer, Respondents.

OVER-EXERTION AND EXPOSURE AS AN ACCIDENT. Decedent was employed by the Moffat Tunnel Commission as a chauffeur. Several days prior to October 26, 1923, he was instructed to drive the attorney for the Commission from Denver to West Portal. On the return trip he was caught in a severe storm in crossing Berthoud Pass, and finally became blocked in the snow drifts occasioned by the storm. In his efforts to extricate his car, he over-exerted himself and, following his return to Denver, suffered a physical breakdown and developed pneumonia. He died November 10, 1923. His condition of health prior to his trip on October 26, 1923, had been good.

Held, that over-exertion constitutes an accident and that this over-exertion caused a weakened condition which made the decedent susceptible to pneumonia, from which he died. Compensation awarded to the widow.

—C—

Index No. 10, Claim No. 31126. Marguerita May Chambers, Decedent; Laura May Chambers, Mother, Dependent, Claimant, vs. School District No. 11, Otero County, Colorado, Employer, and State Compensation Insurance Fund, Insurer, Respondents.

THE EFFECT OF SETTLEMENT WITH A THIRD PARTY UNDER SECTION 87. Claimant settled with the third party without the consent of the Industrial Commission and prior to filing her claim with the Industrial Commission. Claim for compensation was denied.

The same ruling was made in Claims No. 31278, No. 31281 and No. 31282.

Index No. 11, Claim No. 33325. Mary Chazanow, Claimant, vs. Lantz Sanitary Laundry Company, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

FAINTING SPELL. Claimant's injuries were caused by a fainting spell brought on by drinking ice water while she was performing her usual duties. Claimant was unable to give any history of an accident or any unusual condition which might have caused the fainting spell to be classed as an aceident. The claim was denied.

—D—

Index No. 12, Claim No. 29433. Eno DeWerff, Deceased; Martha M. DeWerff, Widow, in behalf of herself and Minor Children, Dependents, Claimants, vs. Portland Gold Mining Company, Employer, and State Compensation Insurance Fund, Insurer, Respondents.

EVIDENCE TO SUPPORT FINDINGS—EFFECT OF. Decedent was injured November 17, 1923, and died November 23, 1923 His accident consisted of a strain or sprain which later caused general peritonitis. The uncontradicted evidence was that the decedent prior to November 17th had been in excellent health, had not been treated for any disease, and that his accident of November 17th was the only possible cause of his death.

Held, that where death can reasonably be attributed to an accident and no cause shown for death other than the accident, that death was due to the aecident. Compensation awarded to the widow and minor dependents.

—E—

Index No. 13, Claim No. 31486. Charles Ekola, Claimant, vs. The Moffat Coal Company, Employer, and The Employers Mutual Insurance Company, Insurer, Respondents.

EMPLOYER OPERATING UNDER MEDICAL PLAN NOT LIABLE FOR SERVICE RENDERED BY PHYSICIAN EMPLOYED BY CLAIMANT, WITHOUT NOTICE. Claimant was injured March 3, 1924. The employer operates under a medical plan approved by the Commission. Following his accident claimant secured the services of a Denver physician without notice to the employer and disregarding the medical services furnished by the employer.

Held, that the respondent employer was not liable for the payment of medical services rendered by the Denver physician.

Index No. 14. Claim No. 29735. F. R. Engelhardt, Claimant, vs. Holly Sugar Corporation, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

FAINTING SPELL AS ACCIDENT. Claimant fainted while at work on November 7, 1923, and fell against a lathe, paralyzing part of the muscles of the right arm. Several days prior to his accident he had worked for some hours, repairing an elevator chain, under the ceiling of the factory, close to a ventilator, and the fumes and gas from the factory caused nausea and vomiting and dizzy spells. These continued up to the date of the fainting spell, on November 7th. It was held, therefore, that the claimant's accident arose out of and in the course of his employment.

—F—

Index No. 15, Claim No. 7381. John Fanganiello, Deceased; Lopa Benedetta Fanganiello, Widow, in behalf of herself, and Maria Fanganiello, Mother, in behalf of herself, Dependents, Claimants, vs. The Denver Tramway Company, Employer, Self-Insurer, Respondent.

ADULTERY BAR TO WIDOW'S RIGHTS. Decedent died July 30, 1918. Two dependents' claims were presented—one by the widow residing in Italy and one by the mother, a resident of Denver. The first award granted compensation to the widow on the ground that the decedent had voluntarily left his wife in Italy and that she was not voluntarily separated from her husband at the date of his death. The mother contended that the widow had forfeited her right to compensation by having committed adultery following her husband's residence in the United States.

The District Court of Denver reversed this finding, holding that the commission of adultery deprived the widow of her right to claim compensation. This ruling was affirmed by the Supreme Court. The final award denied the widow's claim and awarded partial dependency to the mother.

Index No. 16, Claim No. 16119. Louis Ford, Deceased; Lizzie Ford, Widow, Dependent, Claimant, vs. American Smelting and Refining Company, Employer, Self-Insurer, Respondent.

BURDEN OF PROOF SUSTAINED. Decedent was injured December 7, 1920. His injury consisted of a burning of the inner canthus of the right eye. The immediate result was a total loss of vision of the right eye. Decedent died February 14, 1923. Prior to his accident he had worked steadily and at good wages. He enjoyed good health and was normal in all respects. Following his injury he was totally disabled. Eventually he became insane and was committed to the State Insane Hospital at Pueblo. Nothing is offered to account for the total disability of the decedent following his injury or for his insanity, other than his injury of December 17, 1920.

Held, that his accident caused permanent total disability and compensation awarded to his widow, less compensation paid to the decedent during his lifetime.

Index No. 17, Claim No. 30015. O. V. Foutz, Claimant, vs. School District No. 90, Yuma County, Employer, and State Compensation Insurance Fund, Insurer, Respondent.

ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Claimant was injured while on his way to attend a teacher's convention, the car in which he was riding being wrecked. The teachers were required to attend this convention and the accident was held to arise out of and in the course of his employment.

Index No. 18, Claim No. 32989. Martha Fowler, Claimant, vs. Mary Ellen Cafeteria, Employer, and the State Compensation Insurance Fund, Insurer, Respondent.

STATUTE OF LIMITATIONS. Claim for compensation was not filed within six months from the date of accident. The claim was dismissed on account of failure to file within the proper time.

Index No. 19, Claim No. 26785. Thomas A. French, Deceased; Mrs. Catherine French, Widow, in behalf of herself and Minor Children, Dependents, Claimants, vs. The Great Western Sugar Company, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. The decedent was employed as agriculturist for The Great Western

Sugar Company. On June 24, 1923, he was killed while driving a car belonging to the Company through the Mountain Parks. The Company's Advertising Manager was a member of the Press Club Committee for the entertainment of President Harding's party, and through the company secured the services of this car and the services of the decedent as driver. It was held that the accident arose out of and in the course of employment. Compensation was awarded the dependents.

—G—

Index No. 20, Claim No. 27416. Paul Galiegos, Claimant, vs. American Smelting and Refining Company, Employer, Self-Insurer, Respondent.

FAILURE TO FILE NOTICE OF CONTEST. REPORTING ACCIDENT. No notice of contest was filed by the respondent employer as required by the Rules of Procedure. His testimony was, therefore, refused. The claimant testified that he had reported his accident to the company doctor after securing permission to visit the doctor. The employer contended this was not a sufficient report of accident. This was held to be a sufficient report of accident to the employer.

Compensation awarded.

Index No. 21, Claim No. 23032. Jacob Garcia, Deceased; Agedita Tafoya, Mother, Dependent, Claimant, vs. The Temple Fuel Company, Employer, and The Employers' Mutual Insurance Company, Insurer, Respondents.

DEATH OF CLAIMANT BEFORE ENTRY OF AWARD. Decedent was killed September 19, 1922. At the date of his death he was supporting his mother. The mother died following the filing of the claim and before any hearing was had herein. The Commission held that the mother was dependent to the extent of a 90% of total dependency and ordered that the compensation due from the date of decedent's death to the date of the mother's death be applied to the payment of funeral expenses and attorney's fees. The insurance carrier appealed to the District Court, which reversed the award of the Commission on the ground that Section 57 did not apply to this case, as decedent's death occurred before said Section was enacted.

Index No. 22, Claim No. 24610. Elizabeth Gault, Deceased; Mrs. Alice Finnin, Aunt, Dependent, Claimant, vs. School District No. 37, Employer, and State Commission Insurance Fund, Insurer, Respondents.

DEPENDENCY—AUNT NOT A LEGAL DEPENDENT. Decedent died October 27, 1922. Her death arose out of and in the course of her employment. Her sole dependent was her aunt, a resident of Marysville, Ohio. The evidence clearly shows that the aunt actually took the place of the decedent's mother, so far as care and affection are concerned, from the time decedent's mother died to the time she had been educated for the profession of a teacher, and that the decedent had actually contributed to the aunt's support since she had become a teacher.

Held, that the aunt was not a dependent under the provisions of Sections 52 and 53 of the Compensation Act. Medical and funeral benefits, however, were awarded.

Index No. 23, Claim No. 31049. Vollie Gonce, Claimant, vs. Lindsay and Dolan, Employer, and Federal Surety Company, Insurer, Respondents.

WAGES OF MINOR CLAIMANT DETERMINED UNDER SECTION 47D. In this case the claimant, a lad sixteen years of age, sustained an amputation of the left leg between the knee and the hip following an accident. He had had an 8th grade education and at the time of his accident he was earning as much as other men doing the same kind of work. There was no testimony to indicate that he had progressed very rapidly or very far beyond his station at the time he was injured. During the six months prior to the accident he had been irregularly employed. The Referee held that the claimand must be given the benefit of the doubt as to whether or not he would have been steadily employed during the period of disability, for which compensation should be paid upon the basis of the daily wage at the time of accident.

This Award was affirmed in substance by the Commission Award of August 9, 1924. Now pending in the District Court of the City and County of Denver.

—H—

Index No. 24, Claim No. 31968. Joseph Preston Hamer, Claimant, vs. The Denver Tramway Company, Employer, Self-Insurer, Respondent.

ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Claimant was a trailer conductor operating out of the South Division. Claimant left his car on the North Side and was injured while boarding a car to return to his home on the South Side. Under such circumstances the company allows pay to the extent of thirty cents to compensate the man

while returning home. It was held, therefore, that the claimant's accident arose out of and in the course of his employment.

NOTE: This case should be distinguished from the "On way to and from work cases."

Index No. 25, Claim No. 25981. Charles Hanby, Deceased; Isabel Hanby, Widow, in behalf of herself and Minor Children, Dependents, Claimants, vs. The Grand Junction Mining and Fuel Company, Employer, and The London Guarantee and Accident Company, Insurer, Respondents.

COMPENSATION ORDERED PAID TO STEPMOTHER FOR PERIOD MINOR CHILDREN REMAINED WITH HER AFTER DEATH OF FATHER. The first award ordered the compensation awarded the minor dependents paid to their uncle in Oregon. It later developed that the stepmother took care of the minor dependents from April 22, 1923, to August 13, 1923.

Held, that the stepmother was entitled to the compensation due the minor dependents for this period, as provided by Section 67.

Index No. 26, Claim No. 23917. J. W. Harbert, Deceased John I. Harbert, Administrator of the Estate of J. W. Harbert, Claimant, vs. The Great Western Sugar Company, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

ACCRUED COMPENSATION OF DECEASED CLAIMANT PAYABLE TO ADMINISTRATOR. Compensation for temporary disability and for permanent partial disability was ordered paid to the Administrator of decedent's estate, decedent having died after said compensation was due and payable, and his death not being the result of the accident.

Index No. 27, Claim No. 31643. N. J. Higman, Claimant, vs. The Magnus Metal Company, Employer, and The Maryland Casualty Company, Insurer, Respondents.

OCCUPATIONAL DISEASE. The claimant's disability was due to chronic lead poisoning which could not be attributed to an accident. Claim for compensation was, therefore, denied.

Index No. 28, Claim No. 30057. Max Hill, Deceased; Mrs. Julia Hill, Widow, in behalf of herself and Minor Children, Dependents, Claimants, vs. Denver Sewer Pipe and Clay Company, Employer, Self-Insurer, Respondent.

ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Decedent was murdered by an unknown party while at work on a night shift. Prior to the attack the decedent had complained that a fellow-employe was not doing his work properly and the employe had been discharged. Subsequent to hischarge, this employe made threats against the decedent. After the decedent's death the employe could not be found. It was held that the only conclusion possible was that the decedent met his death through an attack by some unknown party, probably the discharged employe, through a spirit of revenge aroused by the conduct of decedent in protecting his employer's interest, and that decedent's death was due to an accident arising out of and in the course of his employment.

Index No. 29, Claim No. 32011. Claude Hollenbaugh, Claimant, vs. Myers Pulp and Paper Company, Employer, and United States Fidelity and Guaranty Company, Insurer.

SPECIFIC DISABILITY; WAGES OF MINOR. Claimant, a minor, lost his right arm between the wrist and elbow in an accident arising out of and in the course of his employment. At the time of accident he was earning $19.20 per week. Representative of employer testified that within two years he probably would have been earning the peak wage of $34.56 per week, had the accident not occurred. Award for temporary total disability plus 139 weeks for specific disability at $12.00 per week.

Award affirmed by the Commission and now pending in the District Court for the City and County of Denver.

Index No. 30, Claim No. 30466. Wilbur A. Holley, Claimant, vs. Boulder Clay Products, Inc., Employer, and Federal Surety Company, Insurer, Respondents.

WAGES OF MINOR DETERMINED UNDER SECTION 47D. Claimant is a minor. He worked one day at $2.70 per day. The other five days of the week he attended public school. He sustained no permanent disability. Compensation computed under subdivision (d), Section 47, and wage earnings fixed at less than $10.00 per week.

Index No. 31, Claim No. 22505. Harold Hunter, Deceased; Dale Hunter, Dependent, Claimant, vs. Girardet and Hotchkiss Engineering and Construction Company, Employer, and The Ocean Accident and Gurantee Corporation, Limited, Insurer, Respondents.

VIOLATION OF A SAFETY RULE. Compensation of the dependent in this case was reduced 50% as the decedent was killed while violating a reasonable safety rule, a positive instruction that none of the men should drive across an unsafe bridge.

Referee's Award was confirmed in substance by the Commission Award, dated March 22, 1924, and was later affirmed by District Court of Montrose County and by Supreme Court of Colorado.

—J—

Index No. 32, Claim No. 28757. Joe T. Jacquez, Claimant, vs. American Smelting and Refining Company, Employer, Self-Insurer, Respondent.

FAILURE TO FILE NOTICE OF CONTEST. REPORTING ACCIDENT. No notice of contest was filed by the respondent employer as required by the Rules of Procedure. His testimony was refused. The claimant had asked the foreman for an order to report to the doctor and told the company doctor of his injury. The employer contended that this was not a sufficient report of accident. This was held to be a sufficient report of accident to the employer. Compensation awarded.

Index No. 33, Claim No. 28954. John Joswiak, Claimant, vs. Carter Mines Company, Employer, and State Compensation Insurance Fund, Insurer, Respondents.

PENALTY FOR FAILURE TO REPORT ACCIDENT. Claimant was penalized one day's compensation for each day's failure to report his accident, as provided by Section 31.

—K—

Index No. 34, Claim No. 32436. Tom Kaney, Claimant, vs. The Denver Tramway Company, Employer, Self-Insurer, Respondent.

INTOXICATION AT TIME OF ACCIDENT. Claimant was intoxicated at the time he was injured and compensation was, therefore, reduced 50%.

Index No. 35, Claim No. 20013. L. F. Knapp, Deceased; Mary Jane Knapp, Widow, Dependent, Claimant, vs. The Great Western Sugar Company, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

OCCUPATIONAL DISEASE. BURDEN OF PROOF. The decedent had to leave his work because of an eczema condition which arose from handling cloths impregnated with lime on December 4, 1921. This condition arose after a long period of employment and not from any definite exposure, and was held to be an occupational disease. Decedent died five months after leaving work. The widow failed to show that his death was the result of an accident. The claim was, therefore, denied.

—L—

Index No. 36, Claim No. 29237. J. W. Lawler, Claimant, vs. G. W. Lackey, Employer, Respondent.

NON-INSURER, EMPLOYER, REQUIRED TO FILE A BOND OR PRESENT VALUE OF COMPENSATION UNDER SECTION 27. Compensation having been awarded and the 50% penalty applied on account of the failure of the employer to carry insurance, he was ordered within ten (10) days from the date of the Award to file a proper bond, or, in lieu thereof, to deposit the present value of the unpaid compensation in trust with a trustee to be named by the Commission.

—Mc—

Index No. 37, Claim No. 27226. Lou McAfee, Claimant, vs. Wm. E. Russell Coal Company, Employer, and The Employers Mutual Insurance Company, Insurer, Respondents.

FACIAL DISFIGUREMENT. On September 27, 1923, claimant was awarded $175.00 for facial disfigurement, subject to the condition that the claimant submit to further medical treatment, and said amount not to be paid until the claimant should have been fully treated and discharged from further treatment. Claimant later reported his inability to report for further treatment on account of his financial condition and on account of having secured a position at an increase in salary that he would be unable to submit to medical treatment at any time in the near future. Original award modified and payment of $175.00 order paid to the claimant in full settlement.

—M—

Index No. 38, Claim No. 28945. Max J. Martinez, Decedent; Josie Martinez, Widow; Robert and George Lawrence Martinez, Minor Sons, Depend-

ents, Claimants, vs. American Smelting and Refining Company, Employer, Self-Insurer, Respondent.

VIOLATION OF SAFETY RULE. Compensation was reduced 50% in this claim as the decedent violated a reasonable safety rule when he disobeyed specific instructions to timber the place in which he worked before starting to work.

Index No. 39, Claim No. 34425. Santiago C. Martinez, Deceased; Prudencia G. Martinez, Mother, Dependent, Claimant, vs. The Gordon Construction Company, Employer, and The Aetna Life Insurance Company, Insurer, Respondents.

ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Decedent was employed in pushing a concrete cart. He had worked for possibly two hours. He had not complained of being sick and apparently was in normal health. He had emptied a regular load and was pushing the empty cart back towards the mixer, a distance of some 400 feet. He was about 150 feet from where he had dumped his load when he was seen to drop to the ground. When other employes reached him he was in convulsions and died almost immediately.

Held, that he had not sustained an accident as defined by law. The mother's claim for compensation denied.

Index No. 40, Claim No. 27277. Paul Marugg, Deceased; Leslie Paul Marugg and Inez Mae Marugg, Minor Children, Dependents, Claimants, vs. General Chemical Company, Employer, and The Fidelity and Casualty Company of New York, Insurer, Respondents.

BALANCE OF UNPAID COMPENSATION ORDERED PAID DEPENDENTS UNDER SECTION 64B.

The decedent, a permanent total disability, had received $347.20. He committed suicide, leaving two minor children totally dependent upon him. Compensation was ordered paid the minor dependents in the sum of $3,125.00, less the sum of $347.20 paid prior to decedent's suicide.

Index No. 41, Claim No. 24187. Walter J. May, Deceased; Josie E. May, Widow, in behalf of herself and Minor Children, Dependents, Claimants, vs. B. J. Hammond and A. A. Rathbun, Employers, Respondents.

FAILURE TO INSURE—LESSEE AND LESSOR. Decedent died November 2, 1922. At the time of his death he was hauling lumber for one Rathbun. In going down a steep hill on his way to the railroad siding he lost control of his wagon, was thrown off and killed. Rathbun was the immediate employer of May at the date of his death and was operating the Buxton Lumber Mill under lease from B. J. Hammond, owner. Neither Hammond nor Rathbun were insured.

Held, that Rathbun, as the immediate employer, and Hammond, as the owner of the property, under Section 50 of the Act, were liable for compensation. Compensation awarded to the widow and minor dependents. Now pending in the District Court of Saguache County.

Index No. 42, Claim No. 27958. William Mayerle, Claimant, vs. Viner-Kempter, Inc., Employer, and United States Fidelity and Guaranty Company, Insurer, Respondents.

COMPENSATION INCREASED ON ACCOUNT OF PREVIOUS LOSS OF ANOTHER MEMBER. Claimant sustained an amputation of the middle and ring fingers of the left hand at the distal joint. He had previously suffered a serious impairment of the use of the right hand. The additional disability on account of the previous injury was held to equal a 5% loss of use of the right hand measured at the wrist. The claimant was awarded compensation for the amputation, plus 5% loss of use of the hand at the wrist. (Sections 73F and Section 76.)

Index No. 43, Claim No. 32869. Domingo Mendez, Deceased; Mrs. Carmen Mendez, Widow, in behalf of herself and Minor Children, Dependents, Claimants, vs. The Colorado Fuel and Iron Company, Employer, Self-Insurer, Respondent.

ILLEGITIMATE CHILDREN RECOGNIZED BY PARENT. Deceedent, prior to his death, recognized his children born out of wedlock. The children were, therefore declared dependents.

Index No. 44, Claim No. 22153. Mrs. Antoinette Montgomery, Claimant, vs. The Board of Education, Silverton, Colorado, Employer, and The State Compensation Insurance Fund, Insurer, Respondents.

CASE REOPENED UNDER SECTION 110 TO DETERMINE WHETHER ERROR HAD BEEN MADE. Claimant injured March 17, 1922. First award entered November 3, 1922. Reopened by the Commission under Section 110 and further hearing ordered for the purpose of ascertaining whether an error or mistake had been made in the proceedings had herein or a change of conditions had occurred since the entry of the last award. Original award affirmed by the Commission on August 16, 1924.

Index No. 45, Claim No. 27741. James F. Morgan, Deceased; Bertha Case Morgan, Widow, Dependent, Claimant, vs. The Colorado Lead Products Com-

pany, Employer, and the State Compensation Insurance Fund, Insurer, Respondents.

DIVORCED WIFE GRANTED ALIMONY NOT DEPENDENT. Decedent died August 29, 1923. He was survived by his son and his divorced wife, the claimant. The wife secured a decree of divorce on June 7, 1920. This decree, in addition to granting an absolute divorce, ordered the defendant to pay $60.00 per month alimony to the claimant on the first day of each month. Several payments, as provided by this order, were made to the claimant, but no payments were made by the decedent to the claimant during the year prior to his death. Claimant had for several years earned her own livelihood.

Held, that the claimant was not the wife of the decedent at the date of his death. That her right to claim $60.00 per month alimony did not constitute her a dependent. Claim denied.

Index No. 46, Claim No. 27856. Charles A. Morrison, Claimant, vs. The John Harvey Fuel and Feed Company, Employer, and The Ocean Accident and Guarantee Corporation, Limited, Insurer, Respondents.

THE EFFECT OF PREVIOUS AWARD FOR COMPENSATION. Testimony indicates that the claimant had sustained a 33 1-3% loss of vision in the left eye. He had previously been compensated for this loss of vision, in a prior claim. It was held, therefore, that the claimant had sustained no permanent disability as a result of this accident and his claim for further compensation was denied.

—P—

Index No. 47, Claim No. 30930. Charles Peterson, Claimant, vs. J. A. Osner, Employer, and The Employers' Liability Assurance Corporation, Limited, Insurer, Respondents.

FREEZING AS ACCIDENT. The claimant froze his fingers on the morning of December 31, 1923, while feeding stock. He worked in the open about three hours and upon his return to the house he found that his fingers were frozen. This was held to be an accident arising out of and in the course of his employment.

Index No. 48, Claim No. 24095. Joseph R. Pickett, Claimant, vs. The Summit County Power Company, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

COMPENSATION AWARDED FOR DISABILITY AS A WHOLE. Claimant was injured November 1, 1922. His permanent disability consists of a tilting of the pelvis and a partial loss of the use of the right leg. Held, that the facts constituted a partial disability to the claimant as a whole and compensation awarded for 20% permanent total disability.

Index No. 49, Claim No. 13372. Ed Pinson, Claimant, vs. The Granite Gold Mining Company, Employer, and State Compensation Insurance Fund, Insurer, Respondents.

COMMISSION—POWER OF TO REOPEN CASE. Claimant was injured April 3, 1918. Claim filed May 10, 1920. His permanent disability consists of a total loss of hearing in the left ear. On January 10, 1921, the Referee denied the claim on the ground that it was not filed within one year following claimant's accident. Reopened by the Commission under Section 110, on September 19, 1924. Final award entered November 5, 1924.

Held, that inasmuch as the claimant was given medical treatment by the employer following his accident and that his failure to file his claim was caused by the long delay in ascertaining the effects of his injury, and that his failure was not for the purpose of misleading the Commission, that claimant was entitled to compensation. Compensation awarded for permanent disability.

—R—

Index No. 50, Claim No. 29682. John Rose, Claimant, vs. The Western Auto and Parts Company, Employer, and Southern Surety Company, Insurer, Respondents.

FAILURE OF EMPLOYER TO INSURE. The employer was not insured and compensation payments were increased 50%, and a bond, guaranteeing payment of compensation, ordered filed as provided by Section 27.

—S—

Index No. 51, Claim No. 27151. Juan E. Sanchez, Claimant, vs. Alamo Coal Company, and The Employers' Mutual Insurance Company, Insurer, Respondents.

ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Claimant was injured July 6, 1923, during the noon hour. While attending to a call of nature, he stepped under an old bank on the top of the main slope portal instead of going to the place provided for that purpose.

Held, that the accident arose out of and in the course of his employment. Compensation awarded for temporary disability. Commission award affirmed by the District Court and by the Supreme Court.

Index No. 52, Claim No. 25757. Walid Scharks, Claimant, vs. Moffat Coal Company, Employer, and Employers Mutual Insurance Company, Insurer, Respondents.

ACCIDENT NOT CAUSE OF CONTINUED DISABILITY. Claimant was injured February 26, 1923. Compensation for temporary disability awarded June 13, 1923. Referee's award June 13, 1923, affirmed by Commission July 18, 1923. Reopened by Commission under Section 110, and further hearing ordered for September 28, 1923. Additional compensation for temporary disability awarded October 29, 1923. Claim reopened under Section 110, January 15, 1924. Further compensation denied March 8, 1924, on the ground that present disability was due to syphilitic condition and not in any way connected with claimant's accident.

Index No. 53, Claim No. 29951. Frank Shidler, Claimant, vs. A. D. Radinsky, Employer, and Indemnity Insurance Company of North America, Insurer, Respondents.

VIOLATION OF A SAFETY RULE. Violation of safety rule was not upheld in this case as the only testimony was to the effect that employes were cautioned to be careful generally and no special rules laid down.

Index No. 54, Claim No. 23360. Tony Snider, Claimant, vs. Smuggler Leasing Company, Employer, and State Compensation Insurance Fund, Insurer, Respondents.

THE EFFECT OF REFUSAL TO SUBMIT TO A REASONABLE OPERATION. Claimant refused to have a reasonable operation which would have been successful and which would have reduced his disability to 50% loss of use of the right leg measured at the knee. The operation was refused May 18, 1923, and compensation was awarded, and beginning May 19, 1923, compensation for 69½ weeks, i. e., for the disability which might reasonably have been expected following a successful operation.

Index No. 55, Claim No. 32526. Mariano M. Solis, Deceased; Carment M. Solis, Widow, on behalf of herself and Minor Children, Claimants, vs. The Great Western Sugar Company, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

EMPLOYMENT. Decedent died as the result of an accident suffered in the course of his employment. He had been hired by the respondent employer to work for one DeFrance on his farm, and was to be paid for his work by said DeFrance.

Held, that he was not in the employ of The Great Western Sugar Company at the time of the accident. Claim denied.

Index No. 56, Claim No. 30343. Edward G. Sprigg, Deceased; Mrs. Martha Sprigg, Widow, Dependent, Claimant, vs. Post Coal and Iron Company, Employer, Respondent.

EMPLOYE DISTINGUISHED FROM INDEPENDENT CONTRACTOR. Decedent was killed on February 7, 1923, while driving a truck. At the time of his accident he was hauling coal and was paid 80c per ton. He furnished his own truck, collected for the coal, and turned the money, including his pay for hauling, over to the employer. He was paid at the end of each week for the total number of tons hauled during the week. It was contended by the respondents that the decedent was an independent contractor. It was held that the decedent was an employe within the meaning of the Workmen's Compensation Act.

This case also involves the penalty provisions of Section 27. The Referee's Award was affirmed in substance by the Commission Award, dated May 15, 1924. Now pending in the District Court of the City and County of Denver.

Index No. 57, Claim No. 28361. Albert Guy Sumpter, Deceased; James A. Sumpter, Father, in behalf of himself and Mary C. Sumpter, Mother, and Lela M. Sumpter, Sister, Dependents, Claimants, vs. J. J. Sievin, Employer, and United States Fidelity and Guaranty Company, Insurer, Respondents.

TYPHOID FEVER CAUSING DEATH RESULT OF ACCIDENT. Decedent was injued August 17, 1923, and died October 11, 1923. The immediate cause of his death was a bowel hemorrhage occasioned by typhoid fever. His injury consisted of severe contusions or bruises to the bones of the left leg. Following his injury he was confined to his home and developed symptoms of typhoid fever. In the forepart of September, 1923, his leg injury required two different operations, the last operation being performed a short time prior to his death.

Held, that the decedent's accident so materially affected his ability to resist disease that it made him much more susceptible to contracting typhoid fever and in effect hastended and accelerated the fatal effects of the typhoid fever. Compensation awarded to the dependent father, mother and minor sister.

—U—

Index No. 58, Claim No. 28896. George Udivich, Claimant, vs. The Colorado Fuel and Iron Company, Employer, Self-Insurer, Respondent.

VIOLATION OF A SAFETY RULE. Claimant's compensation was reduced 50% on account of violation of a safety rule by crossing the tracks and crawling through a string of cars at the Minnequa Plant, while leaving work, instead of following the usual means of exit.

—V—

Index No. 59, Claim No. 32309. Eugene V. Vaughn, Deceased; Ida May Vaughn, Widow, Dependent, Claimant, vs. The Denver Tramway Company, Employer, Self-Insurer, Respondent.

WIDOW LIVING VOLUNTARILY SEPARATE AND APART. The claimant, in this case, the widow, had been living voluntarily separate and apart from the decedent for a period of over two years and was not dependent upon him for support. The claim for compensation was, therefore, denied.

This Award was affirmed in substance by the Commission Award, dated August 25, 1924. Now pending in the District Court of the City and County of Denver.

Index No. 60, Claim No. 30279. James W. Vernon, Claimant, vs. John C. Jenkins, Junior, and Jenkins, Lightbourn Lumber Company, Employers, Respondent.

FAILURE TO INSURE—AVERAGE WEEKLY WAGES—OPERATIONS UNDER LEASE. The employer was operating under a lease. Neither the owner of the property nor the employer carried insurance. Compensation was increased 50% and an award given against both the employer and the owner of the property under Sections 49 and 50. Claimant had been in business for himself during the larger part of the six months before the accident and his wages were based upon the actual wages at the time of the accident.

This Award was affirmed in substance by the Commission Award of April 16, 1924, which is now pending in the District Court of the City and County of Denver.

—W—

Index No. 61, Claim No. 18472. Charles L. Walker, Claimant, vs. The Nuckolls Packing Company, Employer, and The Globe Indemnity Company, Insurer, Respondents.

ATTORNEY'S FEES. Supplemental award allows attorney's fees in the sum of $175.00 to claimant's attorney for services rendered before the Commission and in the District and Supreme Courts.

Index No. 62, Claim No. 30908. George Washington, Deceased; Emma Washington, Widow, Dependent, Claimant, vs. The Colorado Fuel and Iron Company, Employer, Self-Insurer, Respondent.

WHO ARE DEFENDANTS. Claim was filed by Emma Washington, as widow of the decedent. Testimony showed that decedent had secured an interlocutory decree of divorce from his first wife on January 3, 1920, and was married to the claimant January 5, 1920. No final divorce was ever secured.

Claim was denied as the claimant was not the decedent's lawful wife, nor could she be construed to be a common law wife. Referee's Award.

—Y—

Index No. 63, Claim No. 32147. C. A. Yahvah, Claimant, vs. The Colorado Bridge and Construction Company, Employer, and New York Indemnity Company, Insurer, Respondents.

INDEPENDENT CONTRACTOR; ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Claimant was struck by a bolt of lightning while engaged in repairing a bunk shack rented by him from employer for housing men hired by claimant to work on a certain contract with respondent employer.

Held, claimant was an independent contractor and that the accident did not arise out of and in the course of any employment.

—Z—

Index No. 64, Claim No. 20953. Tony Zehar (Zychar), Decedent; Sophia Zehar, Widow, in behalf of herself and Minor Children, Tetiana and Elias Zehar, Dependents, Claimants, vs. The Colorado Fuel and Iron Company, Employer, Self-Insurer, Respondent.

DEPENDENTS. Claimants in this case were a common law wife and two illegitimate children which decedent had acknowledged. Compensation was awarded to these dependents.

STATISTICS — WORKMEN'S COMPENSATION DEPARTMENT

All accidents and claims filed with the Workmen's Compensation Claim Department since the law became effective in 1915, as well as the awards entered, have been tabulated on pages — and — from book records maintained by the statistician, which segregates each year's business into several groupings.

STATISTICS—ACCIDENTS AND CLAIMS, WORKMEN'S COMPENSATION DEPARTMENT

CLASSIFICATION	1915-1916 Aug. 1, '15 to Nov. 30, '16	1917 Dec. 1, '16 to Nov. 30, '17	1918 Dec. 1, '17 to Nov. 30, '18	1919 Dec. 1, '18 to Nov. 30, '19	1920 Dec. 1, '19 to Nov. 30, '20	1921 Dec. 1, '20 to Nov. 30, '21	1922 Dec. 1, '21 to Nov. 30, '22	1923 Dec. 1, '22 to Nov. 30, '23	1924 Dec. 1, '23 to Nov. 30, '24	From Organization Aug. 1, '15 to Nov. 30, '24
1. Number of Accidents	16,670	12,780	14,932	11,358	14,279	13,901	12,859	15,362	17,513	129,667
Percentage—Claims to Accidents	14.72%	21.37%	24.92%	29.48%	29.26%	28.94%	32.67%	34.54%	32.31%	27.48%
2. Number of All Claims	2,455	2,732	3,722	3,349	4,179	4,025	4,201	6,307	5,660	35,630
A { Male	2,418	2,690	3,609	3,239	3,995	3,884	4,064	6,169	5,512	34,570
A { Percentage—All Claims	98.49%	98.46%	96.97%	96.71%	95.59%	96.50%	96.74%	97.21%	97.38%	97.02%
B { Female	37	42	113	110	184	141	137	148	148	1,060
B { Percentage—All Claims	1.51%	1.54%	3.03%	3.29%	4.41%	3.50%	3.26%	2.79%	2.62%	2.98%
3. Number of Fatal Claims (Deaths)	201	300	202	201	179	161	155	168	140	1,700
A { Coal Industries	65	200	66	87	64	46	72	80	34	704
A { Percentage—Fatal Claims	31.86%	66.66%	32.67%	43.28%	30.16%	30.46%	46.45%	47.62%	24.29%	41.41%
B { Metal Industries	61	39	47	46	41	24	19	19	10	309
B { Percentage—Fatal Claims	31.37%	13.00%	23.27%	22.88%	22.91%	15.89%	12.25%	11.31%	7.14%	18.18%
C { Miscellaneous Industries	75	61	89	68	84	81	64	69	96	687
C { Percentage—Fatal Claims	36.77%	20.34%	44.06%	33.84%	46.93%	53.65%	41.29%	41.07%	68.57%	40.41%
4. Number of Non-Fatal Claims	2,251	2,432	3,520	3,148	4,000	3,874	4,046	6,139	6,520	33,930
A { Coal Industries	598	622	722	736	976	931	987	1,125	1,149	7,846
A { Percentage—Non-Fatal Claims	26.57%	26.67%	20.51%	23.38%	24.40%	24.03%	24.39%	21.89%	20.82%	23.12%
B { Metal Industries	428	412	506	516	462	383	460	565	843	4,066
B { Percentage—Non-Fatal Claims	19.01%	16.95%	14.37%	16.39%	11.30%	9.89%	11.37%	10.99%	6.21%	11.98%
C { Miscellaneous Industries	1,225	1,398	2,292	1,896	2,572	2,560	2,599	3,449	4,028	22,019
C { Percentage—Non-Fatal Claims	54.42%	57.48%	66.12%	60.23%	64.30%	66.08%	64.24%	67.12%	72.97%	64.90%
5. Awards by Commission	237	424	639	678	268	351	428	505	518	4,048
6. Awards by Referee	(*)	(*)	(*)	339	826	1,143	1,316	2,005	2,232	7,861
7. Compensation Agreements Approved	2,052	2,242	3,478	3,014	3,692	3,382	3,427	3,886	4,836	29,978
8. Amputations	212	175	213	154	131	120	124	139	164	1,432
9. Loss of Use	128	57	46	27	20	22	18	23	19	359
10. Permanent Total	7	6	8	6	7	9	15	30	32	119
11. Permanent Partial	240	232	232	179	208	166	180	174	167	1,768
12. Temporary Total	2,013	2,174	3,066	3,267	3,748	3,661	3,866	4,965	6,169	31,732
13. Temporary Partial	58	7	41	22	37	67	88	26	41	326
14. Facial Disfigurement	8	5	17	15	11	19	34	47	31	187
15. Blood Poison	41	64	68	47	94	131	67	73	84	659
16. Wholly Dependent—Fatal Claims	120	131	74	88	63	54	62	58	64	714
17. Partially Dependent—Fatal Claims	16	14	19	14	22	14	33	29	27	188
18. No Dependent—Fatal Claims	30	40	8	85	78	72	37	50	36	436
19. Foreign Dependent—Fatal Claims	32	69	8	12	16	11	23	31	13	215
20. Compensation Denied	109	33	44	138	156	332	326	552	509	2,199
A. Fatal (Death)	19	10	12	32	32	47	57	81	36	326
B. Non-Fatal	90	23	32	106	124	285	269	471	473	1,870
21. Compensation Reduced	7	4	4	16	17	37	13	14	14	126
22. Average Weekly Wage	---	$20.87	$17.99	$21.29	$25.40	$26.04	$24.09	$26.35	$25.32	$23.30
23. Average Weekly Rate of Compensation	---	$7.54	$7.71	$8.56	$9.70	$9.76	$9.51	*$10.01	$10.83	$9.10
24. Average Number of Weeks of Disability	---	10.72	15.73	11.69	11.56	11.93	12.46	10.42	9.65	11.77
25. Compensation Awarded and Being Paid	$406,259.18	$391,901.16	$383,766.27	$689,551.00	$461,245.28	$433,661.06	$489,636.92	$523,832.61	$591,523.77	$4,374,266.25

(*)No referee provided for in the 1915 and 1917 Workmen's Compensation Act.

*Effective August 1, 1923, the compensation rate was increased from $10 to $12 per week by the amended law. Prior to that date the average weekly rate of compensation payments was $9.65, and since the new law became effective, $10.96 per week.

COMPENSATION AWARDS—WORKMEN'S COMPENSATION DEPARTMENT

CLASSIFICATION	1915-16	1917	1918	1919			1920			1921			1922			1923			1924			From Organization
	Awards by Com'n	Awards by Com'n	Awards by Com'n	Awards by Com'n	Awards by Referee*	Total for Year	Awards by Com'n	Awards by Referee	Total for Year	Awards by Com'n	Awards by Referee	Total for Year	Awards by Com'n	Awards by Referee	Total for Year	Awards by Com'n	Awards by Referee	Total for Year	Awards by Com'n	Awards by Referee	Total for Year	Totals All Awards
1. Compensation:																						
Fatal—Granted	62	190	186	124	87	211	11	213	224	14	163	177	33	214	247	15	178	223	35	134	169	1,689
—Denied	5	21	10	21	11	32	3	29	32	7	40	47	4	53	57	6	75	81	7	29	36	330
Non-Fatal—Granted	61	57	146	193	161	354	21	360	381	21	503	524	46	682	728	96	1,102	1,198	156	1,422	1,578	5,027
—Denied	21	26	54	72	36	108	4	120	124	3	282	285	17	252	269	19	452	471	39	434	473	1,831
2. Compensation Increase:																						
Fatal—Granted	0	0	0	2	1	3	2	0	2	0	1	1	2	2	4	0	0	0	1	1	2	12
—Denied	0	0	1	0	0	0	1	0	1	0	0	0	0	0	0	2	0	2	0	0	0	4
Non-Fatal—Granted	0	0	1	0	4	4	1	9	10	5	40	45	8	30	38	9	29	38	19	33	52	188
—Denied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3. Compensation Reduced:																						
Fatal—Granted	0	3	3	0	0	0	0	1	1	0	23	23	1	5	6	1	1	2	1	6	7	45
—Denied	0	2	0	0	0	0	0	1	1	0	3	3	0	0	0	0	1	1	0	0	0	7
Non-Fatal—Granted	3	2	2	5	11	16	0	7	7	2	12	14	2	5	7	1	11	12	3	4	7	70
—Denied	0	0	0	1	0	1	1	7	8	0	5	5	0	1	1	0	0	0	0	0	0	16
4. Lump Sum Settlements:																						
Fatal—Granted	6	19	52	40	0	40	31	0	31	23	0	23	27	0	27	27	0	27	23	0	23	218
—Denied	15	17	35	32	0	32	28	0	28	40	0	40	29	0	29	39	0	39	26	0	26	261
Non-Fatal—Granted	20	26	29	65	0	65	51	0	51	50	0	50	48	0	48	69	0	69	80	0	89	447
—Denied	7	3	10	20	0	29	17	0	17	30	0	30	22	0	22	33	0	33	27	0	27	178
5. Rehearings:																						
Fatal—Granted	0	4	2	17	0	17	10	0	10	11	0	11	10	0	10	7	0	7	6	5	11	72
—Denied	1	17	23	19	0	19	28	0	28	28	0	28	27	0	27	23	1	24	2	0	2	169
Non-Fatal—Granted	3	3	7	16	2	18	16	0	16	33	0	33	57	0	57	42	47	89	48	38	86	312
—Denied	3	14	18	23	0	23	34	0	34	66	0	66	73	0	73	49	0	49	3	0	3	283
—Granted	8	0	12	11	5	16	1	7	8	1	13	14	2	29	31	3	40	43	4	20	24	166
—Denied	1	0	1	0	0	0	0	3	3	0	5	5	0	3	3	0	4	4	0	0	0	17
7. Miscellaneous	21	20	38	8	21	29	8	69	77	17	53	70	20	40	60	31	64	98	20	106	135	548
8. Total Awards	237	424	639	678	339	1,017	268	826	1,094	351	1,143	1,494	428	1,316	1,744	505	2,005	2,510	518	2,232	2,750	11,909

*The figures shown in this column cover the seven months from May 1, 1919 to November 30, 1910, as no Referee was provided previous to May 1, 1919.

DIGEST OF COLORADO SUPREME COURT DECISIONS 1915-1924

Beginning on page 32 will be found a digest of all cases decided by the Colorado Supreme Court arranged according to the date of decision. For convenience in indexing titles these cases have been assigned an arbitrary index number for the purpose of this report only.

—A—

Accident arising out of and in the course of employment:
3, 17, 19, 31, 40, 47, 48, 50, 51, 52, 55, 61, 62.

Accident, defined:
21, 23.

Accidentally sustained:
23, 61.

Appeal, right of, statutory:
1, 4.

Application for Review, effect of failure to file:
1, 4, 20, 33.

Application for Review, substantial compliance:
23.

Award conclusive on matters of fact:
1.

—B—

Blindness, condition amounting to, question of law:
2.

Burden of proof:
38, 57.

—C—

Commission, Power of, to reopen case:
35.

Commission, Power of to direct investment of funds:
37.

Commission, Power of to prescribe standard policy:
41.

Compensation Act, liberally construed:
5, 35.

Compensation, monthly payments of, not terminated by award for lump sum:
44.

Compensation payments—duty of insurance carrier concerning:
58.

Compromise, effect of:
9.

Contractors, Independent:
6.

—D—

—E—

—F—

—H—

—I—

—W—

PASSINI v. THE INDUSTRIAL COMMISSION, et al.
64 Colo. 349

FACTS: **Index No. 1.**

Claimant was injured in May, 1916, by falling from a platform. He was awarded compensation to January 5, 1917, by the Industrial Commission, on December 8, 1916, his injuries being found to be a bruised shoulder and traumatic neurosis, arising from the accident. . . . The case was reopened by the Industrial Commission February 16, 1917, for the purpose of determining the extent of other disabilities. Respondent denied further liability, but offered further medical treatment.

The Commission awarded further compensation from and after January 5, 1917, if claimant would subject himself to further treatment, with the proviso that should claimant fail to accept treatment the original order should stand.

On April 17, 1917, and on May 19, 1917, claimant petitioned for a rehearing. The last petition was granted and hearing held. June 11, 1917, the Commission set aside the February award and affirmed the award of December 8, 1916. . . . Claimant brought action in the District Court, without applying for a new trial. The complaint was dismissed on demurrer, and the award of the Commission sustained. This was done on the ground that the claimant failed to follow the statute in perfecting his appeal.

DECISION:

"This Court may consider only the legal question of whether there is evidence to support the finding and not whether the Commission has misconstrued its probative effect. The award is conclusive on all matters of fact properly in dispute before the Commission, where supported by evidence, or reasonable inference to be drawn therefrom. So far as the merits of the case is concerned there is nothing in the record upon which the findings of the Commission may be properly set aside. . . .

"The first finding and award, that of December 8, 1916, provided for compensation to January 5, 1917. . . . On June 11 a new finding and award was made and entered, setting aside the February award and affirming that of December 8th.

"At the hearing upon which the award of June 11th is based, entirely new issues, as well as old ones, were before the Commission, and full consideration was given to both. That hearing can in no sense be considered a mere review of former findings. . . .

"Upon all the issues, new and old, the findings were adverse to the claimant.

"The District Court was, therefore, without jurisdiction to review the actions of the Commission, until the claimant had first petitioned it for a rehearing as provided by section 69 of the act. . . .".

THE INDUSTRIAL COMMISSION v. JOHNSON
64 Colo. 461

FACTS: **Index No. 2.**

Claimant was awarded 104 weeks compensation for total blindness in one eye. A rehearing was granted. . . . The Commission found claimant had useful vision and reduced compensation to 9 and 5/11ths weeks.

Claimant filed suit in the District Court, which made a new award on the basis of total blindness in one eye.

Claimant had lost 10/11ths normal vision prior to the accident and the Commission award was for 1/11th.

At the time of the hearing claimant had only "dodging vision"—that is, he might be able to get out of the way of an approaching object though he could not tell what it was.

DECISION:

"It clearly appears from the record that the Commission was of the opinion that the amount of compensation is to be determined by ascertaining how much an injury contributes to a disability. That is, it is assumed that if a claimant was partially disabled prior to the injury which forms the basis of his claim, and because of the injury he is found to be totally disabled, he is not to receive compensation fixed for a disability because it was not all due to the injury.

"To illustrate—if the claimant before injury had only one-half of normal vision, and lost one-half of that, he would be entitled to one-quarter of the compensation allowed for total blindness. It is hardly necessary to say that such is not a correct construction of the law.

"Whether or not a condition found to exist amounts to total blindness, as used in this statute, is a question of law in deciding which the spirit and purpose of the law must be considered. . . . To say that a man who has only such vision as enables him to recognize a form before him, without being able to distinguish its outlines, is not blind within the meaning of this law, is to apply to it a strict rule of construction and defeat its evident purpose.

"It was clearly within the power of the District Court to determine as a matter of law, that the award was not in accord with the findings, and, having done so, and made an award which is in accord with the findings, there is no reason for disturbing the judgment. It is accordingly affirmed."

INDUSTRIAL COMMISSION v. AETNA LIFE INSURANCE CO.
64 Colo. 480

FACTS: **Index No. 3.**

Decedent was employed by a contracting company which had a general contract with the Mountain States Telephone and Telegraph Company for erection of telephone exchange buildings in the company's territory. Decedent was employed in Colorado. Having completed his duties as foreman on a job at Afton, Wyoming, he started for another job at Montpelier, Idaho. He secured passage a part of the way in a friend's automobile and was killed in an accident en route.

DECISION:

The decedent was held to have been killed in an accident arising out of and in the course of his employment.

The court further held that the **lex loci contractus** governs and that action was properly brought under the Workmen's Compensation Act of Colorado.

STACKS v. THE INDUSTRIAL COMMISSION, et al.
65 Colo. 20

FACTS: **Index No. 4.**

A Commission award was entered in this case May 10, 1917. On June 26, 1917, claimant filed a complaint in the District Court without filing a petition for a rehearing before the Commission (Application for Review). Claimant had requested an opportunity to argue the case orally, which was denied by the Commission, and relying upon this decision, started an action in the District Court.

DECISION:

"The right to appeal is statutory, and a party desiring to avail himself of such privilege must comply with the statute in that regard. In the instant case the plaintiff failed to avail herself of her right to petition the Commission for a rehearing before she appealed to the District Court, and as said in the **Passini** case, 'for this reason the appeal was incompetent and futile'."

Cross References: Passini v. Industrial Commission, 171 Pac. 369.

CAROLY v. THE INDUSTRIAL COMMISSION, et al.
65 Colo. 239

FACTS: **Index No. 5.**

In this case the claimant, who had sustained a permanent and total disability, made application for a lump sum settlement. This was denied by the Commission upon the theory that his total compensation could not be determined, and also upon the ground that it would not be for the best interest of the parties.

DECISION:

"The Workmen's Compensation Act is 'highly remedial, beneficent in purpose, and to be liberally construed.' Industrial Commission, et al., v. Johnson (No. 9275), 172 Pac. 422. The court should not adopt such an interpretation of a statute as would produce absurd, unreasonable, unjust, or oppressive results, if such interpretation can be avoided. Western Co. v. Golden, 22 Colo. App. 209; 124 Pac. 584.

"It is difficult to perceive what circumstances would warrant the payment of a lump sum to an injured employee whose disability is only partial or temporary, which circumstances would not also favor the payment of the

lump sum to the employee if his disability were total and permanent. A workman who is permanently totally disabled is as much entitled to the allowance of a gross sum as is any other injured workman. Section 57, hereinbefore quoted, should be construed, if possible, so as to apply to cases of permanent total disability, since such construction would prevent oppressive results, and at the same time be in accord with the policy and purposes of Workmen's Compensation legislation."

"It is true that the exact number of such partial payments in the future, in such cases, cannot be ascertained. Nevertheless, the Commission, in the light of all the facts before it in a given case may make a reasonable estimate as to the probable number of such partial payments, and the probable duration of the claimant's life. The statute by necessary implication empowers the Commission to do this, and to determine the present worth of partial payments', whether the exact number of such payments can be ascertained or not. To hold otherwise would be to interpolate into Section 57 an exception which is not there, and to exclude from the operation of that section cases where the injury has produced permanent total disability. An exception not made by the legislature cannot be read into the statute. (36 Cyc. 113, n. 88.)"

INDUSTRIAL COMMISSION, et al., v. MARYLAND CASUALTY CO.
65 Colo. 279

FACTS: **Index No. 6.**

Decedent, John O'Mera, had a contract to drive a tunnel. This was drawn December 10, 1915.

O'Mera was an independent contractor and not compensable.

(See Sections 49-50 Workmen's Compensation Act of Colorado of 1923 for present law.)

EMPLOYERS' MUTUAL INSURANCE COMPANY, et al., v. INDUSTRIAL COMMISSION OF COLORADO, et al.
65 Colo. 283

FACTS: **Index No. 7.**

In 1916 the Commission entered an award allowing claimant $8.00 per week for 61 weeks for certain disabilities, with permission to apply for further compensation if his injuries became worse. The claimant applied for further compensation and in 1917 claimant was allowed $2,080.00 compensation based upon the fact that the claimant was disabled to the extent of 25%. His expectancy was 25.12 years and if he had lived 21.12 years he would have collected $8,785.92, 25% of which would be $2,196.45, an amount in excess of the maximum indemnity allowed.

The Commission adopted the only possible method of figuring claimant's compensation. The findings of the Commission are based upon competent evidence.

The insurance company also applied in the District Court for an injunction against the enforcement of the award of the Commission until the court had passed upon the questions involved. That application was denied in the District Court and was again denied by the Supreme Court.

DECISION:

"It is to be noted in this connection that the judgment of the Commission in favor of a claimant is **prima facie** evidence of his right to recover. Procedure under the act is summary in character in order to furnish immediate aid to injured employees, and a careful reading of the statute as a whole leads to the conclusion that it was the intention of the Legislature that payment of these weekly allowances should not be stayed. Indeed, to hold that such payments can be enjoined pending judicial review would in effect practically nullify one of the prime objects and purposes of the law."

THE INDUSTRIAL COMMISSION, et al., v. JOHNSON
66 Colo. 292

FACTS: **Index No. 8.**

The Commission gave claimant an award for 25 per cent loss of use of the foot. The case came before the District Court with some questions of procedure (not discussed as the decision was not based thereon). The District Court entered an award for the claimant for $2,080.00 as a permanent partial disability.

DECISION:

"As there is absolutely nothing in the record to justify the setting aside of the findings of the Commission, the judgment will be reversed and the cause remanded with instructions to the trial court to approve, and accept the findings of the Industrial Commission, and enter judgment accordingly."
Cross Reference: Passini v. Industrial Commission, 64 Colo. 349; 171 Pac. 369.

INDUSTRIAL COMMISSION v. LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.
66 Colo. 575

FACTS: **Index No. 9.**

While this case was pending in the District Court, claimant and the insurance carrier entered into a stipulation for the settlement of the claim

for an amount less than that awarded claimant by the Commission. Judgment was entered by the court upon the stipulation.
DECISION:

"Under this statute a settlement made on stipulation in court is no more effective without the approval of the Commission than is any other settlement. . . .

". . . the award by the District Court, on stipulation, violated not only the spirit but the express provision of the law."

Judgment reversed.

INDUSTRIAL COMMISSION v. HOPPERS CO., et al.
66 Colo. 596

FACTS: **Index No. 10.**

An award was made in favor of dependents of the decedent, Carlson. Carlson was engaged in hoisting rivets. He ascended the scaffolding about 25 feet, seized the rope and jumped off. He struck the ground, lost hold of the rope and the bag of rivets fell on him. Conflicting evidence was offered as to instructions given as to the manner of performing the work. The insurance carried urged the point the decedent had stepped outside the scope of his employment.

DECISION:

"Since the Commission, on conflicting testimony, found in effect that Carlson had not violated his contract of employment by disregarding instructions, there being ample competent evidence to support such finding, we cannot, under the settled law of this jurisdiction, interefere therewith."

Case remanded with directions to affirm the findings and award of the Industrial Commission.

Cross References: Passini v. Industrial Commission of Colorado, 64 Colo. 349; 171 Pac. 369.
Industrial Commission v. Johnson, 66 Colo. 293; 181 Pac. 977.

McPHEE & McGINNITY CO., et al., v. THE INDUSTRIAL COMMISSION
67 Colo. 86

FACTS: **Index No. 11.**

In this case the Industrial Commission awarded compensation for a hernia under Sec. 78 of the Act of 1915. The claimant had had a double hernia in 1909. He noticed some pain when he was operating a plane. Prior to that he had been working with a vise. He had not done anything that had caused any unusual strain.

DECISION:

"There is no credible and substantial evidence to support the findings and the Court must be governed by the special provisions of the act in respect to hernia, and the evidence in this case is not sufficient to entitle the claimant to compensation for a hernia."

Cross References: Industrial Com. v. Johnson, 64 Colo. 461; 172 Pac. 422.
Passini v. Industrial Com., 64 Colo. 349; 171 Pac. 369.
Younquist v. Industrial Com., 67 Colo. 187; 184 Pac. 381.

YOUNGQUIST, et al., v. THE INDUSTRIAL COMMISSION, et al.
67 Colo. 187

FACTS AND DECISION: **Index No. 12.**

The decedent was injured July 19, 1917, by falling brick. He returned to work about two days after he was injured and worked for about three weeks. At the end of that time he was taken sick and died about a week later. The Commission found that the cause of his death was independent of his accident. That finding is supported by credible and substantial evidence and the finding will not be overturned, although there is a conflict of the evidence.

Cross References: Industrial Com. v. Johnson, 64 Colo. 461; 172 Pac. 422.
Passini v. Industrial Com., 64 Colo. 349; 171 Pac. 369.

INDUSTRIAL COMMISSION v. OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD.
67 Colo. 427

FACTS: **Index No. 13.**

Claimant received $728.00 for temporary total disability under an Agreement in Regard to Compensation for his temporary disability plus $2,080.00 for permanent partial disability. Under Sections 53 and 54 of the Compensation Act of 1915, the two sections provide for different things, and under those sections claimant was entitled to compensation, both for temporary disability and permanent partial disability.

GLOBE INDEMNITY CO., et al., v. INDUSTRIAL COMMISSION, et al.
67 Colo. 526

FACTS: **Index No. 14.**

Claimant was awarded compensation for permanent partial disability. The testimony indicated that claimant sustained a 70% disability as a miner and from the testimony, claimant's disability for all purposes was less than that. The claimant had been a miner for twenty-eight years. The respondents contend that claimant's disability should be fixed at a 20% loss of the use of the leg.

DECISION:

"It appears that the rule contended for by plaintiffs in error for determining the 'impairment of earning capacity of claimant,' and which we will designate as Rule No. 1, is 'The degree of disability is to be determined by the claimant's general impairment of earning capacity without respect to any particular kind of labor.'

"Whereas the rule contended for by defendants in error, and which we will designate as Rule No. 2, is 'The degree of disability is to be determined by the claimant's impairment of earning capacity as it relates to the kind of labor at which he was employed when injured,' to support which the following, among other authorities, are cited:

Duprey v. Md. Cas. Co., 219 Mass. 189; 106 N. E. 686.
Gillen v. O. A. & G. Corp., 215 Mass. 96; 102 N. E. 346, L. R. A. 1916 A 371.

"Both these contentions may be wrong as a simple illustration will demonstrate

"An expert engraver, past middle life, engaged for years in that business, commanding high wages thereat, and having no other special skill, and no other regular occupation, is temporarily employed at very low wages carrying brick and mortar in a wheelbarrow in building construction. While so employed he sustains an injury to his right hand, trivial in its effect to incapacitate him from general work, but making it wholly impossible for him ever again to secure employment as an engraver. Both the language and spirit of the Act would be violated in his case by the application of Rule No. 1.

"The same man, under the same circumstances, engaged in the same occupation, sustains an injury to his foot of such character as to permanently incapacitate him from running a wheelbarrow, but having no effect whatever upon his earning capacity as an engraver. Both the language and spirit of the Act would be violated in his case by the application of Rule No. 2.

"We are of the opinion that the widest possible discretion is vested in the Commission to determine whether, under a given set of circumstances and a particular state of the evidence, the first or second rule, or a combination of both, should be applied. Age, education, training, general physical and mental capacity, and adaptability may, and often should, be taken into consideration in arriving at a just conclusion as to the percentage of impairment of earning capacity.

"It thus appears that the alleged error in the instant case goes solely to a finding of fact made by the Commission upon conflicting evidence. That this Court will not disturb such a finding so made is too well settled to admit of further discussion."

Cross References: Passini v. Industrial Com., 64 Colo. 349; 171 Pac. 369.
Industrial Com. v. Johnson, 64 Colo. 461; 172 Pac. 422.

INDUSTRIAL COMMISSION, et al., v. SHADOWEN
68 Colo. 69

FACTS: **Index No. 15.**

M. E. Wolfe was an employee of the defendant in error, Shadowen, who was engaged in the business of operating a threshing machine. He proceeded from place to place, threshing the grain of farmers for hire. Wolfe was employed to operate the steam engine which supplied the power, and while so engaged, was severely injured. The Industrial Commission, upon a hearing, entered an order granting compensation. An appeal was taken to the District Court, where the order of the Commission was set aside, and where it was held that claimant was not entitled to an award. The decision is before us for review.

DECISION:

"Our statute does not state the exemption to relate to those 'engaged in agricultural pursuits,' as in the case of some other statutes, but does exclude from the operation of the law only 'private domestic servants, and farm and ranch laborers.'

"In this case the employee was not employed to labor on his employer's farm, but to operate the engine of a threshing machine engaged in traveling about the country threshing grain for those who desired such service; in other words, his employment was not merely incidental to general farm labor, and in our opinion the employer and employee in such cases are clearly within the operation of the statute."

BROCK-HAFFNER PRESS CO. et al., v. INDUSTRIAL COMMISSION, et al.
68 Colo. 291

Index No. 16.

In this case a minor brother of the decedent was found to be 11/12ths dependent upon his deceased brother. The respondents appealed from this finding. The evidence upon the estimate of dependency is such that from it an inference may reasonably be drawn which supports the findings.

"Under this state of facts we are not called upon to weigh the evidence, but must accept the findings of the Commission."

INDUSTRIAL COMMISSION v. FUNK
68 Colo. 467

FACTS: **Index No. 17.**

On June 14, 1916, Sam and William Gaines were killed while in the employ of Martin D. Funk, doing business as the Wray Brick Company. The decedents at the time of their death were digging clay in an open pit. They had been instructed not to dig under an overhanging bank, as it might cave in upon them. However, they did dig under the bank and the bank caved in, causing their death. There were not four men employed in the clay pit, but more than four were employed in the respondent's business. Three questions of law arise, namely:

"1. Did the accident which caused the death of Sam and William Gaines arise out of and in the course of the employment of the decedents?

"2. Was Sam Gaines, at the time of the accident, an employee within the meaning of the Workmen's Compensation Act, who or whose dependents would be entitled to compensation under the Act?

"3. Was Martin D. Funk such an employer as to be or to become subject to the provisions of the Workmen's Compensation Act?

"It is plain from the provisions of the Workmen's Compensation Act, and it is not controverted, that if any one or more of the foregoing questions must be answered in the negative, no compensation was allowable to any one, and the order and award of the Commission cannot be upheld.

"At the date of their death they (Sam Gaines and William Gaines) were employed by the said Martin D. Funk, doing business as the Wray Brick Company, in mining silica from an open pit or bank then owned and operated by the said Martin D. Funk in connection with his brick business in the City of Wray, Colorado. That while so employed and engaged in mining silica under the bank, the top caved off, completely covering the said William and Sam Gaines and causing almost instant death."

DECISION:

"1. Disobedience to an order or breach of a rule is not of itself sufficient to disentitle a workman to compensation, so long as he does not go outside the sphere of his employment. There are prohibitions which limit the sphere of employment and prohibitions which deal only with conduct within such sphere. A transgression of the former class carries with it the result that the man has gone outside the sphere. In the instant case it should be noted that the Commission found that the workman was directed 'not to work under the overhanging silica bank without first causing the same to be caved off.' It is thus seen that the workman was not prohibited from working at all on the silica bank in question, but was instructed to cave off the top before commencing the work of mining at that particular place. The order related to the manner in which that particular section of the silica bank was to be worked. The order, therefore, dealt only with the conduct of the workman within the sphere of employment, and did not limit such sphere. Under the rule above quoted from Honnold, which we regard as correct, the violation of the order of direction involved in this case did not make the accident one **not** arising out of and in the course of the employment, and it cannot, therefore, be held that the deceased were not within the scope of their employment at the time of the accident.

"2. The work of Sam and William Gaines, performed at the silica mine, was therefore in the usual course of the business of the employer. Such service was not merely incidental to the business, nor occasional. The mining of silica was carried on continuously, or at least with regularity. The employees at the mine were employed to do a particular part of a service recurring somewhat regularly, with the fair expectation of the continuance for a reasonable time. It does not render an employment casual that it is not for any specified length of time, or that the injury occurs shortly after the employee begins work. Under the facts above stated, and the principles announced, we conclude that Sam and William Gaines were not casual employees, within the meaning of the statute.

"3. In this connection, defendant in error relies upon Section 4 (d) III of the Act, which reads as follows: 'III. This act is not intended to apply to employers of private, domestic servants or farm or ranch labor; nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment: **Provided**, That any such employer may elect to accept the provisions of this act, in the manner provided herein, in which event he and his employees shall be subject to and entitled to all the provisions of this Act.' The particular part of this section upon which the defendant in error specially relies, is the expression, 'in or about the same place of employment,' and it is argued that the employer in the instant case is not subject to the act, because less than four persons were engaged in performing services at the pit or bank of silica, where Sam

and William Gaines were working; in other words, it is contended that the act does not apply to the defendant in error simply because he employed less than four persons at the particular place of employment where the accident occurred.

"Considering together the various sections and subsections above referred to, they must be held to provide that an employer is subject to the provisions of the act, without his election, if he employs four or more persons in the same business, or if he is an employer of 'four or more employees engaged in a common employment.'

"It seems clear that the manufacture of brick, in the sense that material is made into brick, and the procuring of material to be used in such manufacture, together constitute but one business of employment. . . ."

EMPLOYERS' MUTUAL INSURANCE COMPANY v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.
68 Colo. 550

FACTS: **Index No.18.**

The sole question is whether a policy of insurance was in force at the time of the accident. The policy was dated June 28th, 1916, effective that date. Premiums on the policy were due on July 1st and August 1st. The policy provided that if a deposit or premium were not made within ten days after its maturity the policy lapsed. An employee of the respondents was killed on Friday, August 11th, 1916. The employer drew a check, dated August 10th, for the amount of the required deposit and mailed it to the insurance carrier, drawing this check after the accident. The practice of the company was to hold delinquent checks until an investigation showed that there had been no accident during delinquency. A clerk sent this check to the bank through error and as soon as the error was discovered withdrew the check.

DECISION:

Check was fraudulently drawn after the accident, antedated the date it was received. The check was never accepted as a payment and was held pending an investigation, and the deposit in the bank was an involuntary action and did not affect the situation one way or the other. The employer was not insured and judgment should be reversed with directions to the Court to vacate, so far as the insurance carrier is concerned, the findings and award of the Commission and to direct the Commission to dismiss proceedings as to that company.

THE INDUSTRIAL COMMISSION OF COLORADO, et al., v. ANDERSON
69 Colo. 147

FACTS: **Index No. 19.**

The claimant was permitted to do certain work at home and certain work at the shop. He was injured by slipping on some ice while attempting to board a street car while on his way to work at the shop.

Under the Workmen's Compensation Act it is necessary that both the service being performed and the injury sustained shall arise out of and in the course of the employment. The intent is to make the industry responsible for industrial accidents only, and not those resulting from hazards common to all.

DECISION:

From the undisputed facts in this case it is plain that claimant was not in any sense obliged to work at his home at any time, or at all. As a matter of fact he was not working anywhere when the accident occurred, but was on his way to his employer's shop to begin work. Upon principle and authority it must be held that a repairer of musical instruments who slips on the ice and is injured while going to work, cannot be held to be injured in the course of his employment, nor does the injury arise out of his contract of employment. Upon facts like these here disclosed or analogous to them, no case can be found where the Workmen's Compensation Act has been held to apply.

THE MIDGET CONSOLIDATED GOLD MINING CO., et al., v. THE INDUSTRIAL COMMISSION, et al.
69 Colo. 218

FACTS: **Index No. 20.**

One Doepke was acting for the plaintiffs (respondents) and failed to file an application for review from a Referee's award within ten days, as required by law. He received an award on October 9th; on October 10th he wrote the Commission asking 'the number of days the law permits me to file an appeal." This was not answered until October 21st, upon which date the Commission advised "Petition for Review should be filed within ten days from the date of the Referee's award." The plaintiffs are presumed to know the law, and could easily have extended the time. The district court should have refused to entertain the suit and should have dismissed it, as the plaintiffs could not appeal until they had applied to the Commission for a review.

PROUSE v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.
69 Colo. 382

FACTS: **Index No. 21.**

The decedent died of septicemia or pyaemia. Prior to his last illness he had worked in foul air, which had reduced his resistance to the infection and rendered him more susceptible to it. The commission held that the death of the decedent was not caused by an accident

DECISION:

The Appellate Court cannot review a claim upon the evidence, but where the evidence is not disputed same may be construed as a finding of fact. The decedent did not die of poisonous gas, but from a disease caused by a definite infection.

1. An accident must be traceable to a definite time, place and cause.
2. The occurrence constituting an accident must be unexpected.
3. The occurrence must be the proximate cause of death or the disease which produces death.

In this case the time was definite. The result was expected and the deceased was warned to cease working within the mine. Death was not caused by poisonous gas, but by disease. The court also held that it was the duty of the commission to make detailed findings of fact.

BILLICK v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.
69 Colo. 471

FACTS: **Index No. 22.**

This case was remanded to the Industrial Commission for a more detailed finding of facts. The evidence being contradictory, the Supreme Court refused to consider it, taking the position that it could not review a case upon the evidence where any other evidence was excluded.

CARROLL, et al., v. THE INDUSTRIAL COMMISSION, et al.
69 Colo. 473

FACTS: **Index No. 23.**

Joseph Carroll was employed in an alfalfa meal mill. On November 1, 1917, he was found dead, his body lying in the hayshed of the mill, where he had been pitching alfalfa hay. His work was hard physical labor. His place of employment was in an enclosed building. The air therein was dust-laden as the result of handling hay, alfalfa, meal and machinery. The decedent had organic heart trouble. The evidence shows that the strenuous work of pitching alfalfa hay in an enclosed building, combined with breathing dust-laden air, brought on an attack of heart trouble, causing instant death, and that if Joseph Carroll had been doing his work in the open air the work would not have brought on a heart attack.

The proximate cause of the death of Joseph Carroll was the condition of the air in his place of employment, or the fact that it was dust-laden. The question to be determined now takes this form: "Under the foregoing facts, must it be held, as a matter of law, that the death was 'accidentally sustained' or resulted from an 'injury proximately caused by accident' "?

DECISION:

"Our statute uses the expressions, 'personal injury or death accidentally sustained,' and 'injury proximately caused by accident,' in providing for what injuries or deaths compensation shall be allowed. By the term 'injury' is meant not only an injury the means or cause of which is an accident, but also any injury which is itself an accident. The expressions above quoted are the equivalent of 'injury by accident,' which is frequently used in the decisions. The word 'by' may mean 'through the means, act, or instrumentality of.' 9 C. J. 1109. Therefore 'injury by accident' and 'injury caused by accident' are terms or expressions which can be used interchangeably. In a discussion of the former, it is said in 25 Harvard Law Review, 340:

" 'Since the case of **Fenton vs. Thorley,** nothing more is required than that the harm that the plaintiff has sustained shall be unexpected. . . . It is enough that the causes, themselves known and usual, should produce a result which on a particular occasion is neither designed nor expected. The test as to whether an injury is unexpected and so if received on a single occasion occurs 'by accident' is that the sufferer did not intend or expect that injury would on that particular occasion result from what he was doing.'

"This is the rule followed in **Fidelity, etc., Co. v. Industrial Accident Commission of California,** 177 Cal. 614; 171 Pac. 429; L. R. A. 1918F 856. It was there stated that the current of authority is that 'unforeseen, unexpected, and unintended injuries to employes have been classed as "accidents" and held sufficiently to justify awards.'

"For the reasons above indicated, we are of the opinion that the record shows that the death of Joseph Carroll resulted from an 'injury proximately caused by accident,' and that, therefore, his dependents are entitled to compensation.

"It is contended by the defendants in error that the District Court had no jurisdiction to review the proceedings of the Commission, because no petition for a rehearing was filed by the claimants after the Commission last announced its denial of compensation. The facts which give rise to the controversy in this matter are as follows: On June 13, 1918, the Commission,

after a hearing, made an order denying compensation to the claimants. A petition for rehearing was then filed. Thereafter, and on July 3, 1918, the Commission vacated its previous order, and set the cause down 'for the purpose of taking further medical testimony as to the cause of death of the said Joseph Carroll and for no other purpose.' Further evidence was taken on August 7, 1918. This evidence was cumulative only. On February 17, 1919, the Commission made an order, as if an original one, denying compensation. This award was, in effect, a reinstatement of the first order. No award in favor of the claimants had ever been made in the meantime. The petition for rehearing which was filed accomplished all that the statute contemplates with reference to such petitions. 'A second petition for rehearing by the same party, filed after the Commission makes an order exactly the same as a previous order, would serve no purpose other than to further delay the termination of the proceedings.'

"The district court did not dismiss the proceedings, but took jurisdiction, and affirmed the award of the Commission.

"Under the circumstances, above stated, we are of the opinion that the claimants should be deemed to have substantially complied with the statute as to filing a petition for rehearing.

"In this case the Commission made an order denying compensation. A petition for rehearing was filed and after a further hearing, in which the evidence taken was covered only, the Commission made an order as if an original one denying the compensation."

The case was remanded to the district court with the direction to remand the case to the Industrial Commission with directions to enter an award allowing compensation.

WEAVER v. INDUSTRIAL COMMISSION, et al.
69 Colo. 507

FACTS: **Index No. 24.**

Decedent received severe burns over a year before his death. He died after an operation for appendicitis and ulcers of the stomach. Dependents claim there was such causal connection between the accident and the decedent's condition at the time of death to justify a recovery. The Commission made no finding upon this point.

DECISION:

"It is the duty of the Commission to make specific findings, reciting all facts important in the history of the case, as well as specific findings of fact bearing upon the contentions of the parties from the testimony adduced. Mere conclusions of law will not suffice."

Case remanded for further investigation and specific findings.

OLSON-HALL v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.
69 Colo. 518

FACTS: **Index No. 25.**

The Commission found "That the burden of proof is upon the claimant. That the claimant has not established her claim as required by law. That she has not shown that the said John Olson was injured by an accident at the date and place mentioned in her claim, or that his death, which occurred October 12th, A. D. 1918, was the proximate result of said accident. That, therefore, the claim of the said Augusta Olson for compensation herein should be denied."

DECISION:

The findings of fact are insufficient. The Appellate Court can review questions of law only and cannot review or determine facts. Case remanded for more specific findings of fact.

INDUSTRIAL COMMISSION OF COLORADO, et al., v. THE COLORADO FUEL AND IRON COMPANY
69 Colo. 524

FACTS: **Index No. 26.**

In this case the Industrial Commission found that Silvano Hernandez, an employee of the Colorado Fuel and Iron Company, was killed by an accident arising out of and in course of his employment, on the 2nd day of November, 1918; that at the time of his death he left his widow, Maria Hernandez; a daughter, Josephino (Josefina) Hernandez; and a son, Manuel Hernandez, both of which children were minors; that the widow and daughter, at the time of the death of the employee, resided in the Republic of Mexico, and the son resided in the City of Pueblo, Colorado. The Commission further found that the said widow and minor children were wholly dependent upon the deceased for support.

An award was made upon the basis of $2,500.00. The minor son, who resided in Colorado, was awarded one-third of this sum, or $833.33. The widow and daughter were awarded jointly one-third of the remainder, or one-third of $1,566.67, to-wit: $555.56, under the limitation of the statute in case of foreign dependents.

The minor son died on January 8, 1919, with the sum of $807.88 of the award to him remaining unpaid. The widow remarried on the 2nd day of

May, 1919, and the unpaid portion of the award to her lapsed under the statute.

The Commission then awarded to Josephino (Josefina), the infant daughter residing in Mexico, the total of the lapsed and unpaid portions of the awards theretofore made to the widow and son in the total sum of $1,363.44, less certain expenses provided by the statute.

Appeal was had from this award to the District Court, where judgment was rendered, reducing the total amount of this award to the dependent, Josephino (Josefina), to the sum of one thousand ($1,000.00) dollars, less the sum awarded in the first instance, as provided by the statute. Error and cross error are assigned.

DECISION:

"It is clear that under Section VII of the act upon the death of the son, the unpaid amount of the award to him should be paid **pro rata** to the widow and daughter subject to the limitation provided in Section X. And under Section V, upon the marriage of the widow, being at a later date, the unpaid portion of the award to her was required to be paid to the surviving daughter subject to the same limitations.

"Section X limits the sum to be paid to a non-resident of the United States to one-third of the amount to be paid to a resident dependent, and provides that 'in no event shall death benefits to dependents who are non-residents of the United States exceed the aggregate sum of one thousand dollars'. It is plain that by this language it was intended that not to exceed one thousand dollars was to be paid to non-resident dependents in any case, regardless as to the number of them or as to the times of payment, or whether under the original or subsequent awards.

"It is contended by the Commission that this limitation applies only to the original award. This construction cannot be sustained.

"It is contended by the defendant company that the amount must be limited to one-third of the unpaid sum, that is to say, one-third of the sum of $807.89 still due under the award to the son, or $269.30. This is equally erroneous."

The order of the District Court, holding that the $1,000.00 limitation applied, and that Josefina, residing in Mexico, was entitled to receive $1,000.00 less the sum of $555.55, the amount theretofore awarded the widow and daughter, was affirmed.

THE EMPLOYERS' MUTUAL INSURANCE COMPANY v. INDUSTRIAL COMMISSION
70 Colo. 228

FACTS: **Index No. 27.**

Claimant was awarded $1,040.00 under Sec. 73 of the Act of 1919 for total blindness of the right eye. He had lost 90% of his vision. The Commission found that he had sustained "Almost a complete loss of vision," and that the "Amount of vision now remaining is of no value from a working standpoint."

DECISION:

The question is one of per cent of disability, not of blindness. Sec. 73, par. g. In case of disability under the schedule in said section, the ratio of the award to the maximum should be the ratio of the proved disability to total disability. S. L. 1919, 729, par. g; and disability in the statute means disability to work. When, therefore, an eye is rendered of no use in work, it is totally disabled and the award should be the maximum.

Judgment affirmed.

Cross Reference: Industrial Commission v. Johnson, 64 Colo. 461; 172 Pacific 422.

EMPLOYERS' MUTUAL INSURANCE CO., et al., v. THE INDUSTRIAL COMMISSION, et al.
70 Colo. 229

Index No. 28.

The material facts are that James A. Powell was killed January 28th, 1920, by an accident arising out of and in the course of his employment, and left minor children, among whom was said Beverly. On April 10th, 1920, Beverly was legally adopted by one Galley and is now known as Beverly L. Galley, and it is claimed that he can no longer be called the son of Powell and so is not entitled to compensation after April 10, 1920.

DECISION:

"The question as to who constitute dependents and the extent of dependency shall be determined as of the date of the accident to the injured employee and the right to death benefit shall become fixed as of said date, irrespective of any subsequent change in conditions."

Section 58 prescribes the conditions on which the right to death benefit shall lapse, but the adoption of a minor dependent is not among them.

THE LONDON GUARANTEE & ACCIDENT CO., et al., v. THE INDUSTRIAL COMMISSION, et al.
70 Colo. 256

FACTS: **Index No. 29.**

"It has been established as a result of the accident described in the agreement above referred to, and in which it is stated that the claimant ruptured the canal of his bladder; that the claimant has sustained a permanent partial disability equal to ten per cent of permanent total disability; that said disability arises from the nervous shock sustained by the claimant as a result of the injuries described in the agreement above referred to, and its consequent effect upon his bodily health; that it has been established as a result of the accident above described, the claimant has sustained for all purposes a total loss of sexual power."

"It is further claimed that the evidence shows that the claimant was making more at the time of the award than he was before the accident, and in order to support the award there must be a finding of impaired earning capacity. The amount of wages paid by the former employer to the workman after the injury, as compared with wages received before, is not conclusive of the question of the workman's disability. The question is, Has the workman's physical and mental efficiency been substantially impaired, and to what extent, and for what time will this impairment extend into the future? The spirit of the Act is to compensate the workman for his disability for the period of its duration."

DECISION:

It is immaterial that the claimant was making more at the time of the award than he was before the accident. The measure of his compensation for permanent disability is not necessarily his earning power at the time of hearing, but his actual impairment of physical efficiency. The objection was also raised in this case that the method of computation was erroneous and the amount of the award excessive. The Supreme Court held that this matter was disposed of in The Employers' Mutual Insurance Company v. The Industrial Commission, 65 Colo. 283; 176 Pac. 314.

Cross Reference: 65 Colo. 283.

PICARDI v. INDUSTRIAL COMMISSION, et al.
70 Colo. 266

FACTS: **Index No. 30.**

The Industrial Commission denied John M. Picardi compensation for the death of his fourteen-year-old son. The claimant was in good health, fifty-six years old, well educated; a contractor by occupation, but was out of work at the time his son was killed.

DECISION:

It was held that the claimant was not shown to be "incapable of or actually disabled from earning his own living" as provided by the Workmen's Compensation Act of 1919. Objections raised on the ground that the findings of the Commission were not sufficiently detailed was not considered because the court considered the finding right under the evidence and the conclusion a reasonable inference from the evidence.

Cross References: Prouse v. The Industrial Commission, 69 Colo. 382; 194 Pac. 625.
Brock-Haffner v. Industrial Commission, 68 Colo. 291.
Globe Co. v. Indus. Com., 67 Colo. 528.

THE HASSELL IRON WORKS CO., et al., v. THE INDUSTRIAL COMMISSION, et al.
70 Colo. 386

FACTS: **Index No. 31.**

"John Hrutkai was killed by an accident arising out of and in the course of his employment while performing services arising out of and in the course of his employment while working for the . . . employer, at Ship Rock, New Mexico, on September 9th, A. D. 1918. That while so employed and while engaged in operating the oxy-acetylene torch and wrecking a steel bridge on an island in the San Juan River, near Ship Rock, New Mexico, the said John Hrutkai was struck by lightning, death resulting instantly. That his death was the immediate result of the accident above described and arose out of and in the course of his employment. . . ."

The only question arising is whether or not there is evidence to support the finding that the accident arose **out of** the employment. At the time of his death the claimant was working upon a steel bridge partly in the water and partly in the river bank. "His employment required him to use, and he did use, a platinum lighter, a torch, a small wrench and a pair of pliers. He had some of these tools on his person when he was struck by lightning. The tools were carried over the spot on his body on which burns were found. At the time of the accident the ground was damp and an electrical storm was in progress."

DECISION:

The Commission could have found, as a reasonable inference to be drawn from the evidence, that the steel in the bridge and the water underneath

caused an attraction for lightning and was a conductor thereof to an extent much greater than was common to points elsewhere in the vicinity, and could have so found even if the testimony of the witness, Reid, had not been admitted. Affirmed.

BURKE v. THE INDUSTRIAL COMMISSION, et al.
70 Colo. 394

FACTS: **Index No. 32.**

Plaintiff in error, Burke, employed the decedent as a taxi driver. He was discharged for reckless driving. The next morning he called for a party of tourists who had previously arranged with Burke for a trip to Estes Park. Upon the return trip the car overturned and the driver, Chadwick, was killed. Later the party he was driving for settled with the former employer. The question is whether the employer, by accepting the money for the trip, reinstated the employee, or if the employer is estopped from denying that the decedent was an employee.

DECISION:

"There is no conflict in the testimony upon the fact of Chadwick's discharge, and the question of his reinstatement is strictly one of law and not of fact. The Commission found that he was an employee solely upon an alleged ratification by Burke of his act in taking the car, without authority, as above noted. This view was adopted by the district court.

"It seems clear to us that the acceptance by Burke of pay for the use of his automobile and equipment could have and did have no effect whatever upon the status of Chadwick. Chadwick was either an employee of Burke at the time of the accident, or he was not. If he was not, then we fail to see how any subsequent act of Burke in dealing with third parties could change Chadwick's relations to him. Whatever the law may be upon the subjects of ratification and estoppel, under the circumstances here shown, as applied to third persons, manifestly, as between Burke and Chadwick, upon the undisputed facts, neither the doctrine of ratification nor estoppel has the slightest application, and both the Commission and the district court were in error in holding to the contrary. If Chadwick was not in the employment of Burke when injured his heirs have no standing under the Workmen's Compensation Act. It conclusively appears that when Chadwick was injured, he had been discharged, and was a mere volunteer, wrongfully engaged in driving the Burke car. The law must leave him where it finds him, for since that situation was brought about by his own willful and deliberate wrong, upon no possible theory is he or are his dependents in position to ask or receive compensation at the hands of Burke."

INDUSTRIAL COMMISSION, et al., v. PAPPAS
71 Colo. 25

FACTS: **Index No. 33.**

Decedent, Pappas, was injured November 14, 1916, and died four days later.

"Greece was blockaded from November, 1916, to August, 1917. Plaintiff received information of the death in November, 1917, and executed and sent to the United States a power of attorney authorizing two persons named therein to represent her in connection with any rights or claims she might have by reason of said injury and death. No action was taken under said power of attorney. January 6, 1920, the Consul of Greece, stationed at San Francisco, filed claim for compensation with the Industrial Commission. August 16, 1921, the Commission rendered its findings and award denying the claim. An appeal was taken to the district court, where findings and award were reversed. The judgment of the District Court was appealed to the Supreme Court.

DECISION:

"The finding and award of the Industrial Commission can be upheld, and the judgment of the district court reversed, only upon two grounds: 1. That the claim was not filed in time. 2. That no motion for a rehearing was presented to the Commission.

"It is undisputed that no such notice was given and no payment made within one year from the date of the accident. It is contended that the existence of the war and blockade of Greece prevented such action and excused the failure. This would be true only in so far as those facts were responsible for the failure. Plaintiff received actual information of the death in November, 1917. Conceding everything claimed on her behalf, the statute would begin to run on that date. The claim would be barred in November, 1918, and it was not filed for more than one year thereafter.

Section 77 of said Act of 1915 reads in part as follows:

" 'No action, proceeding or suit to set aside, vacate or amend any finding, order or award of the Commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have first applied to the Commission for a hearing thereon as provided in this act.'

"This chapter was amended in 1919, and appears as Chapter 210 of the act of that year. Section 98 thereof reads in part as follows:

" 'No action, proceeding or suit to set aside any finding, order or award of the Commission, or referee, or to enjoin the enforcement thereof, shall be

brought unless the plaintiff shall have first applied to the Commission for a review as herein provided.'

"No application herein was made to the Commission for a 'review', or for a 'hearing' save the original hearing upon the claim. Plaintiff contends that the Act of 1916 is applicable and that the portion of it, above quoted, does not relate to a review. With this position we cannot agree. The 'hearing' there referred to is a hearing upon the 'action' proceeding or suit to set aside, vacate or amend', and the construction to be given the section is exactly the construction which the particular language of the Act of 1919 makes inevitable. They both mean the same thing. But even this construction is unnecessary because the section is remedial and the law in force January 6, 1920, at the time of the ruling of the Commission is the law applicable. That law is the Act of 1919.

"In view of the foregoing the consideration of other incidental questions raised by this record is unnecessary. The judgment is reversed and the cause remanded with directions to the district court to enter judgment affirming the findings and award of the Commission."

THE GENERAL CHEMICAL CO., et al., v. THOMAS, et al.
71 Colo. 28

Index No. 34.

This is a writ of error to the Denver District Court upon a judgment rendered October 5, 1921, affirming an award by the Industrial Commission in favor of Emily Ann Thomas. Sixty days were allowed for a bill of exceptions, which was signed November 10th, and thirty days stay of execution. December 12th this writ of error was sued out.

"The record in any case shall be transmitted to the Commission within twenty days after the order or judgment of the court, unless, in the meantime, a writ of error addressed to the district court shall be obtained from the supreme court, for the review of such order of judgment."

The defendants in error move to dismiss the writ because it was sued out neither within said twenty days nor within twenty days from the expiration of the said thirty days. The motion must be granted.

The plaintiff in error claims that the point was waived, because the defendants in error did not object at the time the thirty days for the bill was granted. Whether this waived the transmission of the record within twenty days from the judgment we do not determine; but it did not waive the requirement that such transmission be made within twenty days from the end of the thirty days' stay granted by the court. If the court had power to grant that thirty days at all, which we do not determine, the most that the plaintiff in error could claim for it would be that it postponed the time at which the twenty days began to run, not that it abrogated the twenty-day requirement entirely.

THE INDUSTRIAL COMMISSION, et al., v. THE STATE INSURANCE COMPENSATION FUND, et al.
71 Colo. 106

FACTS: **Index No. 35.**

"The claimant, William Grenfell, lost the sight of his left eye by accident arising out of and in the course of his employment with The Camp Bird Mining Company. The accident occurred March 16, 1916, and the cause is governed by the Workmen's Compensation Act of 1915. In conformity therewith, and upon an agreement between the parties approved by the Commission no hearing whatever having been had. Grenfell was awarded $832.00 for the loss of only one eye.

It appears that in 1908, while employed at another mine, Grenfell suffered an injury to the right eye, which resulted finally in a practical loss of its vision. This eye, however, was not totally useless, as claimant was able to distinguish with it large objects and lights and shadows. After the left eye was injured and after the first award had been made, by direction of the State Compensation Fund an operation was performed on the right eye, in the hope that its sight might be at least partially restored. The operation, however, was unsuccessful, and later that eye had to be removed.

The Camp Bird Company was insured in the State Compensation Fund, a department of the Industrial Commission, which paid the allowed claim for permanent partial disability in full. The last payment was made on August 7, 1918. On September 7th, next thereafter, the attorney claimant moved to reopen the case on a claim of total disability, which motion on notice was allowed. Hearings were had on the new claim in which, without objection, all parties appeared and participated.

Findings were made and a new award entered by the Commission on March 29, 1921, wherein it was declared that claimant was totally and permanently disabled, that such permanent and total disability arose out of and was the proximate result of the accident of March 16, 1916, and that he was entitled to compensation at the rate of $34.72 per month so long as he should live and total disability continue. The Commission also found that the operation upon the right eye would neither have been advised nor required had claimant not sustained the injury to his left eye; that such operation was recommended by the State Compensation Fund in the hope that claimant might thus be enabled to continue his work and earn a livelihood; and that as result thereof he became totally and permanently disabled. The operation was performed some time subsequent to the original award, and the effect thereof was of course then unknown."

DECISION:

"The first question to determine is whether the Industrial Commission had power to reopen the case. The main contention of the employer, The Camp Bird Company, is that it had no such authority. It is to be noted, however, that the Commission was vested with jurisdiction of the subject matter when the first award was entered, and that the proceedings leading up to that award were in conformity with the provisions of the Workmen's Compensation Act. Upon the new claim the power and authority of the Commission over the subject matter is beyond dispute. It is manifest that the question goes merely to the remedy or method of procedure rather than to the right and authority of the Commission to adjust the claim.

"It appears that notice of the filing of the new claim was given, and that at the hearings the State Compensation Fund and The Camp Bird Company had ample opportunity to object to the reopening of the case, but neither saw fit to do so. Instead, both appeared and actively participated in such rehearings. Testimony was taken touching facts, circumstances and conditions, and involving questions of law never previously considered It was, to all intents and purposes, a hearing **de nova.** The objections now urged were not raised until upon application for rehearing after the entry of the second award. Under these circumstances the defendants in error cannot be heard to question the power and authority of the Commission to reopen the case, take further testimony and enter the award of which complaint is made. These being mere questions of remedy or procedure, could be, and were, waived. Had proper and timely objection been made to the Commission against reopening the case, and had the objectors thereafter declined to participate in such hearings, a totally different question would have been presented, one which, under the circumstances, we are not now called upon to, and which we do not determine.

"The remaining question is whether claimant became totally and permanently blind by the accident at the Camp Bird mine when, as a matter of fact, he was practically sightless in the right eye prior to such employment. There is nothing in our compensation statute requiring employes to be physically perfect in order to come within its provisions. Claimant, for practical purposes, was blind in one eye when he entered the services of the Camp Bird Company. This, however, did not prevent him from doing the work which he was employed to do. His wages were the same as his fellow employes with perfect vision; the Camp Bird Company paid the same compensation insurance premium for him as for workmen with normal vision; no penalty whatsoever attached to him because he was practically sightless in one eye. When he lost the sight of his remaining eye in an accident arising out of and in the course of his employment we are of the opinion that he became totally and permanently disabled within the meaning of our compensation act

"While it is true that before the operation upon his right eye, performed with a view to improving the vision thereof, claimant was able to distinguish large objects and light and shadows, it nevertheless was not such vision as would at all enable him to perform the work required.

"The act is highly remedial, beneficent in purpose and to be liberally construed. To say that a man who has only such vision as enables him to recognize a form before him, without being able to distinguish its outlines, is not blind within the meaning of this law, is to apply to it a strict rule of construction, and defeat its evident purpose."

Cross References: Industrial Commission v. Johnson, 64 Colo. 461, 172 Pac. 422.
Employers' Mutual Insurance Company v. Industrial Commission, 70 Colo. 228; 199 Pac. 482.

THE INDUSTRIAL COMMISSION, et al., v. THE GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, et al.
71 Colo. 115

FACTS: **Index No. 36.**

The claimant sustained the loss of the thumb, index finger, and the middle finger at the proximal joint. The Commission awarded compensation on the basis of a 70% loss of use of the right hand measured at the wrist. The insurance carrier contended that under Section 73, the Commission could award compensation only for the amount provided for the loss of the thumb and fingers in the schedule under Section 73 of the Act of 1919.

DECISION:

"Under Subdivision G, the Commission could, as it did, award compensation for the partial loss of use of the hand.

"In the instant case, the Commission correctly treated the partial loss of use of the hand as being the compensable loss sustained. It committed no error in not designating the injury as a loss of the thumb and fingers and awarding the scheduled benefits for the loss of such members."

The insurer had previously paid compensation on the basis of the loss of the fingers and argued that the Commission could not pay compensation for the loss of the thumb and fingers and then add compensation for the loss of the use of the hand.

"The Commission's award does not purport, however, to be one of an additional ocmpensation, and whatever the insurer has already paid may and should be credited upon the award."

The District Court set aside the finding of the Commission as to the average weekly wages of the claimant on the ground that it had no support in the evidence and substitute a finding of its own and ordered the award amended accordingly.

"This was error. The court had no right to set aside or to amend a finding of fact, and then order the award to be amended accordingly. The only grounds upon which a court may set aside an order or award of the Commission are set forth in Section 103, Chapter 210, Session Laws of 1919, namely: (a) That the Commission acted without or in excess of its powers; (b) That the finding, order or award was procured by fraud; and (c) That the findings of fact by the Commission do not support the order or award."

STONG, STATE TREASURER, v. THE INDUSTRIAL COMMISSION
71 Colo. 133

Index No. 37.

"Action in **mandamus** to compel the State Treasurer to invest money belonging to the State Compensation Insurance Fund in United States Bonds. Writ granted."

FACTS:

"The Commission directed the treasurer to invest in United States bonds, but he disobeyed and invested in state warrants.

"In this court the plaintiff in error makes four points:

1. He says that the petition neither alleges nor shows that the relator had no remedy at law.

The brief suggests an action for damages could be brought on the bond of the treasurer as custodian of the fund, and so **mandamus** will not lie. The conclusion necessitates the premise that no public officer who has given a bond can be compelled to do his duty. Such is not the law."

2. 'Plaintiff in error says, 'It affirmatively appears from the petition that the plaintiff in error is not directed by law to perform the act complained of.' "

"It is immaterial what the petition shows the law to be. We look to the statute for that. In support of this second proposition, however, it is urged that section 141 merely gives the Commission power to direct and does not require the treasurer to obey. We think such an argument requires no answer."

3 ."It is said that the act required involves the exercise of skill, judgment and discretion and is not a ministerial act. We cannot agree to this proposition.

"The language is plain and incapable of two constructions. Full control of the fund is given to the Commission; the custodian is authorized to do nothing with it except under their order, and his investment of it is restricted to 'warrants or bonds of the State of Colorado, or of the United States of America, at market price, as may be determined by the Commission.' The custodian is as much under the control of the words 'as may be determined by the Commission' as by what precedes them. Nothing is required of the treasurer by the statute but to obey the commission and invest as directed at the market price."

4. "It is claimed that section 141, if construed as above, violates article 10, section 12, and article 5, section 33, of the Constitution.

"The argument is that the power of the treasurer over the state money is constitutional and so cannot be taken from him by the General Assembly. This, without decision, may be conceded; and we also pass over the power given to the legislature by said section 12, to regulate 'the safe keeping and management of the public funds in the hands of the treasurer; yet the constitution is not violated, because the fund in question is not the general property of the state and its custody is no part of the treasurer's constitutional duty but is conferred on him by statute only. The fund is not 'creditable to the general revenue of the state' and is 'designated for purposes other than such general revenue,' and so is not in the treasury of the state. S. L. 1913, pp. 580 (g) 1 and 582, (g) 4. The treasurer, **eo nomine,** is made custodian of it, but gives a special bond, and anybody else, e. g., the Industrial Commission itself, might have been and may hereafter be made such custodian when the legislature sees fit."

OLSON-HALL v. INDUSTRIAL COMMISSION, et al.
71 Colo. 228

FACTS:

Index No. 38.

"This cause is here a second time. Upon the former review it was remanded to the Commission for fuller and more specific findings. At the first hearing recovery by claimant was denied. The first award was reviewed by the district court and affirmed. After further findings by the Commission, the cause was again taken to the district court and the action of the Commission in denying compensation was there again upheld. It is to review that judgment that claimant now brings the cause here.

"The essential facts are that claimant's decedent, John Olson, died at a hospital on October 12, 1918. The record shows that he claimed to have fallen from a ladder while at his work for the Theater Company on June 9, 1918. His widow and beneficiary claimed that the accident occurred on June

15, 1918, but for the purpose of this decision the discrepancy in date is not important."

DECISION:

"There is no direct proof of the accident. The claimant supports her case wholly with certain reports, and alleged conversations said to have taken place with Olson at various times subsequent to the supposed accident, at his home and at the hospital where he died. There is not one scrap of competent testimony to show that there ever was an accidental injury at all.

"It is elementary in compensation cases, as in other actions, that the burden of proof is upon the party asserting the claim. It was the duty of the claimant to show that the death of her husband was the proximate result of an accident arising out of and in the course of his employment. The alleged fall from the ladder took place either on June 9, or June 15, 1918. The decedent was then upwards of sixty years of age. For approximately four months after the accident he was under the care of at least three physicians, who apparently discovered no evidence whatever of his having met with an accident. Each of them treated him for an organic disease. After his death an autopsy was held which disclosed at least one serious chronic ailment, that another was developing, and that none of these conditions, in the opinion of physicians, was likely to have resulted from a fall, either recent or remote. On the contrary, the medical testimony was practically unanimous that decedent died from pericarditis and hypostatic pneumonia.

"There is some testimony which tends to show that there was a possibility of the pericarditis having resulted from an external injury. The only effect of this testimony, however, is to furnish a conflict, and the findings of the Commission, on conflicting testimony, is conclusive upon the courts. The rule as to fact findings is laid down in Passini v. Industrial Commission, 64 Colo. 349, 171 Pac. 379, as follows:

" 'This court may consider only the legal question of whether there is evidence to support the findings, and not whether the Commission has misconstrued its probative effect. The award is conclusive upon all matters of fact properly in dispute before the Commission, where supported by evidence, or reasonable inference to be drawn therefrom.

"Error is assigned upon the refusal to admit in evidence an wholly unidentified written statement of the employer respecting a claim of Olson as to the accident; and also because of the exclusion of dependent's notice of the accident and claim for compensation; also to the exclusion of statements made by the deceased at various times long subsequent to the alleged accident. These offers were properly excluded. It is true that the workmen's compensation statutes of most of the states provide that industrial commissions shall reach their conclusions without regard to technical rules of evidence. It is manifest, however, that the rule against hearsay is not technical, but vitally substantial, and may not properly be disregarded under such statutory provisions without grave danger of collusion, imposition and injustice. If a claimant be permitted to make out a case upon the essential facts of accidental injury upon hearsay testimony alone there is no limit to the frauds and wrongs that may be encouraged and made possible.

" 'The statements made by an injured employe in the absence of his employer, by a deceased man as to his bodily or mental feelings, are admissible in evidence, but those made as to the cause of his illness are not admissible in evidence, and where there is no other evidence of an accident arising out of and in course of his employment than statements made by a deceased employe in the absence of his employer, an award cannot be sustained.'

"Neither is it apparent how informal statements of the deceased, made long after the alleged accident, and therefore manifestly not within the **res gestae** rule, should be considered as having weight, even if admitted, as against the direct, positive and satisfying testimony of the attending physician.

"As to the alleged accidental injury all evidence offered was hearsay, and compensation may not be lawfully awarded upon that class of testimony alone.

"There was ample competent evidence to support the findings of the Commission. Under such circumstances, bearing carefully in mind the settled rule that the fact findings of the Commission, based upon conflicting testimony, are conclusive on review, the judgment is affirmed."

Cross References: Passini v. Industrial Com., 64 Colo. 349, 171 Pac. 369; Prouse v. Industrial Com., 69 Colo. 382, 194 Pac 625. Industrial Com. v. Johnson, 66 Colo. 292; 181 Pac. 977. Globe Co. v. Industrial Co., 67 Colo 526; 186 Pac. 522. Industrial Com. v. London, etc., Co., 66 Colo. 575; 185 Pac. 344.

CRAWFORD, et al., v. INDUSTRIAL COMMISSION, et al.
71 Colo. 378

FACTS: **Index No. 39.**

It was alleged by the claimants before the Industrial Commission that the decedent died on November 13, 1920, as the result of electrical burns received May 22, 1920, resulting from an accident caused by running an

elevator. The decedent's claim was denied by the Commission prior to his death, and in January, 1921, his mother filed a claim in behalf of herself and a minor sister of the decedent. The Commission found, in part:

"The Referee is of the opinion that Robert Elwood Crawford from and after May 22nd, A. D. 1920, was suffering from an injury caused by an electric shock, and that his death on November 13th, A. D. 1920, was the proximate result of an electric shock sustained by the said Crawford. The Referee, however, is unable to find from the evidence that the shock sustained by the decedent, Crawford, was sustained in the manner and at the time and place alleged by the claimants herein. Proof as to the possibility of sustaining an electric shock in the manner and at the time and at the place alleged by the decedent himself clearly and positively precludes the possibility of finding that the shock from which Crawford was undoubtedly suffering could have been sustained as he alleged. It, therefore, follows that the claim for compensation must be denied."

The District Court confirmed the findings and award of the Commission.

DECISION:

"The only grounds upon which a decision of the Commission can be reversed by the District Court are:

"(a) That the Commission acted without or in excess of its powers;

(b) That the finding, order or award was procured by fraud;

(c) That the findings of fact by the Commission do not support the order or award." Sec. 103, Laws of 1919, p. 743.

"Questions of law only" can be reviewed by us on writ of error. Sec. 108, Laws of 1909, p. 744.

Among the allegations in the complaint are: "(a) That the Industrial Commission acted without and in excess of its powers as follows: . . .

(8) That the Industrial Commission and its Referee have made insufficient findings of fact.

(b) That the findings of fact of the Industrial Commission do not support its order or award in that; . . .

(7) That the Industrial Commission has made insufficient findings of fact upon which to base its award."

"The only important finding of fact is a negative, i. e., the inability of the Referee to find from the evidence of claimants that the shock sustained by decedent was sustained 'at the time and place alleged by the claimants.' Whether this means alleged by the claimants in their **statement** or by the **testimony** of their witness, the deceased, does not appear. We get the impression that the Referee intends to hold that a failure to find that this accident occurred at the precise time and place and in the exact manner stated in the testimony of the deceased precludes recovery by these claimants. If so, we are not prepared to agree with him."

"It becomes absolutely essential that the Commission make some definite finding of fact herein. We are told that deceased was suffering from this shock 'from and after May 22nd'. When did he get it? Where did he get it? Having found these facts in detail the Commission may draw its conclusions therefrom as to whether, at the time of the accident, the employe was 'performing service arising out of and in the course of his employment', which is the test of right of recovery and makes its award accordingly. From the facts so found we can then, and not till then, determine the correctness of the Commission's conclusions and the support, if any, which such facts furnish for the award."

"The judgment is reversed and the cause remanded to the District Court with directions to send it to the Commission for compliance with the law.

Cross References: Prouse v. Industrial Com., 69 Colo., 382, 384; 194 Pac. 625.
Weaver v. Industrial Com., 69 Colo. 507; 194 Pac. 941.
Olson-Hall v. Industrial Co., 69 Colo. 518; 194 Pac. 212.

INDUSTRIAL COMMISSION, et al., v. PUEBLO AUTO COMPANY, et al.
71 Colo. 424

FACTS: **Index No. 40.**

"On April 11, 1919, Parks was in the employ of The Pueblo Auto Company as a salesman. On said day Parks went in an automobile into the country for the purpose of selling an automobile. On the trip he effected a sale to one Hunter, who started in the car with Parks on his return to Pueblo.

On the road they invited two brothers named Bosco to ride with them. A little later, while on the road, one of the Boscos shot and killed Parks. It appears that the killing was for the purpose of obtaining the automobile in which the parties were riding.

It is conceded that Parks was killed while in the course of his employment, but the District Court held that the killing did not arise out of his employment. The correctness of that decision is to be determined on this **review."**

DECISION:

"The cases seem to hold that the test is whether or not there is a causual connection between the injury and the employment, that is, are they so connected that the injury naturally resulted from the employment."

"The award of the Commission can be sustained only on the ground that Parks lost his life while he was in the course of his employment and as the result of an attempt on the part of the Boscos to obtain possession of the employer's automobile.

The danger of assault upon a highway for the purpose of robbery is generally recognized, and said danger is more imminent in recent years since the possession of an automobile affords ready means of escape."

"An injury caused deliberately and wilfully by a third party may be an 'accidental injury,' within the meaning of the act, from the viewpoint of the employer and the employe."

"It being established that Parks was killed in order that his assailant might obtain his employer's automobile in which Parks was riding on his master's business, we are of the opinion that the Commission was justified in awarding compensation to the claimant. The judgment is accordingly reversed with directions to enter judgment affirming the award made by the Commission."

TRAVELERS INSURANCE CO., et al., v. INDUSTRIAL COMMISSION, et al.
71 Colo. 495

FACTS: **Index No. 41.**

"Action involving the constitutionality of a portion of the workmen's compensation act relating to insurance. Constitutionality upheld."

DECISION:

"Such is the record before us that, if a portion of section 22 of our Workmen's Compensation Act (L 1919, p. 708) is constitutional, the judgment must be affirmed. If unconstitutional, reversed."

"The Industrial Commission shall from time to time approve and prescribe a standard or universal form, as nearly as possible, for every contract or policy of insurance, endorsement, rider, letter, or other document affecting such contract, for use in insuring the compensation herein provided for."

"Plaintiffs in error say this is a delegation to the Commission of a legislative power and prohibited by the Constitution. If it is such a delegation it requires no citation of authority to establish the prohibition."

"The constitutional division of all governmental powers into legislative, executive and judicial is abstract and general. Their complete separation in actual practice is impossible. The many complex relations created by modern society and business have produced many situations which can be adequately met only by vesting in the same administrative officers or bodies powers inherently partaking, to some extent of any two or all of these three functions."

"Our Workmen's Compensation Act contains 153 sections. But ten of these relate directly to the subject of insurance. The disputed portion of section 22 might be wiped out and the act remain unimpaired. This portion, therefore, is but an administrative incident. If the Industrial Commission failed to prescribe a standard form of policy not even the insurance feature of the act would be seriously interfered with."

"There is in all this no element of legal compulsion, hence the power to prescribe the policy form is not legislative in the sense in which the delegation of such power is prohibited."

THE INDUSTRIAL COMMISSION, et al., v. FANGANIELLO
72 Colo. 140

FACTS: **Index No. 42.**

Lopa Benedetta, widow of the decedent, claimed compensation as the widow. Marie Fanganiello claimed compensation as mother of the deceased.

The Commission found the fact of the marriage of the claimant and the deceased in Italy, in May, 1913; that immediately following the marriage the husband came to the United States, and remained here until the time of his death in 1918; that he contributed to his wife's support for a period of one year; that in 1917 the widow gave birth to an illegitimate child; and that, from the marriage it was conclusively presumed that the claimant was wholly dependent upon the decedent. An award of compensation was, therefore, made to her as widow of the deceased."

"The trial court held that the findings did not support the award from the fact that in law, in the court's view, the act of adultery on the part of the wife constituted a voluntary separation from the husband. The court therefore remanded the case to the Industrial Commission for further consideration and determination, not contrary to the court's decision."

DECISION:

"The Commission insists that the District Court not only remanded the case, but determined it adversely to the widow. We do not so read the record. The finding of the District Court is that the cause be remanded to the Industrial Commission. The judge before whom the case was tried explained that the order was made for the purpose of allowing the claimant to present evidence which might show that the finding of adultery was not correct, there being a doubt as to her meaning in one of her statements on the stand. This remand is in accordance with section 102 of the chapter

above quoted, and we see no reason why the Commission should complain of it. The order of the District Court is therefore affirmed."

LONDON GUARANTEE & ACCIDENT CO., et al., v. INDUSTRIAL COMMISSION, et al.
72 Colo. 177

FACTS: **Index No. 43.**

After a voluntary agreement, providing for the payment of $10.00 a week for ninety-two (92) weeks, was filed, the case was set down for hearing to determine whether the claimant was entitled to any further compensation, and the extent of his permanent disability, if any. It seems that there were several hearings. At the one held by the Referee May 23, 1921, the finding was that, as a permanent result of the accident, the claimant had sustained 33 1-3% loss of use of his left leg, and that the permanent disability thereby occasioned would have been, and was, approximately, 80%, had it not been for two operations performed at the claimant's expense by the Mayo clinic of Rochester, Minnesota, and the compensation was made on that basis. The award also required the employer and insurance carrier, as provided by section 51 of the Act, to pay for such medical, surgical and hospital attention as the claimant received during the sixty days immediately following his accident, but not to exeed $200.00 in value. On November 3, 1921, these findings and the award of the Referee were approved by the Industrial Commission. Upon a rehearing granted, the Commission again, in a supplemental award of December 3, 1921, affirmed and approved the previous award of November 3rd, which affirmed the Referee's award of May 23rd."

"The questions which the plaintiff in error, the insurance carrier and the employer, say are involved in this review, using their own language, are:

"1. Has the Industrial Commission a right, under the compensation law, by an indirect method, to require the employer or the insurance carrier to pay for medical attention beyond the limits required by the law?

2. Has the Commission a right, under the law, to require the employer or insurance carrier to pay compensation in excess of the actual disability for an assumed disability which the employe might have suffered had he not had certain medical and surgical attention but which he did not in fact suffer?

3. Do the findings of fact support the award?"

DECISION:

"The first two questions do not accurately state the issues involved. As provided by section 51 of the Act, the Commission expressly limited the amount of the award for medical attention given during the sixty days following the accident, and not to exceed $200.00 in value.

It it not a correct statement to say that the Commission awarded compensation for an assumed disability. There is no provision of the compensation act which specifies the time at which disability is to be ascertained. We have examined the evidence, not for the purpose of passing upon its weight or sufficiency, but as throwing light upon the findings of the Commission, and are satisfied they are not only supported by the evidence but that the findings sustain the award. It plainly appears that the claimant, at the end of the sixty days following the accident, was told by the attending physicians furnished by the employer, or the insurance carrier, that they could do nothing further for him. Being thus left to shift for himself, he went to the Mayo clinic in Rochester, Minnesota, and underwent two serious and unusual operations, the result of which was an improvement in his condition. His health was not restored, nor did he regain his normal ability to perform manual labor. Upon the final hearing by the Industrial Commission it appeared to that body, and it is so found, that the claimant's disability, at the expiration of the sixty days from the time of the accident, was 80%, and would have so continued to be had not these operations been performed. The Commission did find that after the operations were performed the permanent result of his accident was still a 33 1-3% loss of the use of his right leg, but, as stated, the Commission also found that, had it not been for these operations, the disability would have remained 80%. The award, therefore, for permanent disability was computed upon the basis of an 80% loss of the use of the claimant's leg. None of it was for medical attention, but for a permanent disability actually existing at the time the physicians of plaintiffs in error discharged him at the end of the sixty day period. The making of this additional compensation, which may be equal to, or greater than, the amount of the claimant's expenses incurred for the operation at Rochester, is not equivalent to an award by the Commission for medical attention in excess of the sum of $200.00, or for such attention given after the period of sixty days following the accident.

Neither the statement that the Industrial Commission's award for increased permanent disability was an indirect method for paying for medical attention beyond the period of sixty days following the accident, nor that the award compels the employer and insurance carrier to pay for an assumed disability which the claimant did not suffer, is borne out by the findings of fact. Section 110 of the statute authorizes the Commission, of its own motion, at any time, after notice to the parties interested, to review any

award previously made, and on such review to make another award diminishing, maintaining or increasing the compensation previously awarded, subject to the maximum and minimum provided in the Act. The Commission, therefore, was authorized in this case to increase the award which it first tentatively made, and had the right to fix the permanent disability as of the date when the physicians of the employer and insurance carrier notified claimant that they were unable to do anything further for him. If the theory of the plaintiffs in error was sustained, it would be equivalent to penalizing the claimant for taking measures to protect himself by diminishing his disability to perform labor. Considering the wide discretion which has been vested in the Commission, and its power to ascertain facts, its freedom from rules of evidence, more or less technical, which prevail in the court's and in accordance with the spirit and purpose of the act, we are constrained to hold, not only that the findings of fact, taken in their entirety, sustain the award, but that the Commission acted humanely, as well as fairly, to plaintiffs in error, in reaching its ultimate conclusion. The judgment of the District Court, which approved the findings and award is, therefore, affirmed."

INDUSTRIAL COMMISSION, et al., v. BIG SIX COAL CO., et al.
72 Colo. 377

FACTS: **Index No. 44.**

This case comes up on writ of error to the District Court to review its final judgment setting aside an award of the State Industrial Commission to Ollie Cruthis. The Industrial Commission approved an Agreement of the insurance carrier to pay the claimant $10.00 per week during disability. Upon a later hearing claimant was awarded $10.00 per week so long as he should live. The Commission granted a lump sum settlement of $3,000.00 in cash and ordered payments to continue at the rate of $28.57 per month so long as the claimant's disability was total and permanent. The Commission did not specifically find the period of claimant's life expectancy and the insurance carrier took the stand that a lump sum settlement could not properly be made unless claimant's expectancy was set forth in the award. The insurance carrier also contended that the Commission should have considered the claimant's physical condition.

DECISION:

"The commissioners had ample opportunity to judge of his general condition and as to the other enumerated matters, and it was not necessary for the Commission, in the absence of any request therefor at the time of the hearing, to take evidence relating thereto. In the absence of anything in the record to the contrary, we may rightfully assume that the Commission did its duty and considered not only the Colorado mortality table but all the other matters which section 78 requires, and gave them due weight in making its award."

"We also add, without entering into detail, that from an inspection of the award, as made, it is apparent that the Colorado expectancy table must have been used. The figures which the Attorney General has set out in his brief, but which need not be reproduced here, satisfy us that this table was used, and properly used, by the Commission. We conclude, therefore, that the undisputed evidence, taken as findings of fact, coupled with our assumption that the Commission had before it the Colorado expectancy table, and that in reaching its conclusion that the same was taken into consideration, as were the matters specified in section 78, amply justify its award."

"Defendants in error have assigned as cross-errors to the judgment of the District Court, the failure of that tribunal, in accordance with their request, to direct the Commission to withdraw its award of monthly payments after having awarded a lump sum. Their position is that the Commission has no power or authority to award a lump sum compensation, unless and until it orders the suspension of the monthly compensation benefits until such time as the gross amount to be commuted into such lump sum would be realized by the payment of the maximum amount of monthly benefits, if no lump sum had been ordered. This contention, in other words, is that these monthly payments should be eliminated from the award. We do not so believe. Section 82 authorizes the Commission 'to order payment of all or any part of the compensation awarded in a lump sum, or in such manner as it may determine to be for the best interests of the parties concerned, and its discretion so exercised shall be final and not subject to review. When payment in a lump sum is ordered the Commission shall fix the amount to be paid based on the present worth of partial payments considering interest at 4% per annum, and less deductions for the contingencies of death and remarriage. The aggregate of all lump sums granted to a claimant who has been found and declared by the Commission to be permanently and totally disabled shall not exceed $3,125.00.' Clearly the award is authorized by this section. It may be in part a lump sum, and if the Commission thinks it is for the best interest of the parties, the balance due may be ordered to be paid monthly. The matter is left to the discretion of the Commission and not subject to review."

THE CANON RELIANCE COAL CO., et al., v. INDUSTRIAL COMMISSION OF COLORADO, et al.
72 Colo. 477

FACTS: **Index No. 45.**

"While employed by the coal company (plaintiff in error), John Seitz was struck in the face by a piece of coal. Later a cancer, carcinoma, developed there from which he died. The Referee of the Industrial Commission awarded his widow, Mabel Seitz (defendant in error), $3,125.00, which was reduced by the Commission, and later by the judgment of the District Court, to $2,313.22, and otherwise affirmed. To review that judgment this writ is prosecuted. The errors assigned are that the Commission acted without, or in excess of, its powers, and that its findings of fact do not support the award."

DECISION:

(For detailed evidence see original report.)

It was held there was sufficient substantial and credible evidence to support the findings and to preclude the Supreme Court from disturbing those findings on the theory that the Commission in basing its findings upon such evidence acted without or in excess of its powers.

Cross References: Passini v. Industrial Commission, 64 Colo. 349; 179 Pac. 369.
Brock-Haffner Press Co. v. Industrial Commission, 68 Colo. 291; 187 Pac. 44.
Picardi v. Industrial Commission, 70 Colo. 266; 199 Pac. 420.

CRAWFORD, et al., v. INDUSTRIAL COMMISSION, et al.
72 Colo. 581

FACTS: **Index No. 46.**

The deceased was employed as an elevator pilot, but it was claimed that he suffered an electric shock in May, 1920. He died November 13, 1920. The Commission found that he did not sustain an electrical shock on May 22, 1920, while working for his employer but that his death was caused by an electric shock sustained in a place and manner unknown to the Industrial Commission. There is evidence that he did sustain such a shock which was rebutted by testimony of certain experts to the effect that it was impossible to receive a shock at the time and place and in the manner testified to by the decedent prior to his death.

DECISION:

"The principal facts in dispute were put squarely to the Commission on conflicting evidence and we are without power under such circumstances to disturb its findings."

Cross References: Industrial Commission v. Johnson, 66 Colo. 292; 181 Pac. 977.
Passini v. Industrial Commission, 64 Colo. 349; 171 Pac. 369.
McPhee Co. v. Industrial Commission, 67 Colo. 86; 185 Pac. 268.
Youngquist v. Industrial Commission, 67 Colo. 187; 184 Pac. 381.

INDUSTRIAL COMMISSION, et al, v. ERNEST IRVINE, INC., et al.
72 Colo. 573

FACTS: **Index No. 47.**

February 28, 1922, deceased was employed by the corporation in its business of selling automobiles. Upon entering the garage of Oscar J. Harris on the evening of that day he was shot and killed by Harris under the assumption that he was a burglar who had entered the garage with felonious intent. The corporation was operating under the Workmen's Compensation Act, and plaintiff, claiming that her husband's death was due to an accident arising out of and in the course of his employment, brought this action before the Commission for compensation.

The Industrial Commission entered an award in favor of the widow which was reversed by the District Court upon appeal.

Three questions were raised by the pleadings: 1. Did the findings support the award? 2. Did the Commission act without or in excess of its powers? 3. Was the evidence "sufficient"?

DECISION:

The district court had no power to disturb the powers of the Commission on conflicting evidence. It is clear from the evidence and the findings that the corporation had entrusted one of its automobiles to deceased. It was his duty under the terms of his employment to give it proper care for the night. While attempting to perform that duty by storing the car in the garage of one Harris, the latter mistook deceased for a burglar and shot and killed him, hence the Commission finds that deceased was shot while attempting

to care for his employer's property and that the cause of death was an accident arising out of and in the course of his employment. The findings, therefore, support the award. The accident arose out of and in the course of claimant's employment.

There being no claim of fraud and the findings clearly supporting the award, the district court had but one duty to perform, i. e., to examine the evidence for the sole purpose of determining if it, or reasonable inferences drawn from it, would support the findings.

Cross References: Industrial Commission v. Johnson, 66 Colo. 292; 181 Pac. 977.
Prouse v. Industrial Commission, 69 Colo. 382; 194 Pac. 625.

ELLERMAN, et al., v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.
73 Colo. 20

FACTS: **Index No. 48.**

"Plaintiffs brought this action before the Industrial Commission to recover under the Workmen's Compensation Act for the death of William F. Ellerman, husband of the plaintiff, Amelia A. Ellerman, and father of the other plaintiffs. The Commission decided against them and to review a judgment of the district court affirming that decision plaintiffs bring the cause here on error.

"William F. Ellerman came to Colorado from Illinois, where he had been an iron moulder. He was about fifty years old and apparently a strong and vigorous man. The only work he did after arriving in this state and prior to August 11, 1921, was mowing lawns and doing other odd jobs requiring no exceptional exertion. On the last mentioned date he began work for defendant, Olson. His duty consisted in wheeling a barrow loaded with concrete a distance of about 125 feet over a level runway and dumping it. The total load weighed approximately 300 pounds and the portion of it actually lifted about 75 pounds. At the end of the third trip, while in the act of dumping the load, Ellerman dropped the barrow handles and fell. He died almost instantly. The undisputed testimony established that death was due to an acute dilation of the heart preceded by chronic myocarditis.

"The 'question' thus stated includes three questions, a—Was the death due to an accident? b—Did the accident occur in the course of the employment? c—Did the accident arise out of the employment?

"If death was due to 'over-exertion arising out of' the employment and would not have occurred save for such employment, then the 'over-exertion' was an 'accident.' On this subject the evidence is in direct conflict.

"The district court held that:

> 'The determination of whether or not this death was the proximate result of an accident . . . is not the vital question in the case. The vital question in the case is whether or not the death of the deceased arose out of his employment.'

"The determination of that question, it will be observed, depends upon whether the death was due to 'over-exertion' required by the employment and without which it would not have occurred. That question was one of fact, concerning which there was a conflict of evidence, and one which the district court was without power to decide.

"The court further found:

> 'In this case there is nothing in the death of the deceased which can be said to have been peculiarly incident to the work in which he was engaged.'

"That was a question of fact which the Commission had not decided.

"'The court is of the opinion that the compensation should have been denied for the reason that the proof did not disclose that the injury arose out of the employment, and not because it was an accident.'

"The Commission decided one question of law and the court another."

DECISION:

"Much as we regret the necessity, it therefore becomes absolutely essential that this cause be remanded to the district court with directions to return it to the Commission for additional findings of fact, and that the Commission amend its findings by determining whether this death was due to over-exertion. If Dr. Dryer is correct, it was. If Dr. Van Meter is correct, it was not. Whether it was depends upon proof of a direct connection between the death as a result and the employment as its proximate cause."

"The former opinion is withdrawn and the cause remanded with directions."

Cross References: Industrial Commission v. Anderson, 69 Colo. 147; 169 Pac. 135.

UNITED STATES FIDELITY & GUARANTY COMPANY, et al., v. INDUSTRIAL COMMISSION OF COLORADO, et al.
73 Colo. 90

FACTS: **Index No. 49.**

"The referee found, therefore, that Leroy E. Martz died January 13, 1922. That he worked for the company as helper from October 4, 1919, until

the date of his injury. That he began work January 11th, 1922, at 2:30 P. M. While performing his usual duties at 9:30 of the same day he became unconscious and so remained until his death, and found nothing else."

DECISION:

"This case is remanded to the district court with direction to require the Industrial Commission to make definite findings as to whether Leroy E. Martz died of the inhalation of carbon monoxide gas, or any gas, and if so when and where the gas was inhaled which caused his death; if he died of inhaled gas, the findings should show whether death was caused by continued daily or frequent inhalation which produced a condition of which he died, or by one accidental lethal inhalation or by both; and if by both whether either one without the other would have caused his death at the time death occurred; whether death arose out of his employment, whether the claimants were totally dependent on the deceased for support, and whether his average weekly wages exceeded $20.00 per week. Then let the district court reconsider the case on the new findings."

THE INDUSTRIAL COMMISSION OF COLORADO, et al., v. HUNTER, et al.
73 Colo. 226

FACTS: **Index No. 50.**

"The defendants in error were claimants under the Workmen's Compensation Act as dependents upon William Hunter, deceased, who was at the time of his death a water commissioner residing at Rye, Colorado. He was killed while riding in an automobile from his home to Pueblo in company with one Parks. The circumstances of the killing are recited in Industrial Commission v. Pueblo Co., 71 Colo. 425. The Commission found that the killing did not arise out of and in the course of his employment. The district court of Pueblo County held that, under the findings of fact made by the Commission, Hunter's death was the result of an accident arising out of his employment, and directed an award accordingly. That judgment is now before us for review."

"The Commission found that 'his (Hunter's) duties were to keep a record of the amount of water in the daily flow, and make reports to the division engineer once a week In performing his duties it was necessary that he travel over his district; for this purpose he used an automobile. On the afternoon of April 11, 1919, Elton C. Parks, salesman of the Pueblo Automobile Company, called at the home of Hunter and obtained his order for a Dodge car. Parks was driving a new Dodge car and invited Hunter to go to Pueblo with him. Hunter's report was due April 12, 1919, and in order to make this report he had to look at the ditches and creeks between his home and Pueblo. By coming to Pueblo with Mr. Parks he could do the necessary work along the road. It was while on his way from his home at Rye to Pueblo that he was shot by the Bosco Brothers. Parks was the first man killed in the attempt to steal the automobile, and Hunter then killed by the Bosco Brothers in order to secure possession of the automobile.' Hunter was driving the car."

DECISION:

"We must accept the findings of the Commission and they show that Hunter was killed while in the line of his employment. The only remaining question is, did the killing arise out of said employment."

DECISION:

"Applying to this case the rule last above stated, it appears that the district court was right in holding that the Commission's award was not supported by its findings, inasmuch as the Commission found that the death did not arise out of deceased's employment. The attorney general's brief seems to assume that if the accident is not such as would be reasonably anticipated, it is not compensable.

"The contrary was stated to be the rule in Industrial Commission vs. Pueblo Auto Co., **supra.** Had the duties of Hunter not required him to be upon the highway, he would not have been killed as he was. The weight of authorities seems to make that one of the tests. We are of the opinion, therefore, that the judgment of the district court is supported by the findings of the Commission and it is therefore affirmed."

Cross References: Industrial Commission v. Pueblo Co., 71 Colo. 425.
Industrial Commission v. Aetna Life Co., 64 Colo. 480.

THE CONTINENTAL CASUALTY COMPANY, et al., v. THE INDUSTRIAL COMMISSION OF COLORADO AND PEDERSEN, et al.
73 Colo. 396

FACTS: **Index No. 51.**

"The claimants are the dependents of a deceased employee. The decedent was employed as an auto mechanic. The referee found, and the finding is not questioned, that while repairing an automobile on the morning of April 10, 1922, the employee inhaled exhaust gas from the machine. This happened in the course of his employment.

"The question presented to us by the record is whether there are sufficient findings to sustain an award in favor of the claimants upon the theory that the death of the employee was proximately caused by accident arising out of and in the course of his employment.

"Relevant to the question above mentioned, the findings contain the following statements:

"'On the morning of April 10, A. D. 1922, Pedersen was working upon the ignition system of one of the trucks. . . . from about 8 o'clock until 12 noon. In the course of his work he would start and stop the car. . . . In doing this, he inhaled the exhaust coming from the automobile. The weather . . . was rather cool. The garage on this particular day was kept closed. . . . At 1:30 he was taken sick. His condition prior to this time had been good. . . . Decedent worked the following day but came home earlier than usual, went to bed and remained in bed until the date of his death, on April 27th, A. D. 1922. His death was caused by pneumonia. . . .

"'The referee is of the opinion, from the facts, that the decedent inhaled an extra large amount of auto gas during the forenoon of April 10th, A. D. 1922, and that his condition during the afternoon of April 10th, A. D. 1922, and the remainder of that week can and should be attributed to inhalation of auto gas. Further, that this was an accident as defined by law and that it so weakened his vitality that he was unable to throw off the pneumonia which later developed, and that his death may thus be ascribed to his accident of April 10th, A. D. 1922'."

DECISION:

"It is claimed that the findings are insufficient because the referee does not state what was the 'condition' of the employee, and that he should have stated that the condition was pneumonia. We think the findings sufficiently indicate that. It is next pointed out that the referee finds that the condition 'can and should' be attributed to the inhalation of gas, and it is claimed the findings are insufficient because they do not show 'why?' It was not necessary that the referee give the reasons for the conclusion, or recite the evidence which supports it. There was evidence to support the conclusion of fact above mentioned.

"The principal contention is that the death was not caused by accident.

"The paintiff in error cites Prouse v. Industrial Com., 69 Colo. 382; 194 Pac. 625, upon the proposition that the accident must be one traceable to a definite time, place and cause. It is claimed that the decedent inhaled gas at other times. The findings, however, are sufficiently specific to show that the injury resulted from the work of the forenoon of April 10, 1922, when the weather was cool, the garage door closed, and the employee inhaled 'an extra large amount of auto gas.' The Prouse case is also cited upon the rule that the accident must be an unexpected occurrence. There is evidence that the occurrence involved here was unexpected. Similar work was done in the garage at other times without ill effects. On the date in question there was an extra large amount of exhaust gas. The presence of gas could be expected, but not the injury resulting therefrom. The accident was not the presence of gas, but the effects produced by it, and these were unexpected.

"Lastly it is claimed, in effect, that the pneumonia and not the accident must be regarded as the proximate cause of the death. Pneumonia was the immediate cause, but the immediate cause is not necessarily the proximate cause. The proximate cause in this case was the injury which led to pneumonia. In this respect the case resembles other cases where the employee died of pneumonia, cited and discussed in 20 A. L. R. 66, where the pneumonia was held attributable to an injury received in the course of employment. . . .

"The judgment of the district court is affirmed."

Cross Reference: Prouse v. Industrial Com., 69 Colo. 382; 194 Pac. 625.

ANDREWS v. THE INDUSTRIAL COMMISSION OF COLORADO et al.
73 Colo. 456

FACTS: **Index No. 52.**

"The material portion of the Commission's findings and award reads as follows:

> 'That the claimant, Elmer Backman, sustained an accidental injury on the 14th day of February, 1922, while in the employ of the respondent, James H. Andrews. . . .
>
> 'That the injury so sustained by the claimant was caused by a jar or bruise on the right hand while engaged in excavating work and digging in frozen ground. That the bruise occasioned thereby became infected, and as a result of such accidental injury it became necessary to amputate claimant's index finger . . .'

"It is here contended that the Commission in making such findings and award acted without and in excess of its powers, and that the findings do not support the award for the reason that the uncontroverted evidence shows that the injury was not the proximate result of an accident arising out of and in the course of Backman's employment, but was due to claimant's willful violation of the rules of his employer and neglect to avail himself of medical treatment."

DECISION:

"The findings of fact so clearly support the award and are within the powers of the Commission, if there be any evidence in support of them, that their discussion from any other standpoint is superfluous.

"There are conflicts in this evidence. Even Backman's testimony is distinguished by uncertainty and inconsistency, but these things are insufficient to justify a reversal. It is said that 'his irresponsible answers and his evasiveness brands his claim as an imposition upon the respondent and the Industrial Commission.' Possibly so, but the truth thereof was for the Commission, not the court.

"Plaintiff long neglected to obtain medical aid for the injury in question, notwithstanding the suggestion of defendant's foreman that he do so, but during that time the evidence fails to show that it appeared of such a serious nature as to demand the attention of a physician. Defendant made no written request for an examination as provided by the Workmen's Compensation Act. . . . whether the employee's conduct in this particular shall affect the award is a matter within the discretion of the Commission.

'It is urged that the injury here in question and the consequent infection was not an accident as defined by the Workmen's Compensation Act. The contrary is established by well considered authority.

Lloyd v. Sugg, I. Q. B. (1900) 486.
Bradbury's Workmen's Compensation (3rd Ed.) 611, par. 19.

"The most that can be said in the instant case is that the Commission and its findings will not be disturbed."

Cross Reference: Prouse v. Industrial Commission, 69 Colo. 382, 384; 194 Pac. 625.

THE INDUSTRIAL COMMISSION OF COLORADO, et al., v. DOMKA ELKAS
73 Colo. 475

FACTS: **Index No. 53.**

"The Industrial Commission disallowed the claim of Domka Elkas on the death of one John Denney, who, she claimed, was Christos Demetriou Elkas, her brother, on whom she was dependent. The usual suit for review was brought in the district court where the Commission's findings were reversed and the case is brought here for review."

DECISION:

"Plaintiffs in error state that the suit in the district court was not begun within the statutory time, twenty days after the award, and therefore that the district court had no jurisdiction. It is not a question of jurisdiction but a question of limitation. The law provides that no suit shall be brought on a promissory note unless within six years after its maturity, but no one doubts that the court where such a suit is brought has jurisdiction over it. This provision, then, of the Industrial Commission Act being a limitation merely, should be pleaded in the court below. It was not done in this case.

"The district court set aside the award, as the judge said, 'being mindful of the fact that this court has no power to interfere with the finding of the Industrial Commission where there is evidence to support it, that the legislature has entrusted to the Commission the determination of questions of fact and that it is only under the circumstances that would justify a court in granting a new trial' after a verdict that it should set aside the Commission's award.

"This raises a question which has never yet been directly before us. Is the district court, under the Workmen's Compensation Act, to treat the award like the verdict of a jury, not to be set aside when there is legal evidence to support the finding, but to be set aside when there is not such evidence?

"We have considered this matter in department and then before the full court and are all of one mind in the affirmative.

"We in this court, in matters of this kind, are permitted to consider only questions of law, but it is familiar that the question whether the verdict is supported by evidence is a question of law and the same must be true of an award; we must conclude, therefore, that the district court had power to do what it did and that we have power to consider the same matter.

"The sole point in dispute was whether John Denney, the deceased, was the same person as John Denney or Christos Demetriou Elkas, the brother of the claimant. We shall not discuss the evidence showing that he was, except to say that it was definite, unequivocal and conclusive.

"The evidence to the contrary was hearsay and taken at its best only showed that John Denney, the deceased, had made some statements concerning himself inconsistent with facts shown to be true concerning John Denney, alias Christos Demetriou Elkas, the brother of the claimant, e. g., that he had been married and had lost his wife, which was not true of claimant's brother, but neither was it true of the deceased."

Cross References: Kokotovich v. Ind. Com., 69 Colo. 572, 574.
Passini v. Ind. Com., 64 Colo. 349.
Employers' Ins. Co. v. Morgulski, 69 Colo. 223.

THE INDUSTRIAL COMMISSION OF COLORADO AND WALKER v. THE GLOBE INDEMNITY COMPANY, et al.
218 Pac. 910

FACTS: **Index No. 54.**

"The Industrial Commission allowed compensation to Charles Walker. The district court reversed the Commission and the case is here on writ of

error. The accident in question happened in December, 1915; the case therefore falls under the Act of 1915.

"The claimant while engaged in his employment cut his lip on the edge of the flap of an envelope and cancer developed. The slowness of the development prevented the notice required by Sec. 62 of said act, but there was no intention to mislead, therefore the claim was not barred for failure to serve notice upon the Commission within thirty days.

"The last sentence of said section is as follows:

> ' . . . If no such notice is given, and no payment of compensation has been made within one year from the date of the accident, the right to compensation therefor shall be wholly barred.'

"No notice was given and defendant in error claims that no compensation was paid within the year, but the employer within that time paid certain hospital, surgical and medical expenses of the claimant, which plaintiff in error says is compensation under the act."

DECISION:

"With that we agree. Such payment is clearly within the meaning of the word compensation. See Webster, Century Dictionary, Words & Phrases and the use of the word elsewhere in the act; e. g., Sec. 57 (1). This conclusion is strengthened by the fact that the Act of 1919, C. L. Sec. 4458, expressly excepts such expenses and certain others from the payments of compensation which will prevent the bar.

"The insurer claims that the employer is required by the Act of 1915 to pay these bills at all events, whether the employee is entitled to compensation or not. We do not agree with this theory. By the Act of 1915 the same conditions are required to charge the employer with the duty of paying such expenses as with the duty of paying any other compensation."

THE COLORADO CONTRACTING CO., et al., v. THE INDUSTRIAL COMMISSION, et al.
219 Pac. 1075

FACTS: **Index No. 55.**

"The question is whether deceased was in the course of his employment when he was killed. The employer was engaged in laying cement pavement between Manitou and Colorado City. Smith's duty was to watch and patrol the line of work from dusk till dawn. August 15, 1922, at about 7 o'clock at night, while running south with the avowed purpose of boarding an east-bound street car to go home, he fell in front of the car and was killed. The line on which the car was moving ran on the street along which his duties lay and so continued for some distance toward the east from the place of the accident. It is claimed by the employer that since it was Smith's purpose to take this car to go home to supper he thereby had separated himself from his work and so was no longer in the course of his employment. The court below, however, points out that even though it was true that he was going home to supper, and even assuming that he would ordinarily be out of the course of his employment in so doing, yet in this case, for some distance, say half a mile, on his way home, he would have ridden along the line of his own work, and could have viewed it as if he were on foot and therefore he need not necessarily be said to have ceased his work until the street car left the street upon which that work lay. We do not see how this argument can be answered and it renders immaterial the question whether the deceased was in the course of his employment immediately before the accident, when he went to a filling station to order kerosene for his employer, and makes it certain that Industrial Commission v. Anderson, 69 Colo. 147, does not control this case."

DECISION:

"Counsel urge very earnestly that there is no evidence to support the theory that Smith was going to look at the work as he rode on the car. That seems to us a mistake. There is evidence that he was on the work and it was for the respondents to show that he had left it. That was not done. If he could not perform all of his duties while on the car he could perform part of them. We cannot conclude against the award, that he had quit work while he was still on the premises and in a position to do part of it. Suppose that instead of trying to take the car he had walked along the same street on his way to supper, would he not still be in the course of his employment till he turned from that street on his way home?

"It is claimed that the district judge had no right to go beyond the findings of the Commission into the evidence to say that deceased might inspect from the car. Again counsel is mistaken. One question before the court was whether the award was supported by any evidence. That was a question proper for consideration. Ind. Com. v. Elkins, 73 Colo. 475; 216 Pac. 521. To answer it the court must review the evidence and the above mentioned suggestion of the judge was made to show that the award was not without evidence."

Cross References: Industrial Commission v. Anderson, 69 Colo. 147.
Ind. Com. v. Elkas, 73 Colo. 475; 216 Pac. 521.

THE EMPLOYERS' MUTUAL INSURANCE COMPANY, v. THE INDUSTRIAL COMMISSION OF COLORADO
219 Pac. 1078

FACTS: **Index No. 56.**

"By Section 47 of the Workmen's Compensation Act (C. L. 1921, Section 4431), 'The average weekly wage of the injured employe shall be taken as the basis upon which to compute benefits.' 'Wages' is defined to be 'the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the accident.' The average weekly wage is to be ascertained and determined as follows:

> 'Clause b. The total amount earned by the injured or killed employe in the six months preceding the accident shall be computed, which sum shall be divided by twenty-six and the result thus ascertained shall be considered as the average weekly wage . . . for the purpose of computing the benefits provided by this act, except as hereinafter provided.'

"That is, the ordinary method of computation is that provided by Clause 'b'. Clause 'c', which comes within the exception, reads:

> 'That in any case where the foregoing method of computing the average weekly wage of the employe by reason of the nature of the employment or the fact that the injured employe has not worked a sufficient length of time to enable his earnings to be fairly computed thereunder or has been ill or in business for himself or where for any other reason said methods will not fairly compute the average weekly wage, the Commission may in each particular case compute the average weekly wage of said employe by taking the daily earnings at the time of the accident or compute it in such other manner or any such other method as will in the opinion of the Commission, based upon the facts presented, fairly determine such employe's average weekly wage.'

"The Industrial Commission, in making the computation in this case, disregarded the method of 'b' and made its award under 'c'. Upon a review in the District Court, it was held that the Commission had failed to hear and determine the issue raised in the cause, which was whether any facts and circumstances existed authorizing the Commission to disregard 'b' and to proceed with the method prescribed by 'c' and, because of such failure, the award was set aside and the Commission was directed to hear and determine this issue, and state the facts and circumstances, if any, which authorized it to depart from the usual method. Upon a remand, the Commission, upon precisely the same undisputed evidence that was before it on the first hearing, made a supplemental award, which is a combination of recital, reasoning and opinion, but not containing the required specific findings of fact. From this document it seems that the Commission, because of the indefiniteness of the evidence, which afforded but little, if any, basis for the computation under clause 'b', and because for a part of the six months' period preceding the accident the defendant was not working for wages, but was engaged in business for himself, it disregarded clause 'b' and proceeded under clause 'c' and determined that the decedent's average weekly wages exceeded $20.00, solely on the basis of his daily earnings at the time of the accident. Upon a second review the District Court approved the supplemental award.

"The undisputed and only evidence upon this subject is the testimony of claimants' witness Morales. He testified that, during a portion of the six months preceding the accident, he and the decedent were working under a contract of hire by a farmer in cultivating sugar beets and potatoes growing on the farmer's land. The compensation was fixed at so much per acre, and the payments were divided equally between the two. The total amount of the payments was stated."

DECISION:

". . . The Commission has thus stated, if not the fact, or findings based on evidence, the reason for its disregard of clause 'b' and its observance of 'c'. Disregarding the failure to make specific findings of fact, and waiving the indefiniteness and insufficiency of the form of the supplemental award, and that the document is chiefly an opinion, it is wholly insufficient as an excuse for ignoring the ordinary method of computing the average weekly wage prescribed by 'b', and resorting to the almost uncontrolled, indefinite and uncertain methods of clause 'c'. There is not a partcle of evidence to sustain the supposed recital of facts. It will be observed that the justification, so far as it is such, for disregarding the usual method of computation, is that the decedent, during the greater part of the six months' period immediately preceding the accident, was not working for wages but was engaged in business for himself. There is not a particle of evidence upon which such finding can rest. Decedent's work in the beet fields was as a laborer for wages by the very definition of that term in the Act. Wages may be on the basis of so much per day or week, or on the basis of tonnage, or upon acreage, or sugar content of beets. The compensation decedent received was for his services at so much per acre. It was clearly wages under all standard definitions and under all recognized authority. 40 Cyc. 240.

There was no basis and no justification for departing from the method prescribed in clause 'b'.

"We may say that there is not a syllable of evidence, or an inference from any evidence, that justifies the Commission in its supposed finding that the decedent was engaged in business for himself instead of working for wages. The Commission has not based its findings upon the theory that the decedent had not worked a sufficient length of time to enable his earnings to be fairly computed under 'b', or that he had been ill for a portion of the six months' period, nor has that body claimed, for any other reason than that the decedent was engaged in business of his own, that the method prescribed by clause 'b' will not fairly compute the average weekly wage. As there is no evidence whatever to support this basic finding as to the nature of the employment, the award resting thereon must be set aside. The claimants are entitled to a fair award, but it must be made upon facts and not mere conjectures or false reasoning, or unwarranted conclusions of the Commission that have no support in the evidence.

"The judgment of the District Court is, therefore, reversed, with instructions to set aside its approval, judgment, and to remand the cause to the Commission directing it to vacate its supplemental award, and to compute and make an award under clause 'b' of Section 47."

Cross References: Industrial Commission of Colorado v. Elkas, 73 Colo. 476; 216 Pac. 521.

SARAH ZOOK v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.
223 Pac. 221

Index No. 57.

"This is a review, at the instance of an unsuccessful claimant, of a judgment of the District Court which approved an award of the Industrial Commission, made under the Workmen's Compensation Act, denying compensation:

FACTS:

This Act expressly declares, and this court repeatedly held, that such an award may be set aside by the courts only when the Commission acts without, or in excess of, its powers, where the finding or award is procured by fraud, or its findings of fact do not support the same. Claimant's assignments of error reveal a misapprehension or misstatement of the established practice in this jurisdiction limiting the courts in reviewing awards of the Commission. We are asked, as was the District Court, to proceed as in ordinary civil cases and pass upon the Referee's rulings at the hearing, such as objections to the admission of testimony, the weight of evidence, credibility of witnesses and mere irregularities in procedure. Courts are forbidden by the statute to do so."

"From the record before us it appears that the alleged accident to decedent occurred, if at all, on April 11, 1923, followed by his death on April 18th. The hearing upon claimant's report of the accident and request for compensation was had on the 6th of June. The claimant appeared in person, without an attorney, the indemnitor by counsel. The testimony is brief. Claimant and three witnesses, fellow workmen of decedent, whom she named in her application as witnesses to the injury, all testified. None of them knew or had heard of any accident happening to the decedent at the time alleged, or about that time, and there was no evidence whatever of an accident. On the other hand, the testimony of a physician was that the decedent's death was due to an organic disease of the heart. Upon this evidence the Commission found that there was no accident and that decedent's death was not caused by any accident, but was due to disease of the heart and, upon such finding, denied compensation. As there was not a particle of evidence that an injury had occurred, and the burden of showing it being upon the claimant, the Commission could not rightfully have made any other award. On the contrary, its findings of fact support the award."

DECISION:

"In the claimant's complaint in the District Court, whose object was to have this award set aside, the foregoing facts are recited, and the additional charge that the award was procured by the fraud of the defendants. Such charges were denied. The record of the court does not show that any testimony was taken. In the absence of proof, the claimant was entitled to no relief there. If testimony was taken it is not in the record before us. We might rightly presume that the evidence, if any was produced, would not sustain the allegations of the complaint."

THE COLORADO FUEL AND IRON CO. v. THE INDUSTRIAL COMMISSION
220 Pac. 498

FACTS: **Index No. 58.**

"A monthly sum of $43.40, beginning August 21, 1919, until $3,125.00 should be paid, was awarded by the Industrial Commission, payable by the employer, plaintiff in error, to Solia S. Mondragon, widow of a deceased employe, 'one-half for herself and one-half for the sole and separate use of Tom Mondragon,' a minor son. The company paid these installments until

August 21, 1922. The widow, however, remarried in December, 1921, and from that time the minor and not she was entitled to her share of the payments then unaccrued. C. L. Sec. 4429. Each month she signed and made oath to a statement that she was still unmarried and thereby obtained the payment. Even after the company was informed of the marriage she, and her mother in her presence, denied it to the agent of the company. As soon as the company discovered the remarriage it obtained leave to discontinue the payments. The Commission afterwards made a new award directing that future payment of the whole $43.40 to the benefit of Tom Mondragon, but allowed the company credit for only half of what it had paid the widow for herself after her remarriage, and the District Court affirmed this award. Of this the plaintiff in error complains.

"The grounds upon which the Commission denied the credit were:

"1. That the statute provides that upon remarriage of a widow with dependent child 'the entire unpaid balance of compensation shall be paid to such child', that payment to the widow was not payment to the child and that it was the company's duty to know whether she had remarried.

"2. That the award itself provided that the payments should continue until further order of the Commission 'or until the right to compensation, as to either of the above named dependents, terminates as provided by law'. C. L. Sec. 4429. That under this order the company was under no obligation to pay after the widow's right had 'terminated as provided by law' on her remarriage and that the employer's duty was to know that termination."

DECISION:

"These arguments are forcible but they depend on the premise that it is the duty of the employer to know of the termination, which we do not think is true.

". . . We think the letter, the spirit and the intent of this section, fit the present case. Payments have been made to one dependent (i. e., the mother). The 'other person', (i. e, the minor with a new right), 'claiming to be a dependent' (he certainly does claim to be a dependent) has not given the Commission notice of his claim'. The case therefore is within the strict letter of the section. It was, of course, to enable the employer, when an award had been made, to rest upon it and make his payment in safety, secure that other dependents from Bulgaria, China or the ends of the earth could not appear and say he had paid the wrong person. All the reason, if not the letter of the section, applies with equal force to the present case. He may pay, secure that new rights conferred upon a payee by the death or remarriage, unknown to him, of some one, perhaps in foreign parts, must be made known to him before he is affected thereby. The employer is not bound to search out the dependents, nor is the Commission. The dependents must appear and make their rights known. Here the minor son acquired a new right. This put him in the same position as to it as he was originally as to all his rights; he must make it known. Unless and until he does so the employer may safely pay according to the existing order of the Commission."

LONDON GUARANTEE AND ACCIDENT COMPANY, LIMITED, v. INDUSTRIAL COMMISSION OF COLORADO, a Corporation, et al.

FACTS: **Index No. 59.**

"One Tucker, by an accident arising out of and in the course of his employment, suffered enucleation (total loss) of the eye-ball of a blind eye. The Industrial Commission awarded him compensation as if the eye had had sight, 139 weeks. The District Court affirmed the award. Whether this was right is the only question before us. We think it is not."

DECISION:

"The statute, Section 73 of the Workmen's Compensation Act, S. L. 1923, page 740, provides that 'the injured employe shall, in addition to compensation to be paid for temporary disability, receive compensation for temporary disability, receive compensation for the period as specified, to-wit: . . .

" 'The loss of an eye by enucleation (including disfigurement resulting therefrom) 139 weeks;

Total blindness of one eye, 104 weeks.'

"By Sec. 75, C L. No. 4449, the Commission may allow not exceeding $500.00 for facial disfigurement.

"It is clear both from these contexts and from the natural reason of the matter that the intent and spirit of the statute is, in case of enucleation, to compensate for the loss of both sight and disfigurement and it should be so construed, notwithstanding its letter justifies the construction given below. Agger v. People, 20 Colo. 348. The judgment makes the statute give more for the loss of a blind eye than of the sight of a good one.

"Judgment reversed with direction to the District Court to set aside the award of 139 weeks for enucleation and to order the Commission to make an award for disfigurement if it deems it proper to do so."

THE INDUSTRIAL COMMISSION OF COLORADO, et al., v. THE EMPLOYERS' MUTUAL INSURANCE COMPANY, et al.

FACTS: **Index No. 60.**

"This is a proceeding instituted before the Industrial Commission under the Workmen's Compensation Act. The Commission awarded this claimant, an employe, compensation at the rate of $10.00 per week. The District Court, on appeal by the insurer and the employer, set aside this award and ordered the Commission to make an award of $5.00 per week. To review the judgment of the District Court, the Commission and the claimant bring the cause here for review.

"Under section 77 of the Act of 1919 (section 4451, C. L. 1921), the claimant is entitled to an award of 'fifty per cent. of the average weekly wages' he had been receiving at the time of the accident. Section 4421, C. L. 1921, provides that the term 'wages' shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire."

"The findings of the Commission, leading it, or supposed to lead it, to the conclusion that the average weekly wage of the claimant exceeded $20.00, so as to authorize an award of $10.00 per week, are as follows:

'Claimant worked at the coal mine of the . . . employer during the six months preceding his injury, at such time as the mine operated. On the days that he worked, he averaged between $4.00 and $5.00 per day. When he was not working he assisted his wife in the work about the boarding house which he and his wife were then operating. In view of the fact that the claimant worked only part time at his work of a coal miner and that the remainder of his time was spent in working for himself, the Referee is of the opinion that claimant's average earnings must be computed on the basis of his daily earnings at the time of his accident. Computed on this basis, the claimant's average weekly wages exceeded $20.00.'"

DECISION:

"The Commission, of course, is not always required to proceed under clause (b), but may, under certain circumstances, proceed to compute the average weekly wage in accordance with clause (c) of the same section, 'by taking the daily earnings at the time of the accident.' That is what it did do in the instant case. It is contended that the Commission was bound to proceed under clause (b) and that there was no ground for acting under clause (c).

"It is not necessary to determine that question. It is sufficient to say that there is neither any finding, nor any evidence, to justify fixing the average weekly wage at $20.00 under either clause (b) or clause (c). The Commission did not find how many days each week he worked.

"Claimant worked 68 days during the six months preceding the accident. Neither side offered any evidence relating to earnings at any preceding time. Sixty-eight days during six months means that the claimant averaged not more than three days per week. During these six months his earnings totaled $222.86. Dividing this by 68, produces $3.27 as the average daily wage. Computed on the basis of 'daily earnings,' as authorized by clause (c), the average weekly wage is not over $10.00, nor one authorizing a greater award than compensation at $5.00 per week.

"The District Court was right in setting aside the award. The judgment is affirmed."

UNITED STATES FIDELITY & GUARANTY COMPANY, et al., v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.

FACTS: **Index No. 61.**

"This case was here once before and we sent it back for more definite findings. U. S. F. Co. v. Ind. Co., 73 Colo. 90.

The Commission finds, among other things, as follows:

> 'January 11, A. D. 1922, while performing his usual dutles in and about the plant of his employer he (the deceased employe) accidentally inhaled an excessive amount of gas. This accident occurred shortly before 9:30 p. m. About 9:30 p. m. he was found unconscious in the upstairs portion of his employer's plant. He remained unconscious until his death, which occurred January 13, A. D. 1922. His death was the proximate result of the excessive inhalation of the gas herein mentioned. His system had been subjected to the continued inhalation of such gas during the term of employment; the excessive inhalation of such gas, herein mention, accelerated the fatal effect of such gas upon his system. His death would not have occurred at the place nor at the time had he not been exposed to the accidental inhalation of the gas herein mentioned.'

DECISION:

"These findings necessitate an award for the claimant. The deceased got an unexpected, excessive, accidental dose of gas, which, with his previous inhalations produced death. His death would not have occurred when and where it did but for this unexpected inhalation. Since the draft of gas which killed him was accidental, it is immaterial whether his health had

been impaired by previous inhalations so that the final draft was rendered fatal. See Ellerman v. Ind. Com., 73 Colo. 20, 22.

"Judgment affirmed."

THE EMPLOYERS' MUTUAL INSURANCE COMPANY, et al., v. THE INDUSTRIAL COMMISSION OF COLORADO, et al.

FACTS: **Index No. 62.**

"The findings of the Commission, as far as now material, are as follows:

> 'The claimant was injured during the noon hour. He came out from the mine where he was working and in attending a call of nature stopped under an old bank on the top of the main slope portal and was caught by a cave-in of this bank. His accident occurred on the employer's premises and during the claimant's working hours.'

DECISION:

"The fact that the accident occurred during the noon hour, when no actual work was being done, does not preclude the accident from being in the course of his employment.

"The contention is that the accident did not arise out of the employment. The claimant was injured in attending to a call of nature. Such an injury, or accident, is, under ordinary circumstances, one arising out of the employment. Ocean Corporation v. Pallero, 66 Colo. 190; 180 Pac. 95. The facts, as found by the Commission, make the accident involved in the instant case one arising out of the employment.

"We find no ground for setting aside the award. The District Court was right in affirming it, and its judgment is, therefore, affirmed."

SUMMARY OF INDUSTRIAL CASES

The following is a list of the cases handled by the Commission during the year, with an epitomized statement of facts relating thereto:

Case No. 1102. Bridge and Structural Iron Workers No. 24 vs. Employer, Denver, January 12, 1924. 110 employes, one employer. Satisfactory settlement made and case withdrawn.

Case No. 1103. Bricklayers' Union No. 44 vs. Employers, Colorado Springs, January 18, 1924. 10 employes, 25 employers. Bricklayers and stonemasons consolidated into one union and mutual agreement made with employers.

Case No. 1104. Ady-Crowe Mercantile Co. vs. Employes, Denver, January 24, 1924. One employer, 6 employes. Complaint in regard to working conditions and hours. Case set for hearing, but at a conference with both sides and the Commission a mutual agreement was reached.

Case No. 1105. Nicoll, The Tailor, vs. Tailors' Union No. 3, Denver, January 31, 1924. One employer, 17 employes. Complaint from union that the manager had changed conditions from day work to piece work. Commission set case for hearing and the decision of the Commission was that the employer was not justified in making the change.

Case No. 1106. Stereotypers Union No. 67 vs. Pueblo Publishers, Pueblo, February 11, 1924. 7 employes, 2 employers. Notice of increase in wages. Case was settled by mutual agreement.

Case No. 1107. Sunshine Coal Company vs. Employes, Durango, February 14, 1924. 7 employes, 3 employers. Notice from the company of proposed wage reduction. No protest and case closed.

Case No. 1108. Painters and Paperhangers, Colorado Springs, February 25, 1924. 85 employes, 13 employers. Notice of increase in wages. Commission set case for hearing. Wage increase granted.

Case No. 1109. Carpenters District Council vs. Master Carpenters, Denver, February 27, 1924. Notice that men employed in fixture shops would not be allowed to work outside. No protest from employers and case closed.

Case No. 1110. O. S. Roslund, The Tailor vs. Employes, Denver, February 28, 1924. 10 employes, one employer. Notice of change in working conditions. After investigation by Commission, found no justification for complaint.

Case No. 1111. Yellow Cab Co. vs. Employes Denver, March 1, 1924, 45 employes, one employer. Notice from employer that the drivers would be put on a commission basis. Settled by mutual agreement.

Case No. 1112. Window Washers No. 29, Denver, March 10, 1924, 25 employes, 3 employers. Notice of increase in wages. Case settled by mutual agreement.

Case No. 1113. Colorado Lumber & Investment Company vs. Employes, Denver, March 14, 1924. Complaint from employes of non-payment of wages. Hearing held at request of attorney general for investigation purposes only.

Case No. 1114. Building Laborers No. 1 vs. Employers, Denver, March 26, 1924. 300 employes, 40 employers. Notice of demand for increase in wages. Case set for hearing and at a conference 50c per day was mutually agreed upon.

Case No. 1115. Caliente Coal Company vs. Employes, Maitland Mines Nos. 1 and 2, March 26, 1924. 19 employes, one employer. Notice from company of wage reduction. No protest from employes and case closed.

Case No. 1116. Caliente Coal Company vs. Employes, Ravenwood Mine, March 26, 1924. 18 employes, one employer. Notice from company they had a lease on this property and would open on a reduction scale. No protest from employes and case closed.

Case No. 1117. Bricklayers, Stonemasons and Marblemasons No. 1 vs. Tile and Marble Constractors' Association, March 26, 1924, Denver. 25 em-

ployes, 6 employers. Notice from employes asking wage increase of $1.00 per day. Case settled by mutual agreement and Commission terminated jurisdiction.

Case No. 1118. Bridge, Structural and Ornamental Iron Workers vs. Employers, Denver, March 29, 1924. 105 employes. Notice of an increase in wages. Case set for hearing. Findings and award of Commission granting wage increase.

Case No. 1119. Cement Finishers No. 577 vs. Employers, Denver. Notice of an increase in wages. Commission was unable to get any information from either party. Jurisdiction was terminated.

Case No. 1120. Temple Fuel Company vs. Employes, Brodhead Mine. Notice from company of reduction in wages. Protest filed by president of union. At a conference with protester he expressed the opinion that no settlement could be made. Jurisdiction terminated by Commission.

Case No. 1121. Hodcarriers No. 718 vs. Associated Contractors, Denver, April 8, 1924. 250 employes, 50 employers. Notice of demand for an increase in wages. Case set for hearing, but at a conference it was settled by mutual agreement, granting increase in wages.

Case No. 1122. Denver Tramway Company vs. Employes, Denver, April 9, 1924. Notice from company of a plan for insurance. No protest from employes and jurisdiction terminated by Commission.

Case No. 1123. Bakers and Confectionery Workers No. 26 vs. Employers, Denver, April 11, 1924. Notice of a demand for an increase in wages. Settled by mutual agreement.

Case No. 1124. National Fuel Company vs. Employes, Puritan Mine, April 17, 1924. Notice of a new contract. No protest from employes and jurisdiction terminated by Commission.

Case No. 1125. National Fuel Company vs. Employes, Monarch Mine, April 17, 1924. Notice of a new contract. No protest from employes and jurisdiction terminated by Commission.

Case No. 1126. Bakers and Confectionery Workers No. 26 vs. Employers, Denver, April 12, 1924. Notice of an increase in wages. 175 employes, 20 employers. Case set for hearing. Increase in wages granted.

Case No. 1127. Elevator Constructors' Union No. 25 vs. Elevator Manufacturers, Denver, April 25, 1924. Notice of an increase in wages. Case set for hearing. At a conference a settlement was mutually agreed upon.

Case No. 1128. Glass Workers' Union No. 930 vs. Employers, Denver, April 30, 1924. 54 employes, 6 employers. Notice of an increase in wages. After investigation the Commission could not affect a settlement and terminated jurisdiction.

Case No. 1129. Cooks Association, Local No. 18, Denver, May 10, 1924. Notice from union that the wages and working conditions would remain the same for the next year.

Case No. 1130. Drainlayers Union No. 331, Denver, May 17, 1924. Notice of an increase in wages. Case set for hearing. At a conference a mutual agreement was made granting wage increase of 50c per day.

Case No. 1131. Huerfano Coal Company vs. Employes, Ludlow Mine, May 26, 1924. Notice from company that the mine was closed for some time but would open on a reduced scale, also a petition from a number of the employes asking that the mine be reopend. Aftr 30 days no protest made and case closed.

Case No. 1132. Plasterers' Union No. 32, Denver, June 3, 1924. Case set for hearing. Findings and award of Commission wage increase not justified at this time.

Case No. 1133. Printing Pressmen's Union No. 144, Colorado Springs, June 6, 1924. 20 employes, 10 employers. Notice of the opening of negotiations for a new agreement. Case closed for lack of information.

Case No. 1134. Mutual Coal Co. vs. Employes, Walsenburg, June 9, 1924. Notice from employes of a lock-out. Case set for hearing at Walsenburg for June 17, 1924. Findings and award by Commission that employer did not cause a lock-out.

Case No. 1135. Electrical Workers No. 12, Pueblo, June 9, 1924. Notice from Union of proposed wage increase in 30 days. Settled by mutual agreement.

Case No. 1136. Stereotypers and Electrotypers No. 13, Denver, June 13, 1924. 33 employes, 3 employers. Notice of wage increase. Case set for hearing. Findings and award of Commission that working conditions remain the same and no general increase in wages to stereotypers is justified by conditions at this time. Commissioner Reilly dissenting.

Case No. 1137. Mutual Coal Co. vs. Employees, Walsenburg, July 1, 1924. Notice from company that a notice was posted at the mine of wage reduction to take effect July 30, 1924. No protest. Jurisdiction terminated.

Case No. 1138. Platt Rogers, General Contractors, vs. Employes, Pueblo, July 18, 1924. Complaint from employes of wage reduction. After investigation, and lack of information by parties making complaint, jurisdiction was terminated.

Case No. 1139. Oakdale Mine Employes vs. Employer, Oakview, May 12, 1924. 90 employes, 1 employer. Petition from employes to the company asking that mine be reopened at the 1917 scale. No protest from employes and case closed.

Case No. 1140. Three Pines Coal Company vs. Employes, Vallorso, July 15, 1924. 50 employes, 1 employer. Notice of wage reduction from company, effective August 16, 1924. No protest and jurisdiction terminated.

Case No. 1141. Typographical Union No. 49, Denver, July 25, 1924. 125 employes, 45 employers. Notice of increase in wages. Commission notified that case settled by mutual agreement.

Case No. 1142. Moving Picture Operators No. 230, Denver, July 26, 1924. Notice of increase in wages. Settled by mutual agreement.

Case No. 1143. Stage Employes, Denver, July 26, 1924. 115 employes, 9 employers. Notice of increase in wages. Settled by mutual agreement.

Case No. 1144. Bill Posters No. 59, Denver, July 30, 1924. 25 employes, 8 employers. Notice of increase in wages. Settled by mutual agreement.

Case No. 1145. Stage Employes No. 62, Colorado Springs, July 30, 1924. Notice to employers that present contract would be in force for the next year. Mutual agreement that present conditions continue.

Case No. 1146. Moving Picture Operators No. 448, Pueblo, August 1, 1924. Notice of increase in wages. Settled by mutual agreement.

Case No. 1147. Printing Pressmen's Union No. 40, Denver, August 1, 1924. Notice of renewal of contract. Settled by mutual agreement.

Case No. 1148. Bricklayers Union No. 4, Colorado Springs, August 1, 1924. Notice of increase in wages. No protest from employers and case closed.

Case No. 1149. Stone Masons, Denver, August 6, 1924. 8 employes, 2 employers. Notice from employer that men had walked off the job. Investigation made and found that employes had done this account of the company using unfair stone. Case set for hearing and decision of the Commission was that the employes had treated the employer fair and to return to work and finish that particular job.

Case No. 1150. Plasterers, Denver, August 7, 1924. Notice from V. P. Johnson that he intended to run as open shop. Notice withdrawn by employer.

Case No. 1151. Bell Coal Co. vs. Employes, Brooks Harris Mine, August 9, 1924. Complaint from employes of wage reduction. After investigation Commission found no justification for complaint.

Case No. 1152. Oliver Fuel & Coal Products Co. vs. Employes, Somerset, August 11, 1924. Notice from company of reduction in wages. No protest from employes and case terminated.

Case No. 1153. National Fuel Co. vs. Employes, Bowen, August 20, 1924. Complaint from one man of discharge without cause. After investigation Commission found no cause for complaint and case was terminated.

Case No. 1154. Cooks and Waiters, Pueblo, September 2, 1924. Complaint from Union Bakery Lunch of trouble with business agent. Trouble settled satisfactorily.

Case No. 1155. Bakers No. 26 vs. Manhattan Restaurant, Denver, September 16, 1924. Complaint that Manhattan Restaurant refused to sign new scale. Case settled satisfactorily.

Case No. 1156. Vickers Coal Co., Trinidad, September 20, 1924. Contract canceled between company and lessees. No protest and case closed.

Case No. 1157. Metropolitan Window Cleaning Co., Denver, October 10, 1924. Wage agreement filed. Same contract to be in effect until May 8, 1925.

Case No. 1158. Colorado Fuel & Iron Co., Pictou Mine, Walsenburg, October 16, 1924. 2 employes, 1 employer. Complaint about discharge of two employes. After investigation, Commission found no cause for complaint.

Case No. 1159. Morning Glory Mine vs Employes, Walsenburg, October 23, 1924. 35 employes, 2 employers. Complaint in regard to charge for electric lights. Case set for hearing. Findings and award by Commission wherein it was found that company had a right to make said charge.

Case No. 1160. Sunnyside Coal Mining Co., Story Mine, Walsenburg, October 27, 1924. 65 employers, 1 employer. Notice from company of installation of electric lamps. No protest from employes and case closed.

CHANGES IN THE COST OF LIVING DENVER, COLORADO

Detailed information covering the original investigation as to the minimum or comfort level budget necessary for the theoretical family of five, consisting of the so-called "wage earner," the mother and three children of school age, has been given in former reports of this Commission.

The index level as given in this report has been maintained by totaling the current prices of the individual items composing the budget, the retail prices of which have been gathered from the same source at weekly or monthly intervals. The charts and tables have been continued to include December, 1924, comparing prices of that date with those of January, 1914, and with the data given it is possible to make comparisons of changes between any given dates.

Table I, "Comparative Yearly Totals," is more readily interpreted by graphic chart "A," which shows the rise and fall of prices at semi-annual periods, while the curve as shown in graphic chart "B" pictures more readily to the eye the changes in cost of the family budget, and the trend in the cost of the food budget, than do the index numbers given in Table II.

It will be noted that from the beginning of the studies in 1914 there was, with an occasional exception, a steady increase in prices until June-July, 1920, when the so-called "peak" was reached. Reductions in the prices of food commodities and clothing had a tendency to decrease the total cost of living gradually until June, 1921, since which date the index level has, with slight upward or downward fluctuations, remained practically the same.

TABLE I—COMPARATIVE YEARLY TOTALS

Month	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924
January	$747.35	$744.28	$790.99	$871.79	$ 977.22	$1,045.88	$1,172.63	$1,223.25	$1,147.64	$1,176.03	$1,176.63
February	736.85	744.49	797.44	906.17	1,011.12	1,035.81	1,170.29	1,209.32	1,130.99	1,166.83	1,162.59
March	731.18	733.15	800.76	908.51	986.52	1,034.51	1,184.74	1,186.58	1,124.44	1,151.60	1,138.07
April	722.03	719.95	805.86	910.22	976.59	1,041.58	1,240.51	1,175.10	1,152.89	1,155.81	1,151.64
May	726.13	725.72	805.29	957.28	966.87	1,058.95	1,279.41	1,161.58	1,151.23	1,142.71	1,139.47
June	736.22	747.25	795.04	971.16	980.98	1,066.02	1,290.78	1,156.43	1,150.29	1,139.75	1,139.99
July	741.68	759.99	809.97	957.43	1,005.98	1,118.44	1,290.78	1,169.38	1,168.58	1,134.60	1,144.18
August	745.74	770.49	819.79	967.30	1,016.55	1,131.41	1,273.00	1,180.51	1,155.01	1,139.80	1,149.91
September	750.73	770.35	808.81	958.46	1,018.10	1,139.69	1,274.91	1,176.10	1,141.85	1,139.37	1,152.25
October	750.47	770.54	842.57	976.10	1,042.32	1,158.14	1,267.35	1,157.90	1,152.89	1,149.87	1,160.36
November	739.91	789.84	857.34	985.62	1,032.59	1,148.29	1,256.56	1,176.08	1,162.88	1,149.35	1,160.10
December	744.80	791.72	866.28	965.72	1,035.04	1,182.09	1,240.94	1,169.06	1,173.38	1,159.75	1,176.95

TABLE II—COMPARATIVE YEARLY TOTALS—INCLUDING ITEMS

	Date	I Housing	II Carfare	III Food	IV Clothing	V Fuel and Light	VI Health	VII Insurance	VIII Sundries	IX Yearly Totals	X Index No. Using Jan. 1, '14 as 100
1914	January	$108.00	$30.30	$368.42	$104.20	$33.55	$20.00	$22.88	$60.00	$747.35	100.0
	February	108.00	30.30	357.92	104.20	33.55	20.00	22.88	60.00	736.85	98.5
	March	108.00	30.30	352.25	104.20	33.55	20.00	22.88	60.00	731.18	97.8
	April	108.00	30.30	343.10	104.20	33.55	20.00	22.88	60.00	722.03	96.6
	May	108.00	30.30	347.20	104.20	33.55	20.00	22.28	60.00	726.13	97.1
	June	108.00	30.30	357.29	104.20	33.55	20.00	22.88	60.00	736.22	98.5
	July	108.00	30.30	362.75	104.20	33.55	20.00	22.88	60.00	741.68	99.2
	August	108.00	30.30	366.81	104.20	33.55	20.00	22.88	60.00	745.74	99.7
	September	108.00	30.30	371.80	104.20	33.55	20.00	22.88	60.00	750.73	100.4
	October	108.00	30.30	371.54	104.20	33.55	20.00	22.88	60.00	750.47	100.4
	November	108.00	30.30	360.98	104.20	33.55	20.00	22.88	60.00	739.91	99.0
	December	108.00	30.30	365.87	104.20	33.55	20.00	22.88	60.00	744.80	99.6
1915	January	$108.00	$30.30	$365.35	$104.20	$33.55	$20.00	$22.88	$60.00	$744.28	99.5
	February	108.00	30.30	365.56	104.20	33.55	20.00	22.88	60.00	744.49	99.6
	March	108.00	30.30	354.22	104.20	33.55	20.00	22.88	60.00	733.15	99.0
	April	108.00	30.30	341.02	104.20	33.55	20.00	22.80	60.00	719.95	96.3
	May	108.00	30.30	346.79	104.20	33.55	20.00	22.88	60.00	725.72	97.1
	June	108.00	30.30	368.32	104.20	33.55	20.00	22.88	60.00	747.25	100.0
	July	108.00	30.30	381.06	104.20	33.55	20.00	22.88	60.00	759.99	101.6
	August	108.00	30.30	391.56	104.20	33.55	20.00	22.88	60.00	770.49	103.1
	September	108.00	30.30	391.42	104.20	33.55	20.00	22.88	60.00	770.35	103.0
	October	108.00	30.30	391.61	104.20	33.55	20.00	22.88	60.00	770.54	103.1
	November	108.00	30.30	399.46	115.65	33.55	20.00	22.88	60.00	789.84	105.6
	December	108.00	30.30	401.34	115.65	33.55	20.00	22.88	60.00	791.72	105.9
1916	January	$108.00	$30.30	$400.61	$115.65	$33.55	$20.00	$22.88	$60.00	$790.99	105.8
	February	108.00	30.30	407.06	115.65	33.55	20.00	22.88	60.00	797.44	106.7
	March	108.00	30.30	410.38	115.65	33.55	20.00	22.88	60.00	800.76	107.1
	April	108.00	30.30	415.48	115.65	33.55	20.00	22.88	60.00	805.86	107.8
	May	108.00	30.30	414.91	115.65	33.55	20.00	22.88	60.00	805.29	107.8
	June	108.00	30.30	404.66	115.65	33.55	20.00	22.88	60.00	795.04	106.3
	July	108.00	30.30	419.59	115.65	33.55	20.00	22.88	60.00	809.97	108.3
	August	108.00	30.30	425.20	115.65	37.75	20.00	22.88	60.00	819.78	109.6
	September	108.00	30.30	414.23	115.65	37.75	20.00	22.88	60.00	808.81	108.2
	October	108.00	30.30	436.54	127.10	37.75	20.00	22.88	60.00	842.57	112.7
	November	108.00	30.30	451.31	127.10	37.75	20.00	22.88	60.00	857.34	114.7
	December	108.00	30.30	460.25	127.10	37.75	20.00	22.88	60.00	866.28	115.9

1917	January	$108.00	$30.30	$465.76	$127.10	$37.75	$20.00	$22.88	$60.00	$871.79	116.6
	February	108.00	**30.30**	**500.14**	**127.10**	37.75	20.00	22.88	60.00	906.17	121.2
	March	108.00	30.30	502.48	127.10	37.75	20.00	22.88	60.00	908.51	121.5
	April	108.00	30.30	504.19	127.10	37.75	20.00	22.88	60.00	910.22	121.7
	May	108.00	30.30	551.25	127.10	37.75	20.00	22.88	60.00	957.28	128.1
	June	108.00	30.30	561.03	127.10	41.85	20.00	22.88	60.00	971.16	129.9
	July	108.00	30.30	547.30	127.10	41.85	20.00	22.88	60.00	957.43	128.1
	August	108.00	30.30	550.47	127.10	41.85	20.00	22.88	66.70	967.30	129.4
	September	108.00	30.30	551.63	127.10	41.85	20.00	22.88	66.70	958.46	128.2
	October	108.00	30.30	539.34	147.03	41.85	20.00	22.88	66.70	976.10	130.6
	November	108.00	30.30	548.86	147.03	41.85	20.00	22.88	66.70	985.62	131.8
	December	108.00	30.30	526.86	147.03	43.95	20.00	22.88	66.70	965.72	129.2
1918	January	$108.00	$30.30	$538.36	$147.03	$43.95	$20.00	$22.88	$66.70	$ 977.22	130.7
	February	108.00	30.30	572.26	147.03	43.95	20.00	22.88	66.70	1,011.12	135.3
	March	108.00	30.30	547.66	147.03	43.95	20.00	22.88	66.70	986.52	132.0
	April	108.00	30.30	537.73	147.03	43.95	20.00	22.88	66.70	976.59	130.6
	May	113.40	30.30	513.86	154.38	45.35	20.00	22.88	66.70	966.87	129.3
	June	119.07	30.30	518.44	158.24	45.35	20.00	22.88	66.70	980.98	131.2
	July	129.19	30.30	526.86	158.24	48.50	20.00	22.88	70.00	1,005.97	134.6
	August	129.19	30.30	533.57	162.11	48.50	20.00	22.88	70.00	1,016.55	136.0
	September	129.19	30.30	531.18	166.05	48.50	20.00	22.88	70.00	1,018.10	136.2
	October	129.19	36.36	548.34	166.05	48.50	20.00	22.88	71.00	1,042.32	139.5
	November	129.19	36.36	538.61	166.05	48.50	20.00	22.88	71.00	1,032.59	138.1
	December	129.19	36.36	541.06	166.05	48.50	20.00	22.88	71.00	1,035.04	138.5
1919	January	$129.19	$42.42	$545.84	$166.05	$48.50	$20.00	$22.88	$71.00	$1,045.88	139.9
	February	119.12	36.36	532.16	185.79	48.50	20.00	22.88	71.00	1,035.81	138.6
	March	114.12	36.36	535.86	**185.79**	48.50	20.00	22.88	71.00	1,034.51	138.4
	April	114.12	36.36	542.93	185.79	48.50	20.00	22.88	71.00	**1,041.58**	**139.3**
	May	114.12	36.36	560.30	185.79	48.50	20.00	22.88	71.00	1,058.95	141.7
	June	114.12	36.36	567.37	185.79	48.50	20.00	22.88	71.00	1,066.02	142.6
	July	120.60	36.36	558.17	241.53	48.50	20.00	22.88	71.00	1,118.44	149.6
	August	120.60	36.36	570.54	241.53	48.50	20.00	22.88	71.00	1,131.41	151.4
	September	129.19	36.36	558.16	253.60	48.50	20.00	22.88	71.00	1,139.69	152.4
	October	132.66	36.36	573.14	253.60	48.50	20.00	22.88	71.00	**1,158.14**	**154.9**
	November	132.66	36.30	569.35	253.60	48.50	20.00	22.88	71.00	1,148.29	153.6
	December	140.40	36.36	582.40	253.60	51.45	20.00	22.88	75.00	1,182.09	158.2
1920	January	$140.40	$36.36	$572.94	$253.60	$51.45	$20.00	$22.88	$75.00	$1,172.63	156.9
	February	140.40	36.36	570.60	253.60	51.45	20.00	22.88	75.00	1,170.29	**156.6**
	March	140.40	36.36	585.05	253.60	51.45	20.00	22.88	75.00	1,184.74	158.5
	April	152.68	36.36	610.64	271.50	51.45	20.00	22.88	75.00	1,240.51	165.9
	May	156.00	36.36	624.47	293.25	51.45	20.00	22.88	75.00	1,279.41	171.1
	June	156.00	36.36	632.84	293.25	51.45	20.00	22.88	78.00	1,290.78	**172.7**
	July	156.00	36.36	632.84	293.25	51.45	20.00	22.88	78.00	1,290.78	172.7
	August	161.80	36.36	602.26	293.25	51.45	25.00	22.88	80.00	1,273.00	170.3
	September	161.80	36.36	590.87	293.25	64.75	25.00	22.88	80.00	1,274.91	170.6
	October	161.80	36.36	591.81	284.75	64.75	25.00	22.88	80.00	1,267.35	169.5
	November	161.80	36.36	**584.22**	**280.50**	65.80	25.00	22.88	80.00	1,256.56	168.1
	December	161.80	36.36	569.35	276.25	69.30	**25.00**	**22.88**	80.00	1,240.94	166.0

TABLE II—COMPARATIVE YEARLY TOTALS—INCLUDING ITEMS—Continued

	Date	I Housing	II Carfare	III Food	IV Clothing	V Fuel and Light	VI Health	VII Insurance	VIII Sundries	IX Yearly Totals	X Index No. Using Jan. 1, '14 as 100
1921	January	$161.80	$36.36	$551.66	$276.25	$69.30	$25.00	$22.88	$80.00	$1,223.25	163.6
	February	161.80	36.36	542.98	276.25	64.05	25.00	22.88	80.00	1,209.32	161.8
	March	165.00	36.36	517.04	276.25	64.05	25.00	22.88	80.00	1,186.58	158.8
	April	165.00	45.45	501.02	276.25	59.50	25.00	22.88	80.00	1,175.10	157.2
	May	165.00	45.45	487.50	276.25	59.50	25.00	22.88	80.00	1,161.58	155.4
	June	165.00	45.45	482.35	276.25	59.50	25.00	22.88	80.00	1,156.43	154.7
	July	165.00	45.45	495.30	276.25	59.50	25.00	22.88	80.00	1,169.38	156.4
	August	165.00	45.45	506.43	276.25	59.50	25.00	22.88	80.00	1,180.51	158.0
	September	170.00	45.45	498.42	276.25	58.10	25.00	22.88	80.00	1,176.10	157.4
	October	170.00	45.45	496.70	259.77	58.10	25.00	22.88	80.00	1,157.90	154.9
	November	173.40	45.45	507.83	259.77	61.75	25.00	22.88	80.00	1,176.08	157.4
	December	173.40	45.45	500.81	259.77	61.75	25.00	22.88	80.00	1,169.06	156.4
1922	January	$173.40	$45.45	$479.39	$259.77	$61.75	$25.00	$22.88	$80.00	$1,147.64	153.6
	February	173.40	45.45	466.39	259.77	58.10	25.00	22.88	80.00	1,130.99	151.3
	March	173.40	45.45	459.84	259.77	58.10	25.00	22.88	80.00	1,124.44	150.4
	April	173.40	45.45	470.96	277.10	58.10	25.00	22.88	80.00	1,152.89	154.2
	May	173.40	45.45	469.30	277.10	58.10	25.00	22.88	80.00	1,151.23	154.0
	June	173.40	45.45	468.36	277.10	58.10	25.00	22.88	80.00	1,150.29	153.9
	July	173.40	45.45	489.53	277.10	55.30	25.00	22.88	80.00	1,168.58	156.3
	August	173.40	45.45	475.18	277.10	56.00	25.00	22.88	80.00	1,155.01	154.5
	September	173.40	45.45	462.02	277.10	56.00	25.00	22.88	80.00	1,141.85	152.8
	October	173.40	45.45	469.56	277.10	59.50	25.00	22.88	80.00	1,152.89	154.2
	November	173.40	45.45	480.95	277.10	58.10	25.00	22.88	80.00	1,162.88	155.6
	December	173.40	45.45	482.35	286.20	58.10	25.00	22.88	80.00	1,173.38	157.0
1923	January	$173.40	$45.45	$485.00	$286.20	$58.10	$25.00	$22.88	$80.00	$1,176.63	157.3
	February	173.40	45.45	475.80	286.20	58.10	25.00	22.88	80.00	1,166.83	156.1
	March	173.40	45.45	463.37	286.20	55.30	25.00	22.88	80.00	1,151.60	154.1
	April	173.40	45.45	467.58	286.20	55.30	25.00	22.88	80.00	1,155.81	154.6
	May	173.40	45.45	454.48	286.20	55.30	25.00	22.88	80.00	1,142.71	152.9
	June	173.40	45.45	451.52	286.20	55.30	25.00	22.88	80.00	1,139.75	152.5
	July	173.40	45.45	446.37	286.20	55.30	25.00	22.88	80.00	1,134.60	151.8
	August	173.40	45.45	451.57	286.20	55.30	25.00	22.88	80.00	1,139.80	152.5
	September	173.40	45.45	454.64	286.20	51.80	25.00	22.88	80.00	1,139.37	152.4
	October	173.40	45.45	465.14	286.20	51.80	25.00	22.88	80.00	1,149.87	153.8
	November	173.40	45.45	464.62	286.20	51.80	25.00	22.88	80.00	1,149.35	153.8
	December	173.40	45.45	475.02	286.20	51.80	25.00	22.88	80.00	1,159.75	155.2

1924	January	$173.40	$45.45	$484.90	$286.20	$58.80	$25.00	$22.88	$80.00	$1,176.63	157.4
	February	173.40	45.45	470.86	286.20	58.80	25.00	22.88	80.00	1,162.59	155.5
	March	173.40	45.45	445.64	286.20	59.50	25.00	22.88	80.00	1,138.07	152.3
	April	173.40	45.45	459.21	286.20	59.50	25.00	22.88	80.00	1,151.64	154.1
	May	173.40	45.45	447.04	286.20	59.50	25.00	22.88	80.00	1,139.47	152.4
	June	173.40	45.45	447.56	286.20	57.40	25.00	22.88	80.00	1,139.99	152.5
	July	173.40	45.45	453.85	286.20	57.40	25.00	22.88	80.00	1,144.18	153.1
	August	173.40	45.45	459.58	286.20	57.40	25.00	22.88	80.00	1,149.91	153.8
	September	173.40	45.45	461.92	286.20	57.40	25.00	22.88	80.00	1,152.25	154.2
	October	173.40	45.45	470.03	286.20	57.40	25.00	22.88	80.00	1,160.36	155.2
	November	173.40	45.45	469.77	286.20	57.40	25.00	22.88	80.00	1,160.10	155.2
	December	173.40	45.45	489.52	286.20	54.50	25.00	22.88	80.00	1,176.95	157.5

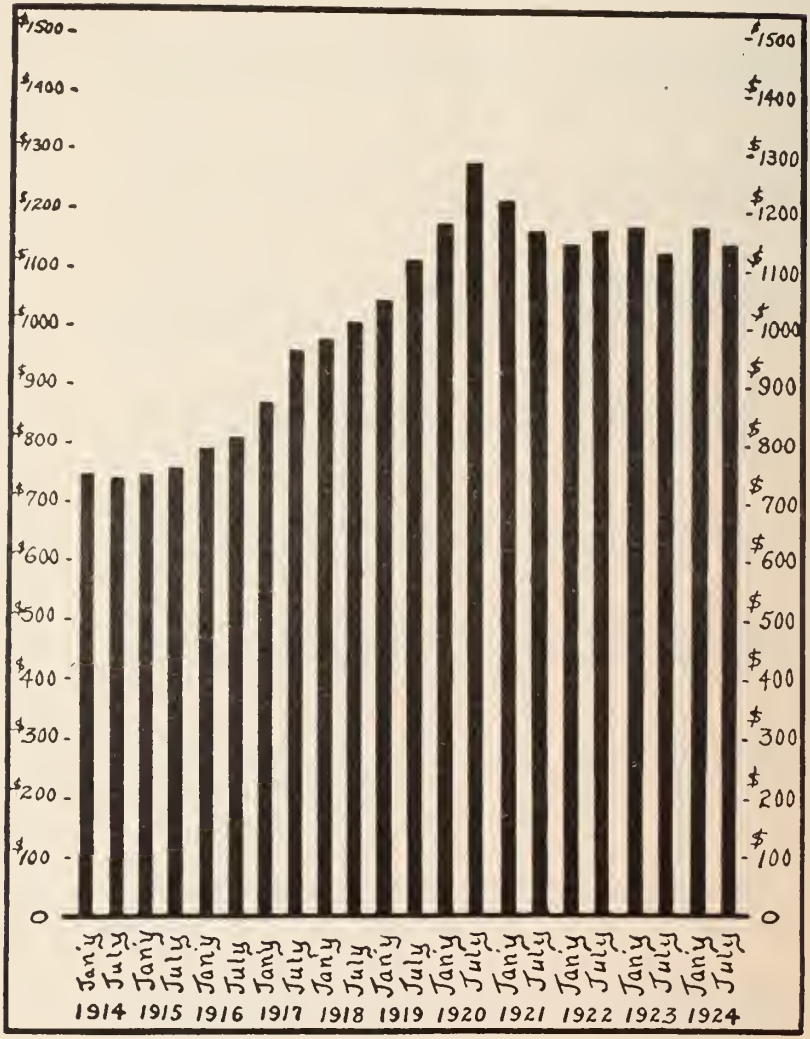
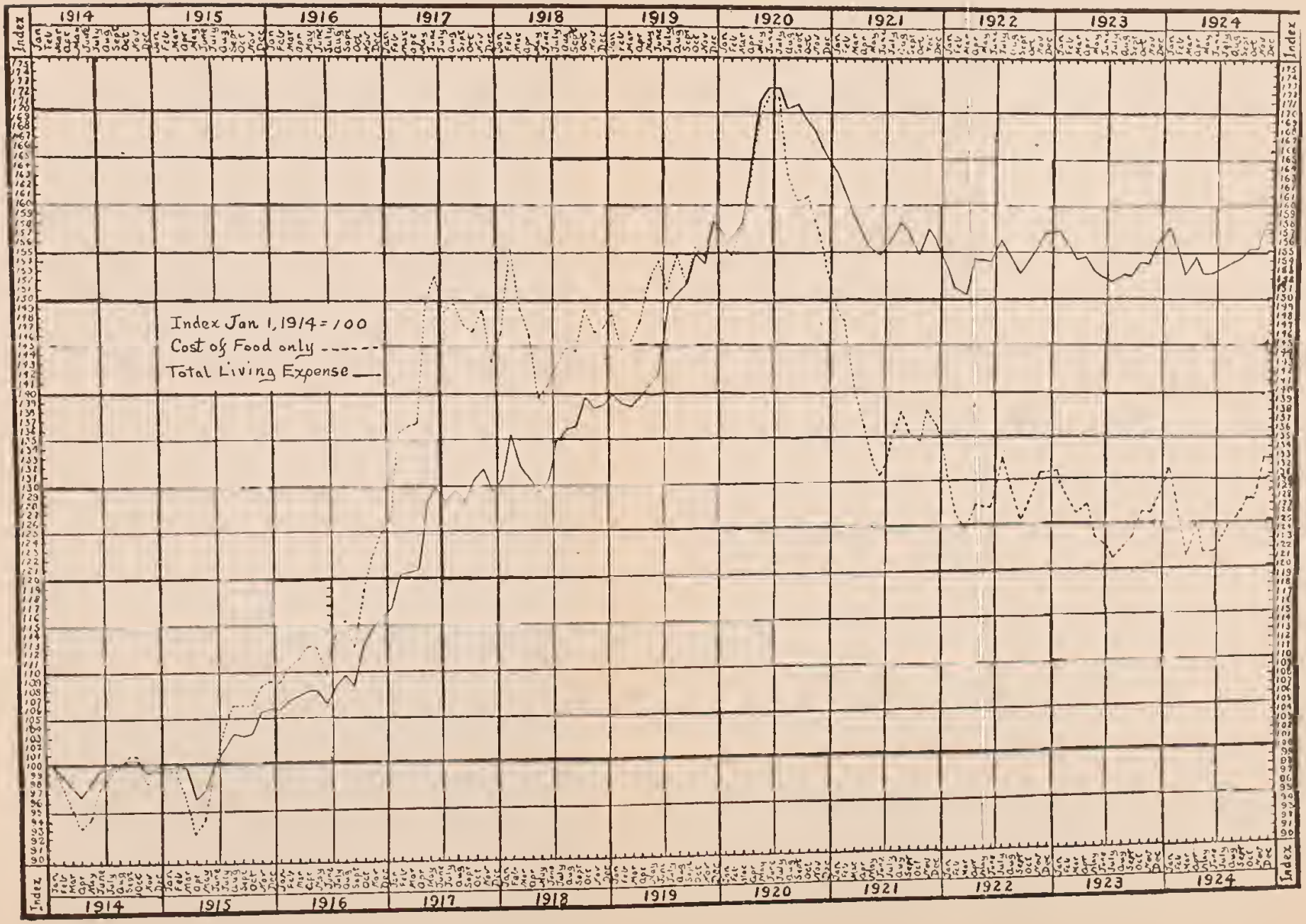


CHART "A"—COMPARATIVE YEARLY TOTAL, CHANGES IN COST OF LIVING, DENVER, COLORADO.

CHART "B"—COMPARATIVE YEARLY TOTALS BY INDEX NUMBERS



WEEKLY WAGES PAID WOMEN

We have received reports from employers of 5,102 women employed in the City and County of Denver. From these reports we find as follows:

2,320 of these women employees receive less than $15.00 per week, and 2,782 receive $15.00 or more.

No. Women Employes	Where Employed	Average Weekly Wage	Receiving Less Than $15 per Week
1948	Department stores	$15.50	907
1628	Telegraph and telephone	17.14	686
303	Laundries and wet wash	15.55	173
287	Restaurants and cafeterias	14.74	146*
222	Garment and brush mfg. co.'s	17.96	65
174	Biscuit and cracker companies	15.58	99
154	Candy manufacturers	16.26	71
114	Five and ten cent stores	11.40	102
106	Printing and stationery companies	20.36	25
86	Tent and awning mfg. companies	17.68	27
80	Clothes cleaners	17.53	19
5,102			2,320

*Includes from one to two meals per day.

The wages of the 2,320 women receiving less than $15.00 per week, as reported by the employers, are as follows:

86	Received			$ 8.00	per	week
120	"			9.00	"	"
234	"			10.00	"	"
190	"			11.00	"	"
595	"			12.00	"	"
218	"			13.00	"	"
368	"			14.00	"	"
65	"	between	$11.00	and 12.00	"	"
259	"	"	12.00	" 13.00	"	"
112	"	"	13.00	" 14.00	"	"
73	"	"	14.00	" 14.90	"	"

2,320 or 45.47 per cent of those reported received less than $15.00 per week.

Reports received from employers of 1,190 women outside the City and County of Denver show 639, or 53.6% of these women receive less than $15.00 per week. The average of these 1,190 women employees is $15.02 a week. The reports submitted come from the cities of Pueblo, Colorado Springs, Trinidad, Boulder, Durango, Fort Collins and Greeley.