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NINTH REPORT

OF THE

Industrial Commission of Colorado

For the Biennium

December 1, 1924

TO

December 1, 1926

Administering:

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

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DENVER, COLORADO
1926

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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, 1924, to December 1, 1926, all of which is submitted for your consideration.

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

STATEMENT

The work of the Industrial Commission has shown a steady increase during the last biennium. This Department is an indicator of the industrial activities in Colorado. The greatest number of accidents are reported during the busiest industrial months. The opening of the sugar factories and the fall increase in the coal output sends the routine work of the Commission to the peak.

This Department is operating at the present time under a severe handicap by reason of an inadequate number of employees.

In 1922 there were 12,859 accidents reported and 4,201 claims filed. In 1926 there were 19,797 accident reports filed—an increase of over 50% during the four-year period. There were 5,584 claims filed in 1926, an increase of about 33%. The premium income of the State Compensation Insurance Fund in 1922 was $339,537.41, and in 1926, $587,253.77, an increase of 73%. In 1922 we had 31 employees under the Commission. During 1923 and 1924 we had 33 employees. During 1926 we had 30 employees, or one less than we had in 1922.

The enormous increase in the work of this Department has been handled, notwithstanding the decrease in the number of employees. The Commission is not satisfied with the work it has been able to do under these conditions during the last biennium. No department so vital to the people can render service under such a handicap.

The appropriation bill as passed by the Twenty-fifth General Assembly provided for four more employees for this Department than contained in the bill as finally approved by the Governor. The four employees consisted of a clerk in the Fund; in the compensation department, an investigator and a stenographer, and in the Minimum Wage Department, its Secretary, who was used by the compensation department as insurance clerk when not busy with other work. The Secretary of the Minimum Wage Department continued to fill her position from May 1, 1925 until October 5, 1925 (until the Supreme Court decided the questions involved), and she has received no pay for her services during said period.

Much credit must be given to our faithful employees and the heads of our various departments for the excellent showing made under present conditions.

The Commission has been compelled to make certain undesirable short-cuts in its work and methods that have not permitted the Department to keep up to the standards necessary to meet the requirements of the people of this state. We have attempted to give the best service possible with the means at our command, and especially to injured employees and their dependents. It is evident that relief must be immediate.

SELF-INSURANCE

The following is a list of the employers to whom self-insurance permits have been granted, all of which expire July 31, 1927, unless sooner terminated by order of the Commission:

American Telephone and Telegraph Company.
The Calumet Fuel Company.
Chicago Bridge and Iron Works.
The Colorado and Utah Coal Company.
The Colorado Fuel and Iron Company.
The Colorado Portland Cement Company.
Colorado Springs and Interurban Railway Company.
The Colorado Supply Company.
The Denver Tramway Corporation.
E. I. du Pont de Nemours and Company.
The Empire Zinc Company.
General Electric Company.
Golden Cycle Mining and Reduction Company.
Graybar Electric Company, Inc.
Griffin Wheel Company.
Hendrie and Bolthoff Manufacturing and Supply Company.
Holly Sugar Corporation.
The International Realty Company.
The Juanita Coal and Coke Company.
The Mountain States Telephone and Telegraph Company.
The Myron Stratton Home.
National Biscuit Company.
The National Fuse and Powder Company.
Pikes Peak Fuel Company.
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.
The Victor-American Fuel Company.
Western Electric Company, Incorporated.
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	$ 430,000.00	
Secured by government bonds and other securities of a par value of $113,300.00	100.000.00	$ 530.000.00
U. S. Bonds and other securities deposited to provide a catastrophe fund		28,300.00
Reserve to Cover Incurred Losses:		
Cash	$ 5,921.41	
U. S. Bonds	1,026,800.00	
Other Securities	219,300.00	1,252,021.41
		$1,810,321.41

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.

BENEFICIARIES' TRUST DEPOSITS

The following tabulation shows the money deposited under the order of this Commission with various banks to the credit of minor and other dependents that the Commission feels are unable to properly handle their funds, and which draws interest at the rate of three per cent per annum. These funds are protected by surety bonds given by the respective depositaries and held by the Commission.

Total number of accounts	253
Total amount deposited	$112,259.04
Number of new accounts opened in 1926	26
Number of accounts closed in 1926	12
Amount withdrawn during 1926	$ 2,587.68

Regular monthly payments are being made from 15 of said accounts to assist in the care and maintenance of the respective dependents.

WORKMEN'S COMPENSATION INSURANCE PREMIUM INCOME AND LOSSES

The distribution of premium income and losses paid for Workmen's Compensation in Colorado since the passage of the law in 1915 is shown in the insert table following page 6.

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

PREMIUM INCOME

GROUP	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	Totals‡	1926*
	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	Premium Income	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	$ 806,751.61	$1,033,794.56	$7,780,007.24	----------
Mutual Companies	163,526.58	254,351.63	303,466.36	382,528.75	313,432.55	502,262.10	416,087.25	330,407.73	402,663.69	398,077.73	351,428.79	3,818,233.16	----------
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	412,733.56	554,868.86	3,547,443.35	$ 575,495.59
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	$1,617,562.90	$1,940,092.21	$15,145,683.75	----------

LOSSES PAID

GROUP	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	Totals‡	1926*
	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†	Losses Paid†
Stock Companies	$1,738.02	$128,719.80	$191,556.57	$243,915.83	$294,156.65	$356,059.22	$389,800.87	$385,124.76	$499,806.15	$528,407.02	$567,364.78	$3,586,649.71	----------
Mutual Companies	2,637.46	23,188.98	58,546.16	74,008.02	98,135.51	111,893.71	130,440.08	141,611.72	134,095.21	134,713 11	139,083.34	1,048,353.30	----------
State Comp. Ins. Fund	2,563.65	28,535.76	42,497.24	51,391.68	86,546.79	128,333.71	168,340.20	178,710.00	201,169.98	246,969.03	279,972.80	1,415,030.84	$279,819.18
Totals	$6,939.13	$180,444.54	$292,599.97	$369,315.53	$478,838.95	$596,286.64	$688,581.15	$705,446.47	$835,071.34	$910,089.16	$986,420.92	$6,050,033.85	----------

* Figures not available for 1926 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, 1925.

CLAIM DEPARTMENT

The Claim Department is responsible for the detailed work required in carrying out the Compensation Law of Colorado. This Department handles and files all First Report of Accidents; Supplemental Reports; Physicians' Reports; Admission of Liability for Compensation; Receipts for Compensation Payments; Claims for Compensation; Final Receipts for Compensation Payments, and conducts Hearings relating to Compensation Claims or Admission of Liability as are required by law. During the past two years, Hearings have been held in the leading industrial centers every sixty days and in the outlying communities twice a year. Hearings at Denver are held continuously.

The following table shows a comparison of the amount of work done in the years 1925 and 1926.

	1925	1926
First Reports	18,143	19,797
Supplemental Reports	20,500	22,000
Physicians' Reports	12,750	15,000
Receipts for Compensation	26,000	28,000
Claims for Compensation	5,807	5,584
Lump Sum Applications	166	176
Hearings held	1,910	1,875
Referee Awards	1,879	2,312
Commission Awards	577	572

The number of Hearings shown does not take into account continuances, nor those in which the Statute of Limitations was waived, or cases heard by agreement.

Statistics showing the detailed work of the Department are shown in the insert tables following page 19.

LUMP SUM SETTLEMENTS

The usual number of applications for lump sum settlements were made during the years 1925 and 1926. These applications were for a variety of purposes. The greater number of those granted were for the purchase of real estate or the payment of indebtedness thereon. Of 131 applications granted in 1926, 43 were granted for the purpose of purchasing homes. A few were allowed for going into business. Some applications were granted for the purchase of cows, horses, chickens, trucks, and other means of making a livelihood. The applications denied were mainly on account of the indefiniteness of the purpose for which the claimant desired the settlement or the fact that the amount to be granted was considered insufficient to accomplish the purpose stated by the applicant. Ap-

plications for lump sum settlements to deposit in banks at interest were invariably denied, as were those for investment in securities of speculative value. The Commission feels that the lump sum provision of the law is a desirable feature. Better results, however, would follow along this line if the Commission is provided with sufficient help to make thorough investigations and to keep track of investments that are authorized.

DECISIONS OF INDUSTRIAL COMMISSION

CLAIM DEPARTMENT

Commencing on page 11 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 Act. Routine cases not involving any particular question are not mentioned. 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. 26943. Luke Ahel, Claimant vs. Smuggler-Union Mining Company, Employer and State Compensation Insurance Fund, Insurance Carrier.

DEPENDENCY, ABSENCE OF CONTRIBUTIONS FOR MORE THAN ONE YEAR BAR. Adam Ahel died July 9, 1923. His death was an immediate result of his accident sustained on the date mentioned above. His father makes claim for compensation. The Decedent had sent no money to his father during the four years preceding his accident.

Held, that the father was not depending upon the Decedent for his support. The case was appealed to the District Court which reversed the Commission and ordered an allowance of compensation. Thereafter, on appeal to the Supreme Court the finding of the Commission was affirmed by the Supreme Court.

Index No. 2, Claim No. 27473. Frank L. Arters, Claimant, vs. P. W. Plyman, Employer, and London Guarantee and Accident Company, Limited, Respondents.

COMPENSATION ORDERED PAID FOR A DEFINITE PERIOD PENDING HEARING. Respondents requested permission to introduce further evidence as to the extent and degree of claimant's permanent disability. It was ordered that the respondents pay compensation to the claimant for a period of 50 weeks at the end of which time the Referee should hold another hearing.

Index No. 3, Claim No. 32638. C. A. Ayres, Claimant, vs. The Denver Tramway Company, Employer, Self-Insurer, Respondent.

COMPENSATION FOR PERMANENT DISABILITY REGARDLESS OF FACT CLAIMANT CAN WORK. Claimant was able to return to work after temporary disability of 101 days. He returned to the same work he had prior to the accident and was able to perform that work satisfactorily. As a result of the accident the claimant lost both testicles and sustained a total loss of procreative power. He should be regularly under the care of a competent physician and will probably develop neurotic disturbances which will seriously impair his physical well being. It was held that the claimant was disabled to the extent equivalent to 25% of permanent total disability as a working unit, and maximum compensation for permanent partial disability was awarded.

—B—

Index No. 4, Claim No. 10472. James Bly, Deceased, Valentina Bly, Widow, in behalf of herself and Bernice Bly, Daughter, Dependents, Claimants, vs. Oakdale Coal Company, Employer, and The Employers' Mutual Insurance Company, and Lloyd's of London, Reinsurer, Respondents.

COMPENSATION ORDERED PAID ADMINISTRATOR. Compensation for the minor dependent having been deposited in trust, and said minor having died after all of such compensation was deposited, upon petition of the Administrator the money deposited in trust was ordered paid the Administrator of the estate.

Index No. 5, Claim No. 40771. George Brownell, Claimant, vs. American Manganese Steel Company and The Globe Indemnity Company.

ALCOHOLISM, DISABILITY DUE TO, NOT COMPENSABLE. Claimant was injured September 29, 1925, and totally disabled to March 20, 1926. Compensation for a temporary disability after March 20, 1926, denied, as his disability after that date was due to alcoholism, and other misconduct.

—C—

Index No. 6, Claim No. 36745. Carl A. Carlson, Claimant, vs. The Colorado Fuel and Iron Company, Employer, Self-Insurer, Respondent.

PERSONAL ALTERCATION. Claimant's accident occurred as a result of a personal altercation between claimant and co-employe. Claimant's thumb was bitten off resulting in an infection which caused the amputation of the right arm. The Commission held that the claimant did not sustain the burden of proof and was unable to show that the altercation was the result of matters connected with the claimant's employment. The claim for compensation, therefore, was denied.

Index No. 7, Claim No. 11541. Mike Casalo, Claimant, vs. Victor American Fuel Company, Employer and Self-Insurer.

ADMINISTRATOR, COMPENSATION PAID TO WHEN. Claimant was injured November 13, 1919, and was awarded compensation for permanent total disability at $10.00 per week on April 9, 1921. Claimant was adjudged mentally incompetent by the County Court of the City and County of Denver, January 9, 1926.

Held, compensation ordered paid to the Public Administrator of the City and County of Denver as conservator of the claimant established January 24, 1926.

Index No. 8, Claim No. 29264. Bertha Cobb, Claimant, vs. City of Boulder, Employer and State Compensation Insurance Fund, Insurance Carrier.

DEPENDENCY, BURDEN OF PROOF UPON CLAIMANT. Elmer Cobb was employed by the City of Boulder as a Policeman. He left his home on the morning of November 19, 1923, about 5 a. m. for the purpose of going on duty. At the time he left home he was dressed in his uniform. He was found about an hour later near a bill board, a short distance from Police Headquarters, between his home and Police Headquarters in an unconscious condition with a bullet wound through the head and a fractured skull. His body was stretched out the full length; his hands at the side of the body with his right hand over his revolver. The revolver had one empty shell. Cobb died shortly after being found. No witnesses were produced, who were eye witnesses to the bullet wound or as to the manner in which Cobb was shot.

Held, that the Claimant, in order to receive compensation must establish the claim by a preponderance of evidence. The evidence in this case does not rebut the possibility of suicide and does not permit the presumption that Cobb's death arose out of the course of his employment. Claim is, therefore, denied.

Compensation Award affirmed by the Court of Boulder County, September 11, 1926.

Index No. 9, Claim No. 30390. Allen B. Comstock, Deceased, Hazel B. Comstock, Widow, in behalf of herself and James, Lester, Zelda, Billy and Glenn Comstock, Minor Children, Dependents, Claimants, vs. Bivens and Nelson, Employer, Respondent.

ACCIDENTAL INJURY—EMPLOYER NOT INSURED. Decedent was killed October 6, 1923, by a shot from a rifle. He was a stage driver for a company which had a mail contract. The rifle was discharged as he was alighting from the car. It was held that the decedent sustained an accident arising out of and in the course of his employment and compensation was awarded in the sum of $3,750.00, increased 50%, and funeral benefits in the sum of $187.50.

Index No. 10, Claim No. 39630. Cecil Creason, Claimant, vs. Colorado Pulp and Paper Company and The New York Indemnity Company.

CROSS-EXAMINATION, EXPENSE OF PAID BY RESPONDENTS, WHEN CLAIMANT WAS INJURED AUGUST 19, 1925. Claimant is a minor. Following hearing he was referred to the Commission's physician for examination. Thereafter respondents demanded a further hearing to cross-examine the Commission's examiner. This examination was perfunctory and developed nothing that was not fully covered in the examiners written report.

Held, that claimants weekly wages should be computed under Section 47 D of the Act. Further held, that the cross-examination requested by the respondents was for the purpose of delay and respondents required to pay the cost of cross-examination under the Commission's Rules.

Index No. 11, Claim No. 39184. Mrs. J. H. Crowder, Claimant, vs. Portland Gold Mining Company, Employer, and State Compensation Insurance Fund, Insurance Carrier.

DEPENDENCY, BURDEN OF PROOF UPON CLAIMANT, WHEN, JOHN CROWDER DIED AUGUST 8, 1925. Claimant contended that his death was due to an electrical shock sustained June 29, 1924, and a subsequent strain sustained July 10, 1925, which aggravated the condition caused by the accident. The immediate cause of the decedent's death was an intestinal hemorrhage preceded hy an intestinal obstruction. Decedent had suffered for a long time from abdominal adhesions.

Held, that the burden of proof was upon the claimant and that burden of proof had not been sustained. Claim denied.

Index No. 12, Claim No. 16430. Ollie Cruthis, Claimant, vs. Bix Six Coal Company, Employer, and Continental Casualty Company, Insurer, Respondents.

PERMANENT TOTAL DISABILITY—ATTEMPT TO REDUCE RATING. Compensation had previously been awarded for permanent total disability. Respondents requested that the case be re-opened to determine his present disability. The Commission held that there is no evidence showing that the claimant had qualified as a wage earner, and compensation payments were ordered continued as provided by previous awards.

—D—

Index No. 13, Claim No. 25510. Antonio Duran, Claimant, vs. the Three Pines Coal Company, Employer, and The Employers' Mutual Insurance Company, Insurer, Respondents.

RIGHT OF COMMISSION TO RE-OPEN CLAIM — COMPENSATION FOR AMPUTATION BETWEEN ELBOW AND SHOULDER. In this claim compensation had been awarded for 139 weeks for the loss of an arm between the elbow and shoulder. Claimant petitioned for a review after the time prescribed by law. The Commission of its own motion re-opened the case. A further hearing was held and compensation was awarded for 208 weeks.

—E—

Index No. 14, Claim No. 6982. Ida C. Ellis, Claimant vs. National Jewish Hospital, Employer, and The Ocean Accident and Guarantee Corporation, Limited, Insurer, Respondents.

PERMANENT TOTAL DISABILITY. Claimant has been unable to secure a bony union of the fractured left femur and absorption of the joint structure caused an increased shortening of the leg. Claimant is held to be permanently and totally disabled and compensation ordered paid as long as she may live.

Index No. 15, Claim No. 39826. Roy Enyeart, Claimant, vs. The Colorado Fuel & Iron Company, Employer and Self-Insurer.

ACCIDENT, DUE TO BREAKAGE OF PRIVATE AUTO. Claimant was injured July 3, 1925. His injury occurred while the claimant and a co-worker were driving home from work in an automobile owned by the co-employee and was sustained while they were crossing a bridge upon the employer's premises. Claimant and the co-employee had an agreement by which they alternated using their cars to drive to and from work. The accident was due to a fault in the steering gear or radius rod of the car. The defective part gave way while the men were upon the bridge and they were plunged over the bridge into the creek bed. Claimant's injury consists of a fracture of the fifth and sixth cervical vertebrae and a paralyzed left arm.

Held, that the accident did not arise out of and in the course of the employment and the fact that the accident occurred upon the employer's premises under the circumstances was not sufficient to impose any liability upon the employer. This award was set aside by the District Court of the City and County of Denver and thereafter appealed to the Supreme Court.

—G—

Index No. 16, Claim No. 33708. John Garcher, Claimant, vs. The Post Coal and Iron Company, a Corporation, Employer, and The Continental Investment Company a Corporation, Co-Employer, Respondents.

CORPORATION LIABILITY UNDER SECTION 49. The respondent conducts its coal business by employing various truck drivers from time to time as the business may require. The driver receives a certain amount per ton for each ton of coal as delivered. Decedent was held to be an employee of the respondent under Section 49 at the time of the accident and compensation was awarded at $10.00 per week increased 50% under Section 27, during total disability.

Index No. 17, Claim No. 41547. George Georgeff, Claimant, vs. Grand Junction Mining and Fuel Company and Employers' Mutual Insurance Company, Insurer, Respondents.

BLISTER, WHEN AN ACCIDENT. On December 22, 1925, the claimant was engaged in picking and shoveling off the bottom of a part of the employers mine. The bottom of this mine was rough and caused repeated and severe jars against the palm of claimant's left hand. Late in the afternoon, the repeated blows from the shovel handle caused a blister on the claimant's hand which thereafter became infected.

Held, that the fact constituted an accident, is defined by law and compensation award for this disability.

Index No. 18, Claim No. 42565. Mrs. J. C. Gibson, Claimant, vs. T. M. Callahan and The Employers Indemnity Corporation, Insurer, Respondents.

WAGES, WHEN HOURLY BASIS MUST BE USED. Claimant was injured February 16, 1926, and was totally disabled to May 10, 1926. Her regular vocation is that of housewife; she does not work for wages outside of what work she performs from time to time for the employer in this case. At the time she was injured, she was paid 40 cents per hour for the time actually worked. When not employed, she was engaged in performing her own household duties.

Held, that claimant's average weekly wages can only be ascertained by using the hourly pay in computing her daily rate. This was done, using eight (8) hours per day and five and one-half (5½) days per week.

Index No. 19, Claim No. 30583. Maynard H. Gormley, Claimant, vs. The Democrat Printing Company, Employer, and Standard Accident Insurance Company, Insurer, Respondents.

INFECTION AS ACCIDENT. Claimant sustained a 65% loss of vision in the left eye as the result of an infection caused by coming in contact with an infected rag or towel which was used while working. Such towels and rags being furnished by the employer for the use of linotype operators. It was held that such infection constituted an accident and compensation was awarded for temporary disability, plus 67.6 weeks for permanent disability.

—H—

Index No. 20, Claim No. 29499. Doc. E. W. Hall, Claimant, vs. T. W. McMahon, Employer, Respondent.

COMMISSION GOVERNED BY PLACE AND CONTRACT OF EMPLOYMENT. Claimant was injured near Julesburg, Colorado. The employer operates a traveling show with headquarters at Marysville, Kansas. No objection was raised by the employer as to the failure of the claimant to file a claim within the time prescribed by law and his defense was thereby waived. The contract of employment, however, having been made in Kansas, and the work in Colorado being of a temporary nature, the Commission is of the opinion that the law in force wherever the contract was made governs, and the claim for compensation is denied.

—J—

Index No. 21, Claim No. 36811. Minnie Johnson, Widow, Dependent, vs. Index Mines Corporation, Limited, Employers.

LEASE, EFFECT OF IN DETERMINING STATUS OF EMPLOYE. Olaf Johnson died February 25, 1925. His death occurred in the shaft of the Index Mine at Cripple Creek, Colorado, and was caused by inhalation of mine gas. His widow is claimant herein. The Index Mine at Cripple Creek is the property of a West Virginia Corporation. At the time of Johnson's death, the Mine was leased to K. MacDermid, Carl Smith, and George C. Franklin. The lease specifically provides, that it is personal to the lessees and shall not be assigned or transferred without the consent in writing of the lessor. The respondents contend that Johnson was a co-partner in the lease and was not employed at the date of his death.

Held, that in the absence of a written transfer of the lease to Johnson, that Johnson was not a co-partner and that the widow was entitled to compensation, under provision of Sections 49 and 50 of the Compensation Act. Case now pending in the District Court on appeal from the Respondents.

—K—

Index No. 22, Claim No. 28536. Harvey Clayton Keys, Deceased, Sarah Keys, Mother, in behalf of herself and May Keys, Lillian Keys, Roy Keys, and James K. Keys, Jr., Minor Brothers and Sisters, Dependents, Claimants, vs. Midwest Coal Company, Employer, and London Guarantee and Accident Company, Limited, Insurer, Respondents.

DEPENDENCY ON MINOR WHERE COMPENSATION IS AWARDED FOR DEATH OF FATHER ALSO. The decedent, a minor, was killed October 1, 1923. His father, James K. Keys, was killed in the same accident and compensation was awarded to wife and minor dependents for the death of James K. Keys by reason of their right to such compensation based upon their relationship. The same dependents were dependent upon Harvey Keys to an extent of 20% of total dependency. Respondents contend that as the wife and minor children have been awarded compensation in the full amount provided by law for the death of husband and father, the same claimants cannot claim further compensation for the death of the son and brother. It was held that the decendent in this case was compelled to and did go to work at an early age to assist in supporting the family, and that the mother and minor brothers and sisters were actually dependent to the extent of 20%, and that to deprive them of this compensation upon a technical construction of the Act would not be fair or just. Compensation was awarded in the sum of $562.50.

Index No. 23, Claim No. 34864. Lynn J. Kimball, Claimant, vs. The Riverside Reservoir and Land Company, Employer, Respondent.

ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. Claimant lost the vision of the right eye and sustained considerable impairment in the use of the right leg. He contends that he inhaled a particle of cement or concrete dust while employed in cement work, thus starting an infection. Claimant was unable to fix definite time or place when he inhaled concrete or cement dust. It was held that the claimant had failed to prove an accident as defined by law.

—L—

Index No. 24, Claim No. 31720. Earl LaBertew, Deceased, Ella LaBertew, Widow, Dependent, Claimant, vs. The Kelly-Springfield Tire Company, Employer, and Royal Indemnity Company, Insurer, Respondents.

ACCIDENT ARISING OUT OF AND IN COURSE OF EMPLOYMENT. Decedent, while riding with a man who had liquor in his car, was shot by a Peace Officer attempting to stop the party. The car belonged to the respondent employer and was in the custody of the deceased It was held that when the decedent had knowingly placed the car in such use he was equally guilty with the driver when the latter violated the law in failing to stop at the command of the Peace Officers and his death at the hands of such officers could not be construed to be an accident or arising out of and in the course of his employment.

Index No. 25, Claim No. 40237. Lewis C. Langdon, Claimant, vs. Walker Bros. Motor Company, Employer, and Maryland Casualty Company, Insurer.

EVISCERATION OF EYE COMPENSABLE SAME AS ENUCLEATION. Claimant was injured September 29th, 1925, by a piece of steel being embeded in the left eye. He left work October 4th, 1925, and returned to work November 23, 1925. His permanent injury was an evisceration of the left eye. An evisceration leaves some small muscles remaining that do give to an artificial eye a slight movement that improves the appearance of the glass eye.

Held, that an evisceration is the same as an enucleation. Compensation awarded for temporary disability and 139 weeks for evisceration of the left eye.

—N—

Index No. 26, Claim No. 35611. Walter Hayes Newkirk, Deceased, Mary America Newkirk, Widow, Dependent, Claimant, vs. The Golden Cycle Mining and Reduction Company, Employer, Self-Insurer, Respondent.

PNEUMONIA AS ACCIDENT. Decedent's death was caused by pneumonia. Several days previous to his death he had been exposed to water and cold in connection with a fire which occurred at his employer's premises. The Commission held that there was no reasonable connection between his alleged exposure on January 9th, and his death of pneumonia on January 23d. and that the pneumonia could in no way be attributed to an accident as defined by law. Ordered that the claim for compensation be denied.

Index No. 27, Claim No. 32308. John F. Niles, Deceased, Theresa A. Niles, Widow. in behalf of herself and minor dependent, Claimants, vs. The F. C. Dreher Contracting Company, Employer, and Aetna Insurance Company, Insurer, Respondents.

PNEUMONIA AS A RESULT OF ACCIDENT. Claimant received serious injuries in May and died June 29, 1924, of hypostatic pneumonia. Respondents contend that death was not due to accident. The Commission held that the accident accelerated and aggravated a weakened heart condition, and that this heart condition was in turn the cause of pneumonia. Compensation was awarded the dependents in the sum of $3,281 25.

—O—

Index No. 28, Claim No. 39611. Laura C. Oakley, Claimant, vs. Henry L. Lowell, Employer, and Aetna Life Insurance Company, Insurance Carrier.

LIGHTNING AN ACCIDENT. Lyle Oakley was killed September 14, 1925, death resulting from being struck by lightning while he was taking his employer's team to his employer's farm. Death was caused by either being hit directly by the lightning or as a result of lightning killing the horse which fell upon the decedent's head and smothering him to death.

Held, that lightning under the fact, stated, constituted an accident as defined by law. Compensation Awarded to the Mother as a total disability. Award affirmed by the District Court and the Supreme Court.

—P—

Index No. 29, Claim No. 12054. Martin Pass, Claimant, vs. Nuckolls Packing Company, Employer, and the Globe Indemnity Company, Insurance Carrier.

DISABILITY NOT DUE TO ACCIDENT NOT COMPENSABLE. Claimant was injured October 13, 1919. His injury was a fracture of the spinous process of the 6th cervical vertebrae, fracture of occipital bone left side and a rupture of left lateral sinus. His present condition consists of a loss of memory, general nervousness, lack of perfect hearing and some disturbance of vision. His disability is approximately 50% of permanent total disability. Further found that he is suffering from a progressive diseased condition, viz., Syphilis, and that this condition may be expected to increase

and possibly become total at any time. His disability, from this respect, however, cannot be attributed to his accident.

Held, that Claimant is only entitled to compensation for disability due to his accident. Compensation awarded for maximum permanent partial disability.

Index No. 30, Claim No. 37107. Doroteo Perez, Deceased, Gregoria Perez, Widow, in behalf of herself and minor children, Dependents, Claimants, vs. The Colorado Fuel and Iron Company, Employer, Self-Insurer, Respondent.

VIOLATION OF SAFETY RULE. Respondent proved that Decedent started after his dinner pail. In going after the dinner pail, he passed a prop which he had properly placed in its working place and took the prop down, placing it against the rib. As he passed under the rock it fell upon him causing his death.

Held, that the evidence fails to disclose whether the removal of the prop was a wilful act on the part of decedent, or whether it was done as a matter of course without any thought as to consequences. Held: That the evidence as to rule violation is not sufficient to warrant a finding that the decedent was guilty of wilful failure as defined by Section 83.

Index No. 31, Claim No. 39521. Thomas F. Plews, Claimant, vs. Stanage-Vorbeck Motor Company, Employer and General Accident, Fire & Life Assurance Corporation, Ltd., Insurance Carrier.

DISABILITY DUE TO MEDICAL TREATMENT COMPENSABLE. Claimant was injured August 15, 1925. On August 26, 1925, he left work to have his hand dressed by the attending Physician. The Doctor applied an alcoholic dressing. The claimant left the Doctor's office and reaching in his pocket for the keys to his car a match exploded and set fire to the dressing. The claimant was at the time on his way back to his place of employment.

Held, that the additional disability arising from the burning of the hand dressing arose directly from his accident and compensation is awarded therefor.

—R—

Index No. 32 Claim No. 25728. Charles Robbins, Claimant, vs. W. A. Mill, Employer, and Maryland Casualty Company, Insurer, Respondents.

COMPENSATION NOT REDUCED BY TENDER OF OPERATION. Respondents contend compensation should be denied on account of claimant's failure to accept further operative treatment. Claimant was a man 53 years of age and nearly two years had elapsed since the date of his employment. The Commission held that they could not require the claimant in this case to accept the operation and his permanent disability was determined on his condition at the date of hearing.

Index No. 33, Claim No. 37969. Carl Robinson, Claimant, vs. E. A. Biers, Employer, and New York Indemnity Company, Insurance Carrier.

PERMANENT TOTAL DISABILITY, WHEN. Claimant was injured April 27, 1925. He sustained amputation of the right arm two inches above the elbow and a 90% loss of the use of the left arm measured at the elbow joint. He had an eighth grade education and has worked most of his life as a Railroad employee.

Held, that the disability sustained is equivalent to an amputation of both hands. Compensation awarded at $12.00 per week for permanent total disability. Affirmed by the District Court of the City and County of Denver.

Index No. 34, Claim No. 37841. David Rusk, Claimant, vs. Windsor Wet Wash Company, Employer, and Norwich Union Indemnity Company, Insurer, Respondents.

EFFECT OF FAILURE TO SECURE PROPER TREATMENT. The insurance carrier tendered proper treatment and on June 18th, claimant ceased availing himself of surgical services tendered by the insurance carrier and began Christian Science treatment. Treatment necessary in this case was surgical and not medical. Compensation was ordered suspended until claimant submitted to the proper surgical treatment.

—S—

Index No. 35, Claim No. 30343. Edward G. Sprigg, Deceased, Mrs. Martha Sprigg, Widow, Dependent, Claimant, vs. (Post Coal and Iron Company), Continental Investment Company, Employer, Respondent.

CORPORATION LIABILITY UNDER SECTION 49. Under facts similar to Claim No. 33708, compensation was awarded the widow for $3,125.00, increased 50%, and for funeral expenses in the sum of $112.50.

Index No. 36, Claim No. 22382. Harry Stevenson, Claimant, vs. American Smelting & Refining Company, Employer, and Self-Insurer.

SAFETY RULE, DEFINED. Claimant was injured July 7, 1922. Temporary disability ended July 28, 1925. Permanent disability consists of a 50% disability as a working unit. The Respondent Employer expended some

$3,500.00 for medical treatment in this case. They, therefore, contend that they should receive credit for this expenditure.

Held, that although they are to be commended for attempting to salvage the claimant they are liable for compensation on the basis of claimant's permanent disability. Claimant is, therefore, awarded maximum compensation for permanent partial disability.

Index No. 37, Claim No. 34446. Jack Stroh, Claimant, vs. Toliver & Kinney Mercantile Company, Employer, and Globe Indemnity Company, Insurance Carrier.

PERMANENT PARTIAL DISABILITY, ELEMENTS OF. Claimant was injured October 11, 1924. Temporary disability terminated January 15, 1925. Claimant's injury was fracture of left tibia. The Referee found as a fact that claimant on account of his injury had been prevented from promotion in his work with greater pay and fixed a permanent disability at a 10% loss of the left leg at the ankle.

Held, that the fact that the claimant had been deprived of a promotion by reason of his accident, was a proper factor to be considered in determining the permanent disability herein. Compensation awarded for permanent partial disability.

Index No. 38, Claim No. 34782. Allen Sweeney, Claimant, vs. H. E. Huffman, Employer, and New York Indemnity Company, Insurer, Respondents.

WEEKLY WAGES OF MINOR COMPUTED UNDER PARAGRAPH 47-D. Claimant, 16 years of age, sustained an accident causing double vision, equivalent in its effect to a 25% loss of use of one eye. His earnings at the date of accident were $15.00 per week. He was preparing himself to follow the occupation of a pharmacist. It was held that the disability sustained by the claimant was one which would continue throughout his entire lifetime and would impair his earning capacity permanently. Taking into account his age, his education, his ability, and the work which he intended to follow, compensation was awarded on the basis of a wage rate of $24.00 per week.

—T—

Index No. 39, Claim No. 34304. Odes Taylor, Claimant, vs. Henry Webber and L. J. Chapman, Employer, Respondent.

EVIDENCE—MATERIALITY OF, AS AFFECTING FURTHER HEARING. Hearing in this case was had at Denver. At the conclusion of the hearing, Respondents' counsel requested a further hearing at Salida. The Referee required Respondent to file an affidavit showing the character and materiality of the evidence which they desired to submit. Affidavit was filed in due time and objections thereto were filed by counsel for the claimant. It was held that all of the employers had testified concerning claimant's accident, and the argument that the claimant was doing an unnecessary act at the time of injury was not supported by the testimony of the employers themselves. It was further held that the law makes no exception as to who must carry Compensation Insurance, and the testimony that the Respondents had tried to secure Compensation Insurance was immaterial. Compensation was awarded the claimant increased 50% under Section 27 of the Act.

Index No. 40, Claim No. 35761. Gregory L. Teason, Claimant, vs. City of Colorado Springs, (Water Department), Employer, and State Compensation Insurance Fund, Insurer, Respondents.

ACCIDENT OCCURRING ON WAY HOME FROM WORK. Claimant was injured about 8:15 in the evening while riding his motorcycle into a safety sign at a street intersection, the sign not being lighted at the time. He is a meter inspector for the city. He inspected several meters at about 5 p. m., and stopped at a restaurant to secure his supper. He had his supper and spent two or three hours talking with friends in and about the restaurant before starting home. He was on his way home at the time of the injury. It was held that the accident arose after the claimant had completed his day's work and was on his way home. Compensation was denied.

Index No. 41, Claim No. 39811. Tony Tekovik, Claimant, vs. Sunnyside Mining & Milling Company, Employer, and State Compensation Insurance Fund, Insurance Carrier.

MEDICAL EXPENSES, RIGHT TO CLAIM. Claimant filed his claim October 5, 1925, alleging accident occurred July 26, 1925. He was operated for left inguinal hernia at Pueblo on August 27, 1925, and returned to work November 10, 1925. Claimant did not appeal for medical services from the employer and incurred medical and hospital expenses at Pueblo without authority from the employer.

Held, that claimant could not under the circumstances be reimbursed by the employer for medical and hospital expenses.

Index No. 42, Claim No. 18967. Paul E. Tinkham, Claimant, vs. Plains Iron Works Company, Employer, and The Employers' Liability Assurance Corporation, Limited, Insurer, Respondents.

PROGRESSIVE DISABILITY. Claimant claims a progressive disability. He had previously been allowed compensation for 15% loss of use of the right foot at the ankle. Compensation was awarded for 25% loss of the right foot at the ankle.

Index No. 43, Claim No. 34227. Allie Thorpe, Claimant, vs. P. J. Sullivan, Employer and Ocean Accident & Guarantee Corporation, Ltd., Insurance Carrier.

MARRIAGE—COMMON LAW, PROOF OF. Elgin Thorpe died October 4, 1924, as a direct result of an accident sustained on the same day. Claimant who signs herself Allie Thorpe, lived with the Decedent from 1912 until the date of his death. Claimant was married to one C. D. Foley in 1888. She deserted Foley in 1898 at Chicago and was never divorced from Foley.

Held, that the claimant was unable to contract a common-law marriage and was therefore not entitled to claim compensation. Compensation claim denied.

—W—

Index No. 44, Claim No. 30008. Wilber W. Warren, Claimant, vs. R. J. Corcoran, (The Durango Corral), Employer, Respondent.

FAILURE TO CARRY INSURANCE. In this case awards had previously been entered against the employer as the Durango Corral. A hearing was had to establish the ownership of the Durango Corral and it was found that R. J. Corcoran was the owner. Compensation was awarded, increased 50% as provided by Section 27 of the Act, and the respondent was ordered to deposit the present value of the compensation with a Trustee or to file bond guaranteeing payment.

Index No. 45, Claim No. F-489. J. L. Weaver, Claimant, vs. The Western Power Company, and State Compensation Insurance Fund.

STATUTE OF LIMITATIONS, WAIVER OF. Claimant was injured July 31, 1917, and was paid compensation on a temporary disability to December 21, 1918. He sustained a recurrence of the disability on October 22, 1924, and was disabled until April 10, 1925, and now has a permanent disability of 50%. Claimant relies on a letter dated January 6, 1919, from the Manager of the State Fund, which, he claims, constitutes a waiver of the Statute of limitations. This contention was upheld by the Referee, who awarded compensation. The Commission, however, denied the claim on the ground that the claim for compensation was not filed within five (5) years, as required by Section 85.

The case is now pending in the District Court on an appeal prosecuted by the claimant.

Index No. 46, Claim No. 41465. James Weir, Claimant, vs. The United Oil Company, Employer, and Self-Insurer.

FAILURE TO APPEAR AT HEARING, EFFECT OF. Claimant was injured December 16, 1925, and returned to work December 30, 1925. Hearing held March 25, 1926, at Canon City, Colorado. Respondent employer did not appear at this hearing, although duly notified, and thereafter protested against the award and asked that the case be re-opened so that they could appear.

Held, that it was the duty of the employer to appear at the hearing of March 25, 1926, and that as a self-insurer, it could not rely on the Referee to secure or introduce testimony of which he had no knowledge.

Index No. 47, Claim No. 33997. Clifford L. Wilson, Claimant, vs. Shot-Lite Corporation of America, Employer, and Maryland Casualty Company, Insurer, Respondents.

EFFECT OF EXPIRATION OF POLICY. The Respondent Employer contends that the Maryland Casualty Company had orally agreed to renew their policy which expired August 20, 1924, fifteen days before the accident. The promise was not reduced to writing or signed by an authorized agent of the company. The Respondent Employer was required to pay compensation increased 50% under Section 27.

Index No. 48, Claim No. 36830. Mabel Wright, on behalf of herself and minor children, Claimant, vs. The Canon-Reliance Fuel Company, Employer, and United States Casualty Company, Insurance Carrier.

Earl Wright was killed March 2, 1925, while working for the above named employer at their mine near Canon City. His death was caused by electrocution. Respondent contended that Decedent's death was due to wilful failure to use a safety device and obey a safety rule. The safety device in question was the use of a sign board indicating whether or not anyone was working on the electric lines controlled by the switch box at the point where the sign board was to be used. The safety rule relied upon was the alleged wilful failure of the decedent to properly use the sign board in question so as to indicate that he was working upon the electric lines. Decedent's death was due to the fact that a co-worker turned a switch on that caused the decedent's death. The co-worker contention is that when he ar-

rived at the switch, that the signboard read "440 volt switch," which meant that no one was working on the line. The Commission found that the decedent had worked as an electrician for a number of years. That he was careful, intelligent and industrious. The only evidence that supports respondent's contention is the evidence of the co-worker, who admits that he turned the switch on that caused the Decedent's death. The switchboard was not under lock and key and any person through carelessness, malice, or criminal intent, could switch the board at any time.

Held, that the evidence fails to show that Wright willfully violated the rule in question. Further held, that the use of the switchboard in question was not a safety device. Maximum compensation awarded to Widow and minor dependents.

STATISTICS—ACCIDENTS AND CLAIMS, WORKMEN'S COMPENSATION DEPARTMENT

CLASSIFICATION	1915-1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	From Organization
	Aug. 1, '15 to Nov. 30, '16	Dec. 1, '16 to Nov. 30, '17	Dec. 1, '17 to Nov. 30, '18	Dec. 1, '18 to Nov. 30, '19	Dec. 1, '19 to Nov. 30, '20	Dec. 1, '20 to Nov. 30, '21	Dec. 1, '21 to Nov. 30, '22	Dec. 1, '22 to Nov. 30, '23	Dec. 1, '23 to Nov. 30, '24	Dec. 1, '24 to Nov. 30, '25	Dec. 1, '25 to Nov. 30, '26	Aug. 1, '15 to Nov. 30, '26
1. Number of Accidents	16,670	12,780	14,932	11,358	14,279	13,904	12,859	15,362	17,513	18,143	19,797	167,597
Percentage—Claims to Accidents	14.72%	21.37%	24.92%	29.48%	29.26%	28.94%	32.67%	34.54%	32.31%	32.01%	28.21%	28.05%
2. Number of All Claims	2,455	2,732	3,722	3,349	4,179	4,025	4,201	5,307	5,660	5,807	5,584	47,021
A { Male	2,418	2,690	3,609	3,239	3,995	3,884	4,064	5,159	5,512	5,668	5,411	45,649
A { Percentage—All Claims	98.49%	98.46%	96.97%	96.71%	95.59%	96.50%	96.74%	97.21%	97.38%	97.61%	96.90%	97.00%
B { Female	37	42	113	110	184	141	137	148	148	139	173	1,372
B { Percentage—All Claims	1.51%	1.54%	3.03%	3.29%	4.41%	3.50%	3.26%	2.79%	2.62%	2.39%	3.10%	3.00%
3. Number of Fatal Claims (Deaths)	204	300	202	201	179	151	155	168	140	152	155	2,007
A { Coal Industries	65	200	66	87	54	46	72	80	34	50	52	806
A { Percentage—Fatal Claims	31.86%	66.66%	32.67%	43.28%	30.16%	30.46%	46.45%	47.62%	24.29%	32.90%	33.55%	40.15%
B { Metal Industries	64	39	47	46	41	24	19	19	10	37	38	384
B { Percentage—Fatal Claims	31.37%	13.00%	23.27%	22.88%	22.91%	15.89%	12.25%	11.31%	7.14%	24.34%	24.52%	19.14%
C { Miscellaneous Industries	75	61	89	68	84	81	64	69	06	65	65	817
C { Percentage—Fatal Claims	36.77%	20.34%	44.06%	33.84%	46.93%	53.65%	41.29%	41.07%	68.57%	42.76%	41.93%	40.71%
4. Number of Non-Fatal Claims	2,251	2,432	3,520	3,148	4,000	3,874	4,046	5,139	5,520	5,655	5,429	45,014
A { Coal Industries	598	622	722	736	976	931	987	1,125	1,149	1,268	1,261	10,395
A { Percentage—Non-Fatal Claims	26.57%	25.57%	20.51%	23.38%	24.40%	24.03%	24.39%	21.89%	20.82%	22.42%	23.23%	23.05%
B { Metal Industries	428	412	506	516	452	383	460	565	343	712	697	5,474
B { Percentage—Non-Fatal Claims	19.01%	16.95%	14.37%	16.39%	11.30%	9.89%	11.37%	10.99%	6.21%	12.59%	12.84%	12.16%
C { Miscellaneous Industries	1,225	1,398	2,292	1,896	2,572	2,560	2,599	3,449	4,028	3,675	3,471	29,165
C { Percentage—Non-Fatal Claims	54.42%	57.48%	65.12%	60.23%	64.30%	66.08%	64.24%	67.12%	72.97%	64.99%	63.93%	64.79%
5. Awards by Commission	237	424	639	678	268	351	428	505	518	557	572	5,177
6. Awards by Referee	(*)	(*)	(*)	339	826	1,143	1,316	2,005	2,232	1,879	2,312	12,052
7. Compensation Agreements Approved	2,052	2,242	3,478	3,014	3,692	3,382	3,427	3,855	4,836	4,664	4,670	39,312
8. Amputations	212	175	213	154	131	120	124	139	164	152	178	1,762
9. Loss of Use	128	57	45	27	20	22	18	23	19	52	56	467
10. Permanent Total	7	6	8	5	7	9	15	30	32	30	25	174
11. Permanent Partial	240	232	232	179	208	156	180	174	167	157	163	2,088
12. Temporary Total	2,013	2,177	3,066	3,267	3,748	3,661	3,866	4,965	5,169	5,468	5,241	42,641
13. Temporary Partial	58	7	41	22	37	57	38	25	41	31	28	386
14. Facial Disfigurement	8	5	17	15	11	19	34	47	31	21	37	215
15. Blood Poison	41	64	58	47	94	131	67	73	84	69	52	780
16. Wholly Dependent—Fatal Claims	120	131	74	88	63	54	62	58	64	83	80	877
17. Partially Dependent—Fatal Claims	16	14	19	14	22	14	33	29	27	19	27	234
18. No Dependent—Fatal Claims	30	40	8	85	78	72	37	50	36	41	37	518
19. Foreign Dependent—Fatal Claims	32	69	8	12	16	11	23	31	13	9	11	235
20. Compensation Denied	109	33	44	138	156	332	326	552	500	622	472	3,203
A. Fatal (Death)	19	10	12	32	32	47	57	81	36	41	30	397
B. Non-Fatal	90	23	32	106	124	285	269	471	473	581	442	2,896
21. Compensation Reduced	7	4	4	16	17	37	13	14	14	9	8	143
22. Average Weekly Wage	---	$20.87	$17.99	$21.29	$25.40	$26.04	$24.09	$25.35	$25.32	$25.02	$24.95	$23.63
23. Average Weekly Rate of Compensation	---	$7.54	$7.71	$8.56	$9.70	$9.76	$9.51	*$10.01	$10.83	$10.74	$10.63	$9.50
24. Average Number of Weeks of Disability	---	10.72	15.73	11.69	11.55	11.93	12.46	10.42	9.65	9.84	9.26	11.32
25. Compensation Awarded and Being Paid	$406.259.18	$394,901.16	$383,766.27	$689,551.00	$461,245.28	$433,551.06	$489,635.92	$523,832.61	$591,523.77	$635,428.16	$698,431.29	$5,717,125.70

(*) 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			1925			1926			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	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	45	178	223	35	134	169	31	127	158	22	120	142	1,989
—Denied	5	21	19	21	11	32	3	29	32	7	40	47	4	53	57	6	75	81	7	29	36	12	29	41	9	21	30	401
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	166	1,271	1,440	117	1,279	1,396	7,863
—Denied	21	26	54	72	36	108	4	120	124	3	282	285	17	252	269	19	452	471	39	434	473	43	344	387	32	410	442	2,660
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	3	1	4	2	2	4	20
—Denied	0	0	1	0	0	0	1	0	1	0	0	0	0	0	0	2	0	2	0	0	0	0	0	0	1	0	1	5
Non-Fatal—Granted	0	0	1	0	4	4	1	9	10	5	40	45	8	30	38	9	29	38	19	33	52	14	23	37	10	26	36	261
—Denied	0	0	0	0	0	0	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	0	0	0	0	8	8	53
—Denied	0	2	0	0	0	0	0	1	1	0	3	3	0	0	0	0	1	1	0	0	0	0	1	1	0	0	0	8
Non-Fatal—Granted	3	2	2	5	11	16	0	7	7	2	12	14	2	5	7	1	11	12	3	4	7	1	8	9	0	11	11	90
—Denied	0	0	0	1	0	1	1	7	8	0	5	5	0	1	1	0	0	0	0	0	0	0	1	1	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	29	0	29	31	0	31	308
—Denied	15	17	35	32	0	32	28	0	28	40	0	40	29	0	29	39	0	39	26	0	26	22	0	22	20	0	20	303
Non-Fatal—Granted	20	26	29	65	0	65	51	0	51	50	0	50	48	0	48	69	0	69	89	0	89	84	0	84	106	0	106	637
—Denied	7	3	10	29	0	29	17	0	17	30	0	30	22	0	22	33	0	33	27	0	27	31	0	31	19	0	19	228
5. **Rehearings:**																												
Fatal—Granted	0	1	2	17	0	17	10	0	10	11	0	11	10	0	10	7	0	7	6	5	11	4	0	4	2	0	2	78
—Denied	1	17	23	19	0	19	28	0	28	28	0	28	27	0	27	23	1	24	2	0	2	5	0	5	0	0	0	174
Non-Fatal—Granted	3	3	7	16	2	18	16	0	16	33	0	33	57	0	57	42	47	89	48	38	86	23	31	54	27	205	232	598
—Denied	3	14	18	23	0	23	34	0	34	66	0	66	73	0	73	49	0	49	3	0	3	6	0	6	6	0	6	295
6. **Disfigurement:**																												
—Granted	8	0	12	11	5	16	1	7	8	1	13	14	2	29	31	3	40	43	4	20	24	1	15	16	4	33	37	209
—Denied	1	0	1	0	0	0	0	3	3	0	5	5	0	3	3	0	4	4	0	0	0	0	1	1	0	0	0	18
7. **Miscellaneous**	21	20	38	8	21	29	8	69	77	17	53	70	20	40	60	34	64	98	29	106	135	82	24	106	164	197	361	1,015
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	557	1,879	2,436	572	2,312	2,884	17,229

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

DIGEST OF COLORADO SUPREME COURT DECISIONS, 1915-26

Beginning on page 25 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. Colorado or Pacific citations are given and the claim number of the case before this Commission is indicated by the prefix "I. C." before the number.

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

FACTS: **I. C. 1552** **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 Commision 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: **I. C. 1471** **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: **I. C. 137** **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: **I. C. 1563** **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: **I. C. 335** **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: **I. C. 1007-1008** **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: **I. C. 1026** **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: **I. C. 1526** **Index No. 8.**

The Commission gave claimant an award for 25% 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: **I. C. 3404** **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: **I. C. 6512** **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 carrier 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, interfere 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: **I. C. 5773** **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 **I. C. 4619** **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 Reference: 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: **I. C. 1999** **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: **I. C. 2673** **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: **I. C. 9120** **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 services; 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

FACTS: **I. C. 4826** **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: **I. C. 2709** **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 **I. C. 10482** **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: **I. C. 942** **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: **I. C. 9285** **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: **I. C. 6130** **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: **I. C. 4623** **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.

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

FACTS: **I. C. 4971** **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 'unforseen, 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 pe-

tition 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:.. **I. C. 536** **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 casual 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 Commision 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: **I. C. 8076** **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: **I. C. 8179** **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, resided 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: **I. C. 14131** **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

FACTS: **I. C. 12332** **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: **I. C. 5752** **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: **I. C. 13236** **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: **I. C. 7606** **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-acteylene 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: **I. C. 14771** **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 stopped 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 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 wilful 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: **I. C. 2488** **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

FACTS: **I. C. 12312** **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: **I. C. F.140** **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 a 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 employees 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: **I. C. 15241** **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 compensation, 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 realtor 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 consitutional duty but is conferred on him by statute only. The fund is not 'creditable to the general revenue of the state' and is 'designed 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: **I. C. 8076** **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 Theatre 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 finding 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 is 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 employee 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 employee 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 Com., 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: **I. C. 16090** **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 employee 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: **I. C. 9475** **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 casual 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 employee."

"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: **I. C. 15243** **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: **I. C. 7381** **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: **I. C. 10799** **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 exceed $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 is 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 at-

tending 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 Commisslon, 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, hut 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: **I. C. 16430** **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-error 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 award 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: **I. C. 15007** **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 the 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: **I. C. 16090** **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 electrical shock sustained in a place and maner 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: **I. C. 20072** **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: **I. C. 18863** **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 has 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: **I. C. 20515** **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 care 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 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: **I. C. 9644** **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: **I. C. 21659** **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 conclusions of fact above mentioned.

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

"The plaintiff 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: **I. C. 21492** **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 wilful 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, L. 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: **I. C. 18111** **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 Dennev 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: **I. C. 18472** **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: **I. C. 22828** **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: **I. C. 22464** **Index No. 56.**

"By section 47 of the Workmen's Compensation Act (C. L. 1921, Section 4431). 'The average weekly wage of the injured employee 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:

> 'Cause b. The total amount earned by the injured or killed employee 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 employee by reason of the nature of the employment or the fact that the injured employee 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 employee 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 employee'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 deter-

mine 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 particle 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 findings 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

I. C. 26173 **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:

"The 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 rightfully 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: **I. C. 10591** **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 employee, '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 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.
76 Colo. 155, 230, Pac. 598

FACTS: **I. C. 28435** **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 employee 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.
76 Colo. 145, 230 Pac. 114

FACTS: **I. C. 25200** **Index No. 60.**

"This is a proceeding instituted before the Industrial Commission under the Workmen's Compensation Act. The Commission awarded this claimant, an employee, 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.
76 Colo. 241, 230 Pac. 624

FACTS: **I. C. 20575** **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 duties in and about the plant of his employer he (the deceased employee) 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.
76 Colo. 84, 230; Pac. 394

FACTS: **I. C. 27151** **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."

LAURA STOCKDALE, IN BEHALF OF DALE HUNTER, v. INDUSTRIAL COMMISSION OF COLORADO, et al.
76 Colo. 494; 232 Pac. 669

FACTS: **I. C. 22505** **Index No. 63.**

"The District Court affirmed an award by the Industrial Commission in favor of Dale Hunter, minor dependent of Harold Hunter. Laura Stockdale, who brought this action on behalf of the minor, brings the case here for review because the Commission reduced the award fifty per cent. under C. L. Section 4457, on the ground that the death resulted from Hunter's "wilful failure to obey" a rule adopted by his employer for his safety.

Hunter met his death by the breaking of a bridge across which he was driving a team of horses attached to a wagon which carried a large tank filled with water. He and all his fellow teamsters had been warned that the bridge was unsafe and forbidden under pain of discharge to use it with the teams."

DECISION: (Excerpt).

"The chief point made against the finding of the Commission is that there is no evidence that the disobedience was "wilful." The meaning of the word, as used in this place, is "with deliberate intent." If the employee knows the rule and yet intentionally does the forbidden thing he has "wilfully failed to obey" the rule. It is not necessary for the employer to show that the employee, having the rule in mind, determined to break it; it is enough to show that, knowing the rule, he intentionally performed the forbidden act. Such an act as driving across a bridge cannot be unintentional. Hunter deliberately and intentionally drove onto the bridge. There was no sudden emergency calling for action without deliberation, his team was under control, the act was not instinctive or with sudden impulse as in Hyman Bros &c. Co. v. Ind. Ac. Com., 180 Cal., 433, 181 Pac., 784."

"But between the making of the rule and the accident the bridge had been repaired and petitioner says the rule should have been republished or that the employees should have been rewarned. The bridge did not belong to the employers but to a farmer who owned the land on which it stood and it was he who did the repairing. Hotchkiss, the employer in charge of the work, says that the repairs made it weaker rather than stronger. He, therefore, did not rescind his rule. Why should he renew it? It was still in force."

"The petitioner insists that said Section 4457 does not refer to death but only to **injury** resulting from disobedience. There is room for argument on this point but in the case of Ind. Com. v. Funk, 68 Colo. 467, we affirmed an order of the Commission reducing the compensation 50% where death had ensued. That construction must stand till the legislature directs otherwise."

"It is seriously contended that the rule in question was not adopted and was not posted. The servants were orally forbidden to use the bridge and that was enough."

"The judgment of the district court is affirmed."

BOHMANN v. INDUSTRIAL COMMISSION, et al.
76 Colo. 588; 233 Pac. 621

FACTS: **I. C. 27303** **Index No. 64.**

"Plaintiff in error is hereinafter referred to as "plaintiff;" defendant in error, the Industrial Commission of Colorado, as "the commission;" defendant in error, J. M. Simpson Woodworking Company, as "the employer;" and defendant in error, the Employers' Liability Assurance Corporation, Ltd., as "the insurer."

Plaintiff, alleging he was permanently injured in the service of the employer, and that said injury was one arising out of and in the course of his employment, filed his claim with the Commission. Hearing was duly had and the claim disallowed. The cause was then taken to the district court which entered its judgment affirming the action of the Commission. That judgment is now here for review.

That plaintiff was permanently injured, that during the alleged employment both plaintiff and the employer were governed by the act in question, and that the insurer is liable if plaintiff is entitled to recover herein, are all undisputed.

The only material questions are: (a) Did plaintiff file his claim in time? (b) Was there evidence to support the finding of the Commission?"

DECISION:

"Plaintiff first filed his notice and claim August 11, 1923, and, on conflicting evidence, the Commission found: "That the claimant did sustain injuries by reason of an accident occurring prior to August 10, 1922, probably during the month of June, 1922. That the claimant filed his claim for compensation herein August 11, 1923, . . . That the claim of said claimant was barred by reason of the statute of limitations."

There was a conflict in the evidence as to whether the injury which caused the disability in question arose out of and in the course of the alleged employment. On that question the Commission found: "The claimant

was injured prior to August 11, 1922, in an accident not arising out of and in the course of his employment; that if the claimant sustained any injury on August 15, 1922, he has sustained no disability by reason of that injury. . . . Claimant has failed to prove that he sustained an accident on August 15, 1922, and that he has sustained any permanent disability by reason of such accident."

The district court held the question one of fact to be determined from conflicting evidence. That conflict can be most clearly set forth by quoting from the learned trial judge:

"I have read the entire testimony. . . . The only objection made is that the evidence is not sufficient to sustain the findings. Of course the Legislature has created a tribunal for the determination of facts in cases of this sort, and that tribunal is not the court, but is the Industrial Commission.

Let us see whether there is enough evidence to justify the finding of the Industrial Commission. Bohmann, the claimant, told his employer that the accident occurred in June, 1922. He told the claim agent that it was in May or June, 1922. . . . Later he testified that it was about August 14, 1922. . . . He testified that his wife went to Pine Grove on the last Sunday in July, and was there fourteen days exactly. The last Sunday was July 29. His wife, therefore, returned August 12. He testified that he was injured three to five days before he stopped work, and that he stopped work the day his wife returned. That would make the day of the accident between August 7 and August 9. . . . Later he said that the date of the accident was August 15, and that his wife was at Pine Grove for three weeks. . . . He testified that he wrote to his wife and told her of the accident, and that she came home; whereas his wife testified that the first she heard of the accident was August 19, when he was at Pine Grove, at which time he told her about it. . . . The claimant's own sister-in-law testified that a while before the claimant went to Pine Grove he worked on her automobile, and injured himself by straining his back. Certainly, in the light of that testimony . . . the court would not be justified in saying that there was such a total lack of evidence to sustain the findings of the Industrial Commission as would justify the court in supplanting the findings of the Commission by findings of the court. . . . It is impossible for me to say that the Commission did not have sufficient before it to find to enable it to find either one way or the other without interference on the part of the court. Therefore, I find the issues in this case in favor of the defendants."

We also have examined the entire record and reached the same conclusion. The finality of the decision of the Commission under such circumstances has been before us so often that citation is superfluous. The questions were solely for the Commission and the courts are powerless to disturb its findings.

The judgment is accordingly affirmed.

THE C. W. KETTERING MERCANTILE COMPANY AND THE OCEAN ACCIDENT AND GUARANTY CORPORATION, LTD., v. WILLIS H. FOX AND THE INDUSTRIAL COMMISSION OF COLORADO
77 Colo. 90; 234 Pac. 464

FACTS: **I. C. 30525** **Index No. 65.**

"This is a cause where the District Court affirmed an award made by the Industrial Commission in a proceeding under the Workmen's Compensation Act in favor of an injured employee. The employer and the insurer have sued out this writ of error.

The Commission found that the claimant, Willis H. Fox, was, on August 16, 1923, "employed by The Kettering Company," and that on that date "he was hit by an Oregon Short Line train." The record shows that the claimant was injured in an accident wherein a railroad train struck the automobile which he was driving, upon a crossing, near the town of Downey, Idaho. The Commission also found that "the claimant has elected to pursue his right under compensation." This last finding was made in view of the circumstance that the claimant might have elected to pursue his remedy against the railroad company in an action for damages for personal injuries resulting from such company's alleged negligence. The claimant made his election, in writing, on February 26, 1924, which was six months and ten days following the date of the injury. This election constituted the only written notice claiming compensation, which claimant ever filed with the Industrial Commission.

The principal contention of plaintiffs in error is that claimant was barred from any right to compensation because his written notice was filed more than six months following the date of the injury." . . .

"The briefs are voluminous. There is a controversy as to whether the notice mentioned in the statute must be in writing. This question is raised because defendants in error claim that there was an oral notice given to the Commission on February 11, 1924, which was before the expiration of the six months following the date of the injury. The facts concerning this alleged oral notice will be hereinafter referred to. There was neither a written nor an oral notice on the date above named, so the question above mentioned is immaterial.

The claimant was barred from any right to compensation, not having filed any notice claiming compensation within six months after the injury, unless the question of waiver or estoppel comes in, and leads to the contrary result." . . .

DECISION: (Excerpt)

"We now come to the question whether the record shows such a state of facts that the plaintiffs in error, the employer and the insurer, are estopped to assert that the claimant's right to compensation is barred because his notice claiming compensation was filed after six months from the date of the injury.

Before the expiration of six months following the injury, and on February 11, 1924, without any notice claiming compensation having been filed, the employer and the insurer notified the Industrial Commission that they would contest liability in this case on certain named grounds, not involving any notice or lack of notice of claim of compensation. On the same day the Commission, by the referee, held a hearing in this matter. This hearing appears to have been brought about by the insurer who induced the claimant to come before the Commission on that date. He came in person, without an attorney. The insurer and the employer say this hearing was held at that time for the purpose of advising the injured employee, claimant here, that he must elect whether he would make claim for compensation under the act or institute an action against the railroad company for damages for personal injuries. The Commission's record recites that this hearing of February 11, 1924, was held "pursuant to agreement between the parties."

At this hearing the referee of the Commission took evidence concerning the accident, the resulting injury, the employment, and the earnings. The referee sought to ascertain from Fox, now the claimant, whether he was going to sue the railroad company. Fox did not know, because he was not advised what his attorneys intended to do. He didn't know whether they thought he had a case.

The referee then ruled or ordered that the "case will be continued until such time as the claimant notifies the referee as to whether or not he intends to bring suit against the Oregon Short Line Railroad." There was no objection to this order on the part of the plaintiffs in error. They acquiesced in the continuance which was, in effect, to a time over six months following the date of the injury. They merely suggested that Fox notify the referee in writing, and the referee then included this in the order. At this time the plaintiffs in error were already familiar with the facts. They were prepared to contest the claim, if one was made, on several grounds, not involving any notice or lack of notice of a claim for compensation. They were waiting to see what Fox would do under the order concerning election. Fifteen days later, Fox filed his election in writing, notifying the Commission and the referee that he had elected to claim compensation from the insurance carrier under the Workmen's Compensation Act. Several days later, and on March 8, 1924, the plaintiffs in error, for the first time, notified the Commission that they would contest liability on the additional ground that "claimant did not file his claim within six months after the date of his alleged accident."

We think that under the foregoing facts the plaintiffs in error are equitably estopped from invoking the limitation clause in the statute. What occurred at the hearing of February 11, 1924, and what was done by plaintiffs in error at and prior to that time, was such as to lead any one in Fox's position to believe that all he needed to do, to preserve his rights, was to make his election in writing, and this he did, and he in no way caused plaintiffs in error to change their position. It follows, from the foregoing views, that the Commission did not err, or act in excess of its jurisdiction, in making the award, so far as any question concerning notice is involved."

THE INDUSTRIAL COMMISSION OF COLORADO, et al., v. GLOBE INDEMNITY COMPANY, a Corporation, et al.
77 Colo. 251; 235 Pac. 576

FACTS: **I. C. 31767** **Index No. 66.**

Plaintiff in error Thompson was injured while painting the building of defendant in error Hospital, whose compensation insurance was carried in defendant in error, Globe Indemnity Company. Thompson was awarded compensation by The Industrial Commission. Defendants in error thereupon brought this action in the district court which reversed the Commission. To review that judgment this writ is prosecuted.

The record does not disclose the ground of the reversal, but it is here contended that Thompson was not employed by the hospital but by one Cain alleged to have been an independent contractor. For that reason it is said there is no evidence to support the award. No other question need be considered.

DECISION: (Excerpt)

Defendants in error cite Arnold v. Lawrence 72 Colo. 528; 213 Pac. 129. We think that authority is against them. That case was taken from the jury on the theory that the plaintiff was a day laborer, in the face of the

allegation that he had agreed to furnish competent workmen and do skillful work, which agreement he had violated to defendant's damage. We there held that the fact was for the jury. We stated, by the citation of approved authorities, that:

> "A servant is one whose employer has the order and control of the work done by him and who directs, or at any moment may direct, the means as well as the end."
>
> "One who contracts to do certain work for another, furnishing his own laborers, implements and materials, is a contractor, not a laborer, even though paid by the day."
>
> "Plaintiff in error was in the business of a painting contractor furnishing his own materials, not working by the day for others under their directions. His admitted contract was to furnish men and materials to paint the houses, i. e., complete the entire work, not to paint them himself, or merely do painting on them by the day."

In the instant case Cain testified that he had no contract; that he was hired to do certain work; that "they trusted me to make out the bills and get the work done;" that he was a painter who did work both by contract and day's labor; that he had first been directed to paint the operating rooms at the hospital "and then they gave me the outside to go ahead with;" that he hired Thompson, "they left it to me;" that his agreement was with the Sister Superior and as to the employment of men, "she leaves that up to me;"

> "Q.—Were you supposed to work on it steadily until it was finished? A.—As long as they wanted anything done around there."
>
> "Q.—If the Sister Superior should tell you to discharge this man, you would discharge him? A.—Yes, I sure would."

From the foregoing it appears that this was not a contract job. Cain was in the employ of the hospital. He was its foreman on this particular kind of work. While he was permitted to employ and discharge men under him there is no evidence that such was his exclusive right under the terms of his employment. In fact the contrary very clearly appears. The findings of the Commission used the language "claimant was working for and employed by one Floyd Cain," but it is perfectly apparent that this was but another way of saying that Cain employed him for the hospital.

The evidence is not entirely satisfactory and the findings technically deficient, but we think there is ample in this record to support the award.

The judgment is accordingly reversed with directions to the district court to affirm the findings and award of the Commission.

Allen C. J., and Adams J., Concur.

DOC E. W. HALL v. THE INDUSTRIAL COMMISSION OF COLORADO AND T. W. McMAHON
77 Colo. 338; 235 Pac. 1073

FACTS: **I. C. 29499** **Index No. 67.**

"This cause is before us upon the review of a judgment of the District Court of the City and County of Denver affirming an order of the Industrial Commission. The order, or award, in question was one whereby the Commission denied compensation to the claimant.

The claimant was an employee whose employer was engaged in the show or carnival business. Claimant's duties were those of an advance agent. The headquarters of the business, and the residence of the employer, were in the state of Kansas. The contract of employment was made in Nebraska, claimant says, and the Commission found it was made in Kansas. In any event it was not made in Colorado. The Commission denied compensation upon the ground that it had no jurisdiction to grant it, under the facts above stated. The sole question to be determined is the correctness of the ruling on the question of jurisdiction."

DECISION:

"Where the situation is such as that now before us, that is, where the injury is in this state, and the contract of employment made in another, and the work is not to be carried on principally within this state, the trend of the decisions seems to be to leave the injured party to proceed under the laws of the state where the contract was made. The Hopkins case above cited, quoting from Bradbury's Workmen's Compensation (3rd Ed.) 88, or the same author's note in 9 Anno. Neg. & Comp. Cases, 918, says:

> "It would seem that the application of the doctrine that the parties should be governed by the Workmen's Compensation law of the state where the contract of employment was made would settle many of the difficulties and conflicts which are bound to arise, and that any other doctrine would greatly multiply these difficulties."

The doctrine favored by Bradbury should be adopted here, as it was in the Connecticut case above cited. It is accordingly held that our Industrial Commission had no jurisdiction to award compensation to the plaintiff in error, in view of the fact that his contract of employment was made in another state and his duties were not to be performed principally in this state only.

The district court was right in affirming the decision of the Commission. The judgment is affirmed."

ED. LINDSAY AND P. S. DOLAN, CO-PARTNERS, DOING BUSINESS AS LINDSAY AND DOLAN AND THE FEDERAL SURETY COMPANY, A Corporation, v. THE INDUSTRIAL COMMISSION OF THE STATE OF COLORADO, AND VOLLIE GONCE, CLAIMANT, AND MR. AND MRS. LESTER GONCE.
77 Colo. 424; 236 Pac. 1005

FACTS: **I. C. 31049** **Index No. 68.**

Vollie Gonce, one of the defendants in error, a minor, while in the employ of Lindsay and Dolan, plaintiffs in error, lost his left leg by accident. It was amputated March 1st, 1924, between the knee and hip, leaving a sufficient stump to permit the use of an artificial limb. March 14th he filed his claim with the Commission. June 16th the referee made a report which was affirmed by the Commission, and subsequently by the district court. The matters in dispute are the length of time and the rate of the allowance. The plaintiffs in error say that the rate, $10.80 per week, was higher than the findings of fact justified, and that the number of weeks, two hundred and eighteen, was greater than the facts justified. There are many statements and much argument, but all can be reduced to these two points.

A portion of the award reads as follows:

> "During November, 1923, the claimant earned $10.50, in December, 1923, he earned $61.60, in January, 1924, he earned $56.00 and in February, 1924, he earned $88.80. He was working for $3.60 per day and he worked six days a week when work was available. Claimant was sixteen years of age at the time he was hurt and had an eighth grade education. Under Section 47 D. the average weekly wages of a minor must be determined upon the basis of the earnings as such minor if not disabled would probably have earned during the time for which compensation is granted. **Although the testimony does not indicate that claimant's daily rate would have been increased during the future, 'the claimant must be given the benefit of the doubt'** as to whether or not he would have been steadily employed. Compensation should, therefore, be paid upon the basis of the daily wage at the time of the accident or upon an average weekly wage rate of $21.60 per week.
>
> It is, therefore, ordered that the respondent employer and the compensation insurance carrier above named pay compensation to the claimant at $10.80 per week beginning March 10, 1924, and continuing to June 16, 1924, both dates inclusive, for and on account of the claimant's total disability and beginning June 17, 1924, further compensation at $10.80 per week for a period 204 weeks in full settlement of the claim for compensation filed herein."

DECISION: (Excerpt)

We cannot disturb the finding as to that amount. If, in February, 1924, the claimant earned $88.80, neither we nor the district court can say without usurping the function of the Commission, that it was not probable that he would earn so much on the average for the four years next ensuing. He was sixteen years old; his earning capacity would ordinarily increase. The Commission made no definite finding that it would or would not; neither did it find directly whether the claimant would have been steadily employed; but does so impliedly by making an award as if it had so found. This must be regarded as equivalent to a finding and it supports the award of $10.80 per week. It is not for us to say whether the evidence justifies the finding. Prouse v. Industrial Commission, 69 Colo. 382; 194 Pac. 625. There is nothing to show that the Commission has acted in excess of its power or that there was any fraud." . . .

THE INDUSTRIAL COMMISSION OF COLORADO, et al., v. B. J. HAMMOND
77 Colo. 414, 236 Pac. 1006

FACTS: **I. C. 24187** **Index No. 69.**

"Walter J. May met with an accidental death while hauling lumber for one Rathbun, lessee of defendant in error, Hammond, neither of whom carried industrial insurance. Deceased's widow, on behalf of herself and children, made claim against Rathbun and Hammond under the Workmen's Compensation Act and obtained judgment. Hammond took the cause to the district court where the findings and award as to him were set aside. To review that judgment this writ is prosecuted.

Hammond owned a saw-mill which he leased August 15, 1922, to Rathbun, including machinery, tools and equipment. The lease was for one year. By its terms Rathbun agreed to produce three hundred thousand feet of lumber from the mill, and Hammond agreed to pay charges due the government for the cutting and was to receive as rent one-sixth of the finished product delivered on cars, or one-sixth of the net proceeds. Rathbun employed the deceased, at $4.00 per thousand, to haul logs from the timber to the mill and lumber from the mill to the railroad cars, using his own team and wagon. November 2, 1922, May was killed while so employed."

DECISION: (Excerpt)

Amended Sec. 16 of the Workmen's Compensation Act, Laws 1923, p. 733, reads as follows:

> "Every employer of four or more employees (not including private domestic servants and farm and ranch laborers), engaged in a common employment, shall be conclusively presumed to have accepted the provisions of this Act, unless, prior to the date such employer becomes the employer of four or more persons, he shall have filed with the Commission a notice in writing to the effect that he elects not to accept the provisions of this Act or unless said employer has rejected the provisions of the Workmen's Compensation Act of Colorado in conformity with the provisions of said Act as heretofore existing."

Sec. 27 of the Act, Laws 1923, p. 736, provides that if an employer, subject to the terms of the act, carries no insurance and one of his employees who has not rejected the act as therein provided is killed or injured, compensation may be claimed according to the terms of the act:

> "and in any such case the amounts of compensation or benefits provided in this Act shall be increased fifty per cent."

The same section further provides that the present value of the compensation awarded shall be paid to a designated trustee, or a bond given conditioned for compliance with the terms of the award, and in the event the employer shall fail to pay or give bond the award may be filed in the office of the clerk of the district court, recorded in the judgment book and judgment docket,

> "and shall thenceforth have all the effect of a judgment of the District Court, and execution may issue thereon out of that court as in other cases."

Sec. 49 of the Act, Laws 1919, p. 717, reads in part:

> "Any person, company or corporation operating or engaged in or conducting any business by leasing, or contracting out any part or all of the work thereof to any lessee, sub-lessee, contractor or sub-contractor, shall irrespective of the number of employees engaged in such work, be construed to be and be an employer as defined in this Act and shall be liable as provided in this Act to pay compensation for injury or death resulting therefrom to said lessees, sub-lessees, contractors and sub-contractors and their employees, . . . and such lessee, sub-lessee, contractor or sub-contractor, as well as any employee of such lessee, sub-lessee, contractor or sub-contractor, shall each and all of them be deemed employees as defined in this Act. Such employer shall be entitled to recover the cost of such insurance from said lessee, sub-lessee, contractor or sub-contractor, and may withhold and deduct the same from the contract price . . ."

The Commission found that May was employed by Rathbun; that the death was caused by an accident arising out of and in the course of decedent's employment; that the widow and children were dependents, and sole dependents, of deceased; that Rathbun was operating the mill under a lease from Hammond, the owner; that neither carried insurance; that Rathbun employed four or more employees regularly in such operation. The compensation allowed by the Commission was increased fifty per cent on account of the failure of lessor and lessee to carry insurance, and the medical, surgical, hospital and undertaker's claims were likewise increased fifty per cent. It was further ordered by the Commission that the lessor and lessee execute a bond for compliance with the order or pay to the trustee the present value of the compensation awarded.

"It is next asserted that the evidence does not support the finding, that in the operation of the miil in question Rathbun, at the time of the accident, employed regularly four or more persons. That finding we think amply supported, but in view of the fact that Hammond's liability, if any, is fixed by said section 49 irrespective of the number of employees, the question is immaterial."

"Defendant in error objects to that portion of the findings and decree requiring him to give bond on the ground that the amendment to Sec. 27 was not passed until this claim accrued and if invoked here would therefore be retroactive. The point is not well taken, first, because that portion of the section in question relates only to the remedy, and second, because it is for his advantage, merely providing a method by which he may escape immediate payment. He is not obliged to give the bond unless he elects to do so."

"Neither can defendant in error complain because, under said Sec. 16, the act is applied to him on the presumption that he has accepted it because of his failure to file with the Commission a notice of his election not to accept. The legislature might have made the statute mandatory. Defendant in error is merely given the privilege of escaping its provision by filing a notice."

"That Hammond conducted the saw-mill business by leasing it to Rathbun and is therefore liable under said Sec. 49, seems to us too clear for argument. . . ."

"The principal contention, however, of defendant in error, is that deceased was not an employee but an independent contractor and as such not subject to the terms of the Workmen's Compensation Act. It is not always easy to determine when one performing labor for another is a servant and when a contractor. Each case must be decided upon its own facts and where these are in dispute the finding of the Commission is final"

"Finally defendant in error insists that the Commission erred in adding fifty per cent. to the medical, surgical, hospital and undertaker's claims, and in this we think he is correct. Sec. 51 L. 1919, p. 719, imposes upon the employer the duty of furnishing medical, surgical, nursing and hospital treatment and supplies and apparatus for a fixed time and to a fixed minimum regardless of the compensation allowed, and where such bills are not paid but are included in the award they are paid direct to those who have rendered the service or furnished the supplies. In view of these facts we cannot construe the words "compensation or benefits," used in that portion of said Section 27 hereinbefore quoted, as including such expenses.

"The judgment of the district court, so far as it relates to the defendant in error, is reversed, and the cause remanded with directions to affirm the award of the Commission save as to the fifty per cent. added by it to the medical, surgical, hospital and undertaker's claims which portion of the award is hereby set aside."

FRINK DAIRY, A Corporation, AND MARYLAND CASUALTY COMPANY, A Corporation, v. INDUSTRIAL COMMISSION OF COLORADO, RUTH S. KIRBY, AND CALVIN CLIFFORD KIRBY
78 Colo. 71; 239 Pac. 727

FACTS: **I. C. 35489** **Index No. 70.**

Peter Kirby was killed by accident while driving a milk wagon for plaintiff in error. The Industrial Commission awarded his widow and minor son $52.08 per month upon a finding of fact that his average weekly wages exceeded $24.00. The district court affirmed the award.

The plaintiff is error claims (1) that under the evidence the amount was not justified; and (2) that the findings were not sufficiently specific. As to the second point, it is urged that the Commission ought to show whether it proceeded under paragraph (b) or (c) of Section 47 of Workmen's Compensation Act (C. L., Sec. 4421); and if (c) then to find the facts upon which it disregarded (b). See Ins. Co. v. Ind. Com., 74 Colo. 201. It is plain, however, that they did not follow, (b) because under that clause, under the evidence, it would be impossible to find that Kirby's weekly wage was $24.00. We think they ought to have stated why they did not follow it and ought to have found the facts which they claim justify that course, and the district court or this court might rightly send the case back for such a finding; but since the evidence is undisputed we may and ought to consider the facts as established and proceed as if the Commission had found them. Prouse v. Ind. Com., 69 Colo. 382; 1924 Pac. 625."

DECISION:

"Upon the first point, then, whether the evidence justifies the finding of an average wage of $24.00 per week. It appears that the decedent worked in Detroit for a dairy at approximately $50.00 per week, that he quit them in May, that he left Detroit with his wife and child in July, 1924, and went to Wyoming where he visited, thence to Denver, then back to Wyoming where he worked about two months for $180.00, then to Denver again, where he was employed by plaintiff in error from about October 31st to December 26th, 1924, the date of his death. He was paid by plaintiff in error for 47 days' work on Commission, $194.55, which would be at the rate of over $24.00 per week, as the Commission found.

The dairy company insists that the award should have been made according to paragraph (b): $180+$194.55÷26=$14.40, but (c) qualifies (b) as follows: "That in any case where . . . by reason, etc. . . . or where for any other reason said methods will not fairly compute the average weekly wage," the Commission may compute it "by taking the daily earnings at the time of the accident" or "in such other manner and by such other method as will, in the opinion of the Commission, based upon the facts presented, fairly determine each employee's weekly wage."

We think the facts justify the resort to this clause. The evident purpose of the act is to give the dependents what they have lost. Roughly and in general that is about one-half the income of their supporter for the last six months, yet often that would not be so and for that reason we have the qualification in paragraph (c). The method of computation desired by plaintiff in error would not fairly represent the loss to the dependents and we do not think would satisfy the legislative intent.

Judgment affirmed.

HAZEL B. COMSTOCK v. A. E. BIVENS AND AXEL NELSON, PARTNERS, DOING BUSINESS AS BIVENS & NELSON
78 Colo. 107; 239 Pac. 869

FACTS: **I. C. 30399** **Index No. 71.**

"Bivens and Nelson were operating a stage route in southwestern Colorado and in connection therewith carried the mails of the United States Government under a Star Route contract. They employed Comstock to

carry the mails over that portion of the Star route from Naturita to Paradox and to portoffices between these two towns. By the terms of the contract of hiring, Comstock was to furnish his own services and an auto truck as a vehicle for carrying mails and his fixed compensation was $225.00 per month. Additional compensation for carrying parcel post mail was allowed him, the amount of which depended upon the amount of packages he carried. Comstock was permitted by his employers to carry passengers and freight on his truck and his compensation was such as he arranged for with the passengers and shippers. With this feature of the contract Bivens and Nelson had no concern. When Comstock began the work of carrying the mails under this employment, he carried a revolver which he afterwards exchanged for a rifle. On his last trip from Naturita to Paradox, after Comstock reached the postoffice at the latter place and had delivered the mail to the postmistress, and after receipting for a parcel post package which he was to deliver to some consignee apparently on the next morning on his trip from Paradox to Naturita. he drove his truck from in front of the postoffice for a short distance along the public highway and stopped in front of his own home and apparently while taking his rifle out of the truck in some manner not disclosed by the evidence, there being no eye witnesses, the weapon was discharged and Comstock died in a few minutes as the result of the wound."

DECISION: (Excerpt)

"The Industrial Commission vs. Anderson, 69 Colo. 147, we held that in the absence of special circumstances bringing the accident within the scope of the employment, no compensation is recoverable by an employee who is injured while on his way to or from work. This is in accordance with the general rule. To this general rule, however, there are exceptions as well established as the rule itself. . . . "

"We think the case in hand comes within the exception to the general rule. . . . "

"When Comstock delivered the mail to the postmistress on the evening of the day when the accident occurred he could not indefinitely leave his automobile in the public highway or make of the same a place of storage. It was necessary for him to put it in his garage or some place on his own or rented premises. While there is no direct evidence as to what Comstock's intentions were in driving from the postoffice to his home, his course was what he usually pursued after delivering the mail. He was found lying near the car and had taken the rifle from the automobile in the place where he usually carried it on his trips and apparently intended to put it away in his house when it was discharged. The car being the instrument or facility that he used in performing his work of carrying the mail, it is a fair inference from the testimony that he was preparing to store, or was engaged in storing, his automobile for the night at the time the accident occurred. This is analogous to what occurs, for example, when a carpenter, who quits work at the end of the day on a house which he is building, goes across a street or to some other nearby place to store his tools for the night. We think that Comstock was doing the work for which he was employed when this accident occurred and it arose out of and in the course of his employment."

"It may be that one who actually carries the mail for his employer who holds a mail contract from the United States performs a public function, and that the contractor is not liable in damages to senders or receivers of the carried mail which such carrier steals or destroys and for the reason given. This does not, however, destroy the relation of employer and employee. . . . "

"He is the employee of the contractor, and he is also something more—the servant of the United States in carrying the mail. The fact that the employers of the mail carrier are not liable to third parties for the negligence or dishonesty of the mail carrier is not equivalent to saying they are not liable under this act to dependents of the carrier for injury to him in the course of the employment. . . . "

"Conceding that Comstock was performing a public function, nevertheless he was actually employed by the holders of a Star route contract and though the Star route contractors might not be responsible at common law to third parties for the employee's negligence, yet if the employee is injured in an accident arising out of and in the course of his employment and while engaged therein, our Workmen's Compensation Act offers a remedy which is not taken away by the mere circumstance that Comstock was at the time also engaged in the performance of a public function. . . . "

"We are clearly of the opinion that upon neither of the foregoing grounds can the decision of the district court be sustained. It is, therefore, reversed and the cause remanded to that tribunal with instructions to set aside its judgment and in lieu thereof render a judgment dismissing the application of the employer and affirming the award of the Commission."

WILLIAM FLICK, v. THE INDUSTRIAL COMMISSION OF COLORADO AND JOHN COAN
78 Colo. 117; 239 Pac. 1022

FACTS: **I. C. 34076** **Index No. 72.**

The Industrial Commission awarded John Coan compensation for an injury arising out of and in the course of his employment by one Ish in a gravel pit on the land of Flick, the plaintiff in error. Flick brought suit in the district court where the award was affirmed and he brings the case here on error.

The finding of the Commission was that Ish, "the respondent employer, was leasing such land from W. M. Flick under an oral royalty contract;" "under Sections 49 and 50 of the Compensation Act W. M. Flick is required to pay compensation to the claimant."

Section 40 reads in part as follows:

> "Any person . . . operating or engaged in or conducting any business by leasing, or contracting out any part or all of the work thereof to any lessee . . . shall . . . be construed to be and be an employer as defined in this Act, and shall be liable as provided in this Act to pay compensation . . . to said lessees . . . and their employees."

DECISION: (Excerpt)

The first proposition of plaintiff in error is that the evidence does not justify the finding of the Commission that he was leasing to Ish, still less that he was "operating or engaged in or conducting any business by leasing." The evidence on that point is that there was an oral agreement between Flick and Ish that Ish might enter on the land of Flick and operate a gravel pit with machinery for the purchase of which Flick loaned the money to Ish and that Ish was to pay a royalty upon each yard of gravel taken out. Flick retained possession of the land and raised a crop on it; no time, nor, apparently, any extent of space was fixed. Was this a lease? The plaintiff in error urges that it is a mere license, and the authorities bear him out in that claim. . . . "

"Our conclusion must be that the finding of the Commission that there was a lease is not justified by the evidence. In view of this conclusion the question whether a lessor is, ipso facto, liable as an employer, or whether a contract for a royalty as distinguished from rent makes him so, are not now before us and since the Commission has found merely a leasing, the other factors mentioned in the statute as sufficient to charge an owner with the liabilities of an employer must be deemed to have been found in the negative and the case must be reversed. . . . "

"It is claimd that the provision in Sec. 27 of the Act for an increase of fifty per cent. in the award in case no insurance is carried is unconstitutional; that it violates Sec. 20 of Art. 2, that "excessive fines shall not be imposed;" that being added to the award it is a double punishment, that it is to be paid to an employee and not to the State, and that it is "class legislation," because no such penalty is put upon the real employers. The additional award is not a fine or punishment or a penalty. The statute is not penal in its nature. The award is compensation, a duty or liability attached by law to the contract of employment and the additional compensation is an additional liability, attached by law to the uninsured liability, not by way of punishment, but simply that the compensation in one kind of contract is $2.00 and in another kind $3.00 for the same injury. The purpose is probably to induce insurance and thus provide security.

"As to the objection of class legislation the section seemsto us to apply to all sorts of employers alike, and so of Sections 49 and 50."

"The argument also seems to claim that Section 49 is unconstitutional because it furnishes a definition of employer different from that in Section 8. That does not violate the constitution. It is our duty to construe them together if we can, and we can. Section 49 merely adds to the definition in 8."

THE INDUSTRIAL COMMISSION OF COLORADO AND JOSE SANCHEZ, v. THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, INSURER, AND THE TRINCHERA TIMBER COMPANY, A Corporation
78 Colo. 267; 241 Pac. 729

FACTS: **I. C. 21392** **Index No. 73.**

"In January, 1921, Jose Sanchez was employed as a blacksmith by The Trinchera Timber Company. While he was engaged in shoeing a horse on the 7th day of January, 1921, the horse jerked and threw him to the floor of the shop with considerable violence. He complained of an injury to his hip, was unable to proceed, and another employee completed the job of shoeing. March 25, 1922, an agreement (apparently ratified by the employer) between the insurer and Sanchez was entered into by which the insurer agreed to pay Sanchez compensation for his injury at the rate of $10.00 per week beginning July 10, 1921, and continuing during his disability. April 27, 1922, the Industrial Commission upon being advised of this agreement approved the same. Thereafter the insurer and employer

petitioned the Commission for a review of the award of April 27; their petition alleging that the agreement as to compensation had been made without proper investigation and that Sanchez had not sustained the injury in question in the course of his employment. The Industrial Commission, upon such application, June 24, 1922, entered upon a review and made a supplemental award continuing the former award of $10.00 per week and in addition thereto allowed Sanchez $200 for medical services. July 3, 1922, the insurer filed another petition asking for a further review. This was granted and on January 30, 1923, the Commission made a second supplemental award doing away with all further compensation. Up to this time Sanchez had been paid the sum of $100.00 under the previous award thus set aside by the Commission. In each one of these orders or awards the Commission assumed to reserve jurisdiction by spreading on its records: 'This Commission does hereby retain jurisdiction of this claim until the same is finally and fully closed'." Neither of the foregoing purported to be a final award and the record satisfactorily shows that the Commission did not intend to make either of them final but retained jurisdiction until in due course it made a final award.

Plaintiffs in error say that Sanchez, the claimant, is a Spanish-American citizen of Colorado, unable to read or write the English language, unfamiliar with court or Industrial Commission procedure, and incapable of understanding their true import or the reasons for the various awards hereinbefore mentioned. Early in the year 1924 Sanchez consulted local attorneys who appear for him in this proceeding along with the Attorney General. These attorneys examined the record of the proceedings before the Industrial Commission and wrote a letter to that body that their examination of the record convinced them that the award of the Commission of January 30, 1923, doing away with further compensation, had been brought about by false testimony and that other testimony which was considered essential had not been introduced. The Commission then upon its own motion, and proceeding as it believed was proper under Section 4484, C. L. 1921, being Section 110, p. 745 of the Session Laws of 1919, resumed jurisdiction, and reviewed the case and on April 23, 1924, entered an order directing its referee to hold a further hearing for the purpose of receiving testimony which might be offered. This order was complied with by the referee who conducted a hearing at Alamosa. Notice thereof was given to the claimant and to the employer and insurer. They were represented by counsel at the hearing where evidence was taken. It seems that the false testimony which it is claimed by Sanchez brought about the award discontinuing further compensation, was given by a co-employe of the timber company and this alleged false testimony was that Sanchez's physician had stated to the witness that before this injury he had treated Sanchez professionally for tuberculosis and social diseases which led the Commission to find that the injury, if any, was not one that arose in the course of his employment but that it was due to the diseases in question. Upon this last hearing at Alamosa the Industrial Commission, upon its finding that there was error and mistake upon its part in the previous denial order, corrected the same by entering a supplemental award on February 19, 1925, thereby making a substantial allowance to the claimant. The defendants in error, the insurer and employer, asked for and were granted a rehearing of this award of February 19, 1925, and on the rehearing the Commission on March 16, 1925, approved the same and entered it as its final award in the case. It is from this final award of March 16, 1925, as we understand the record, that the case was taken to the district court and set aside by that tribunal and it is this judgment setting aside such final award that we are asked now to review."

DECISION: (Excerpt)

"One contention made by the defendants in error is that, if in other respects the Commission had power upon its own motion under Section 110 **supra** to review any of its former awards, it was beyond its power upon such hearing to make an award increasing the compensation of its previous award of January 30, 1923, which denied further compensation; that point being that since no money compensation was then alowed, but was denied, it was impossible to increase the same as was later done in March, 1925. This reasoning we cannot sanction. Certainly the failure of the Commission to award claimant any compensation did not operate to prevent that body, by a supplemental or subsequent award, if it had jurisdiction to make a supplemental award, from providing compensation in such sum as it deemed the evidence warranted. This would be proper under this section of the statute because an award of a substantial sum would be a larger sum than no award at all."

"The principal objection by which the defendants in error seek to uphold the judgment of the district court setting aside the Commission's final award, is that, as the court held, the Commission exceeded its lawful power; in other words, acted without, or in excess of, its jurisdiction which is one of the grounds upon which our courts are permitted to set aside awards of this character under the Workmen's Compensation Act. Defendants in error concede that if the Commission in a previous award made a mistake or committed an error or if there was a subsequent change in conditions, it might at any time thereafter of its own motion upon notice and a hearing

accorded to the parties, review the same and on such review, if the evidence justifies it, diminish or increase the compensation previously awarded within the prescribed limits, but they contend that there was not sufficient evidence upon the final hearing February 19 or March 16, 1925, to justify the making of the award setting aside the previous one of January 30, 1923. If the Commission was led or induced to find from the showing on the hearing culminating in the order of January 30, 1923, that the claimant's injury was not suffered in the course of his employment but was due to disease from which he suffered long before, and that the evidence then produced before the Commission upon which such finding was made was false or perjured testimony, the Commission might, according to the plain terms of Section 110, set aside such award or order and enter a different award if the showing before it was sufficient in its judgment to prove that its finding was based upon false testimony. It certainly was an error or mistake upon the part of the Commission, if it was led by the false testimony of the witness for defendants in error to believe, and so find, that the injury sustained by the claimant was not received in the course of his employment. . . ."

"While parties by consent may not confer upon a court jurisdiction of a subject matter of litigation which is does not possess, either party by his conduct may estop himself to complain of a non-compliance with provisions relating to procedure, or as to any matters of which the court has jurisdiction, unless the same are of such mandatory nature that they cannot be waived, or where their strict observance is essential to any jurisdiction by the court. We do not see why the same rule should not obtain in proceedings before the Commission under the Workmen's Compensation Act. The objections here interposed are not of a jurisdictional character. They relate to matters of procedure which may be waived, or failure to comply with which may not be insisted upon because of the conduct of the parties affected. Section 97 **supra** provides that unless a petition for a review of any award of the Commission is filed within ten days after the same is made or within such further time as the Commission may designate, no review of such award is permitted. In all of the reviews had in this case both parties appeared thereat. Defendants in error were represented by counsel and produced evidence. Each review, except the final one, was applied for by defendants in error. When they were notified by the Commission that it had of its own motion, on the ground of its own mistake or error in the award denying further compensation, concluded to reopen the case for further hearing, the insurer wrote a letter to the Commission acknowledging receipt of the notice and asked that the Commission "place this upon your calendar for a further hearing at Alamosa, Colorado." This request was granted and at the Alamosa hearing the defendants in error appeared by counsel and with their witnesses and participated in the review. At no time either at this or at any other hearing, did they raise the question of jurisdiction of the Commission to re-open the case and produce further testimony, or that Section 97 as to time of filing petitions for review had not been complied with. Indeed, they themselves asked for and got reviews without complying with that section, so far as we can determine from this record. We are convinced that both parties by their conduct and acquiescence led the Commission to believe, and to act upon that belief, not only that the Commission had full power at all reviews and rehearings to act, but that the various petitions for review were seasonably applied for within the time prescribed or within the time specified or within the period as extended. Both parties are now estopped to claim otherwise. . . . "

"We are justified in saying that all of the awards or orders of the Commission previous to that of the final award of March 16, 1925, were merely tentative awards. We held in London Guarantee and Accident Co. v. Industrial Commission, 72 Colo. 177; 210 Pac. 70, that the Commission was acting within its rights to increase an award first tentatively made. . . . "

"The judgment of the district court is reversed and the cause remanded with instructions to vacate its judgment and in lieu thereof to affirm the final award of the Industrial Commission of date March 16, 1925."

THE INDUSTRIAL COMMISSION OF COLORADO AND MARTHA SPRIGG, WIDOW OF EDWARD G. SPRIGG, DECEASED, v. F. G. BONFILS AND H. H. TAMMEN AND THE CONTINENTAL INVESTMENT COMPANY, A Corporation
78 Colo. 306; 241 Pac. 735

FACTS: **I. C. 30343** **Index No. 74.**

The Continental Investment Company operated a coal yard under the name of the Post Coal Company. Edward G. Sprigg was accidentally killed while hauling coal for that company, and Martha Sprigg, his widow, claims compensation. The defense is that he was not the employee of the company. The Commission gave her an award which the district court set aside and the case comes here on error. . . .

DECISION:

Was Sprigg in the service of The Continental Investment Company under a contract of hire?

We think he was. He was engaged in hauling coal with his own truck to customers of the company at a fixed price per ton; he was allowed to

haul it himself or employ others; he was allowed to come and go as he pleased; need not report for work at any time nor at all unless he chose; could work for others if he desired. He called at the yard when he pleased and was given coal to haul if there was any to be hauled when he called. The company was under no obligation to give him work and he was under no obligation to work for the company, therefore he could quit when he chose and the company could discharge him when it chose. This was service for hire.

A servant is one whose employer has the order and control of work done by him and who directs or may direct the means as well as the end. Arnold v. Lawrence, 72 Colo. 528, 530; 213 Pac. 129. By virtue of its power to discharge the company could at any moment direct the minutest detail and method of the work. The fact, if a fact, that it did not do so is immaterial. It is the power of control not the fact of control that is the principal factor in distinguishing a servant from a contractor. Franklin Coal & Coke Co., v. Ind. Com., 296 Ill. 329; 129 N. E. 811.

The most important point "in determining the main question (contractor or employee) is the right of either to terminate the relation without liability." Ind. Com. v. Hammond, 77 Colo. ....; 236 Pac. 1006. This is a confirmation by this court of the rule above stated as to control, because the right immediately to discharge involves the right of control.

Sprigg was not employed "for the completion of any given task according to plan." Ind. Com. supra; nor to 'haul a certain amount of coal, McKinsetry v. Guy Coal Co., 116 Kan. 192; the amount of his work was not fixed either by time or measure. Muncie Co. v. Thompson, 70 Ind. Appl. 157; his work did not involve the furnishing of capital shop facilities or assistants, and he did not contract "to do certain work" or to furnish any materials. Arnold v. Lawrence, 72 Colo. 528; 213 Pac. 129. He was not an independent contractor. . . .

The Commission found that Sprigg was an employee under the definition of Sec. 49; the district court held that section unconstitutional and was under the impression that the Commission's finding precluded the proposition that he was an employee as defined by Section 9; this court however, is now bound by the Commission's conclusions of law. C. L. Sec. 4482. The facts were undisputed and the question is one of law not fact. We think the Commission's finding that Sprigg was an employee was correct under Sec. 9. If their reason was wrong, which we do not say, that would not prevent affirmance of the award. We think, therefore, that the findings of fact by the Commission support its award, that the Commission acted not without power and was within its power. These conclusions relieve us of the consideration of the constitutional question as to Section 49.

The judgment of the district court is reversed with directions to affirm the award.

THE INDUSTRIAL COMMISSION OF COLORADO AND JOHN GARCHER, v. THE CONTINENTAL INVESTMENT COMPANY, A Corporation
78 Colo. 388; 242 Pac. 49

FACTS: **I. C. 23708** **Index No. 75.**

The Industrial Commission awarded compensation to Garcher against the Continental Investment Company, the district court set aside the award and directed an award in favor of the company and the case is brought here for review.

The facts are that the Continental Investment Company, under the name of the Post Coal and Iron Company, operated a coal yard which was managed by one Garberson who was paid eighty cents a ton for the transportation and delivery of the coal to the customers. Garberson's wife owned a truck which was used for the delivery of coal and the driver was paid by Garberson's checks one-half of the said eighty cents per ton. On the day of the accident Garcher took the place of the driver and was injured during the course of his work. The only question is whether he was an employee of the Continental Investment Company. We think he was.

DECISION:

Section 49 of the Workmen's Compensation Act reads as follows:

> "Any person, company or corporation operating or engaged in or conducting any business by leasing, or contracting out any part or all of the work thereof to any lessee, sub-lessee, contractor or subcontractor, shall, irrespective of the number of employees engaged in such work, be construed to be and be an employer as defined in this act, and shall be liable as provided in this act to pay compensation, for injury or death resulting therefrom to said lessees, sub-lessees, contractors and sub-contractors and their employees."

Without this section we do not think Garcher may be said to be the company's employee. Garberson was selling coal for the company and delivering it at a fixed price per ton, was using his own truck (borrowing or hiring it from his wife is immaterial), was hiring his own men to transport the coal, was paying them himself out of his compensation received for such carriage, was not controlled by the company as to hours or manner of work. All that was required of him was the result that is, delivery to the cus-

tomers. He may therefore be said to be an independent contractor. Flickinger vs. Ind. Acc. Com., 181 Cal. 425; 184 Pac. 851, Standard Oil Co. vs. Anderson, 212 U. S. 215, 221, et seq., and if so Garcher was his employee and not the company's.

But Garcher, under Sec. 49, may be said to be the company's employee. The court below, however, thought that section unconstitutional because not properly within the terms of the title of the act. Section 21 of Article V. of the constitution reads:

> "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

The title of the act is as follows:

> "An Act to determine, define and prescribe the relations between employer and employee and providing for compensation and benefits to employees and their dependents for accidental injury to or death of employees, for insurance of such compensation and benefits, creating a state compensation fund," etc.

We think the court was wrong. The argument for the company is that the constitution permits the enactment of nothing which is not within the terms of the title, that the title of the act refers only to the relations of employers and employees; that the section in question relates to and concerns the relations of principals to the employees of their independent contractors; that this is not the relation of employer to employee, and therefore not within the scope of the title of the section, and so the section is to that extent void. The reasoning is forcible, but "contractor" is not necessarily outside the category "employees," Smith v. Bowersock, 95 Kan. 96, 104; 147 Pac. 1118. Moore v. Heaney, 14 Md. 558, 562. In other words, the term "employee" has both a narrow, specific, and a wider, generic meaning. That the legislature used it in the latter sense is shown by Section 49, but the district court has restricted it to the former, and, if the words employer and employee are used in the sense we have above suggested, the reasoning falls to the ground, because then the contractor is the principal's employee and the workman is his and an act determining the relations between them determines the relation of employer and employee and so is within th scope of the title. The wider, generic meaning should be given because we ought to uphold the act if we reasonably can.

To go a little further, the rule is that what is germane to the subject as expressed in the title is within its scope. It is germane to the title of the act to define the terms as used in the act. That is what Section 49 does, extending the definition beyond the scope of that of the dictionary, perhaps, but, nevertheless, defining it. If it has misdefined one of those words according to the dictionary, would the act to that extent be unconstitutional? If so, every act that defines a word must stay strictly with the dictionary or define that word also in the title, which has never been done so far as we are aware. For example, in the very act in question, C. L. Sections 4377-83 define various words, including employer and employee. The legislature has a right to do this and thereby declare the sense in which the words are used both in the title and in the rest of the act. If it be claimed that this will permit the legislature to avoid the beneficence of this section of the constitution by adopting absurd and unreasonable definitions, the answers are two, first, we have no right to assume that the legislature will be unreasonable, and, second, the question is not before us because the present definition is reasonable.

The California cases of Flickenger vs. Ind. Acc. Com., 181 Cal. 425; 184 Pac. 851, and Perry v. Ind. Acc. Com., 180 Cal. 497; 181 Pac. 788, do not support the company's position. In that state it was thought necessary expressly in the constitution to give power to the legislature to make employers liable without negligence for accidents to employees and the constitution was amended to permit it. It was then held that such liability could not be extended by the legislature to others than employees and that an independent truck driver occasionally hired was an independent contractor and not an employee within the meaning of the constitution. To extend the ordinary definition of the word employer there would extend the meaning of the constitution itself and thereby the jurisdiction of the commission, but here it merely declares the meaning of the words as used in the title.

The judgment of the district court is reversed with directions to affirm the award of the Commission.

Mr. Justice Campbell specially concurring:

I think that portion of said Section 49 of the act which so define "employee" as to include an independent contractor is not germane to the title, but concede there is a reasonable doubt thereof, hence, under the rule that no statute can be held unconstitutional unless it be so found beyond a reasonable doubt, I concur.

LONDON GUARANTEE AND ACCIDENT COMPANY, LIMITED, A Corporation, AND THE MIDWEST COAL COMPANY, v. THE INDUSTRIAL COMMISSION OF COLORADO, AND SARAH KEYS, ON HER OW BEHALF, AND ON BEHALF OF MAY KEYS, et al.
78 Colo. 478; 242 Pac. 680

FACTS: **I. C. 28536** **Index No. 76.**

James K. Keys and his son, Harvey Clayton Keys, (16 years of age) were killed by the same accident. Sarah Keys, widow and mother of the dead, made claim for herself and minor children on account of the death of the father, and the Commission found that she and the surviving children were totally dependent on him for support and made an award accordingly, which has never been questioned. The widow afterwards petitioned for a lump compensation, which was allowed and paid.

The widow then for herself and said children applied for compensation for the death of the son and brother. The Commission found the applicants were twenty per cent. dependent on the son and made an award accordingly, which was affirmed by the district court and the insurer brings error.

DECISION:

The second award and the judgment of the district court were wrong, not only wrong but logically impossible. The whole is equal to the sum of all its parts and cannot be more or less. The Commission rightly found that the widow and children were wholly dependent on the father. They could not find otherwise, because the statute, C. L. 4426 is that they **"shall be** conclusively presumed to be wholly dependent" on the father. "Wholly dependent" on him means that they are dependent on no one else; it has no other meaning; they could not, therefore, be dependent in whole or in part on any other person. The first finding of the Commission, res adjudicata, as well as the said section itself, precludes the possibility of the second finding. We paraphrase what we said in Employers Co. v. Com., 70 Colo. 229, 231. The argument that claimants might thus lose an award for the greater part of their actual support would be forceful if addressed to the legislature, as we hope it will be, but the statute is explicit and we cannot add to it or take from it. It is perhaps true that the legislature did not foresee the consequences of Sec. 4426, but we cannot ignore its express terms because we guess or even believe that to be the case, and so give it a meaning more agreeable to us. There never was a statute all the consequences of which were foreseen. The English statute, with those of some states, is wiser, i. e., that dependency is a question of fact. Hodgson vs. Owners, etc., 3 B. W. C. C., 260, 271, 274. The defendants in error have cited that case but it does not support them. The ground of the decision was, quoting one of the opinions, that "the question of dependency was not a question of law at all. It is purely a question of fact." That proposition, as we have shown, is not true in Colorado, but in case of widow and children the contrary is true. It is purely a question of law.

The judgment of the district court is reversed with directions to disaffirm the award of the Commission.

THE EMPLOYERS' MUTUAL INSURANCE COMPANY, A Corporation, AND THE THREE PINES COAL COMPANY, A Corporation, v. THE INDUSTRIAL COMMISSION OF COLORADO AND ANTONIO DURAN
78 Colo. 501; 242 Pac. 988

FACTS: **I. C. 25510** **Index No. 77.**

The district court affirmed the Commission's second award which increased the allowance from 139 to 208 weeks. We think the Commission and the court were right. The material facts are that on March 5th, 1923, Duran, by accident in the course of his employment, lost his arm two inches above the elbow, the Commission awarded compensation for 208 weeks and plaintiffs in error claim it should have been 139 weeks.

C. L. 4447, which governs the case, specifies compensation for "loss of one arm between elbow and shoulder—208 weeks, loss of forearm between wrist and elbow, 139 weeks . . . (c) whenever amputation is made between any to joints mentioned in this schedule . . . the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto." It is plain that this would mean that Duran ought to have the compensation specified for loss at the elbow, but there is no specification for compensation for loss at the elbow. The insurer says that the compensation should be 139 weeks, but that is to say that "at the elbow" means "below the elbow," to support which there is no ground. Neither is there ground to say that "at the elbow" means "above the elbow." The reasonable conclusion is that paragraph (c) has no reference to the specifications for loss of the arm, which leaves 208 weeks for loss between shoulder and elbow as the correct award. What compensation should be awarded for a loss actually at the elbow is a question not now before us.

The Commission first awarded 139 weeks, which on its own motion under C. L. 4484, Sec. 110 of the act, it afterwards changed to 208. Plaintiff in error says it had no jurisdiction to make this change.

The original award was Nov. 9, 1923, 139 weeks. January 17, 1924, Durant filed a petition for review which was denied as too late. March 14, 1924, on its own motion, the Commission ordered a further hearing on the ground of errors, inter alia, that it appeared "that the amputation of said arm was between the elbow and shoulder, for which the specific schedule provides 208 weeks disability," the further hearing was had, and, May 29, 1925, award was entered for 208 weeks, with no change in facts. It is claimed that since the facts were the same the award should have been the same, but the error was of law, not fact, and, as we have shown above, the correction was right.

Between the date of the order for further hearing, however, and the new award, the claimant applied for and was granted a lump sum settlement which was paid, and it is claimed that this was such a final disposition as to deprive the Commission of power to act further. It is also claimed that the original award was a final judgment which exhausted the powers of the Commission unless changed conditions should appear. The claim is unsound, London Guar. Co. v. Ind. Com., 72 Colo. 177, Sanchez v. Employers' Liability Co., ... Colo, ...; ... Pac. ..., decided at the present term. C. L. 4484 is as follows:

> "Upon its own motion on the ground of error, mistake or a change in conditions, the Commission may at any time after notice of hearing to the parties interested, review any award and on such review, may make an award ending, diminishing, maintaining or increasing the compensation previously awarded." . . .

DECISION:

There can be no doubt that the error of law, i. e., 139 for 208 weeks, might, under this section, be corrected at any time. The statute is, in this respect, too plain for construction. If this is inexpedient or its consequences at variance with our ingrained ideas of proper judicature, it is a matter for the consideration of the General Assembly. Midwest Coal Co. v. Keys and Industrial Comm., decided herewith. We think this is true although the lump settlement was allowed. There is nothing to show that anything more than a settlement of the first award was intended and it was so computed; moreover further hearing on application for modification of that award was pending when the lump settlement was allowed. It is not likely that the Commission intended to waive the pending application; but even after lump settlement why should not an error of law be corrected? There are decisions to support either side of the case but upon the plain words of the statute we think the matter is clear.

Judgment affirmed.

Mr. Chief Justice Allen and Mr. Justice Campbell concur.

ARMOUR AND COMPANY, A Corporation, AND THE WESTERN CASUALTY COMPANY, A Corporation, v. THE INDUSTRIAL COMMISSION OF COLORADO AND JOSEPHINE BENGSTON
78 Colo. 569; 243 Pac. 546

FACTS: **I. C. 34305** **Index No. 78.**

The Industrial Commission awarded Josephine Bengston compensation for the death of her husband, Henning Bengston. The district court affirmed the award and the case comes here on error. It is claimed by plaintiffs in error that there is no competent evidence to support the award, because the evidence that there was an accident is all hearsay and that there is no evidence that the death was caused by the alleged accident. This is the sole question in the case. We think the judgment was right.

DECISION: (Excerpt)

We cannot review the case upon the evidence. C. L. Sec. 4477 and 4432, Prouse v. Ind. Com., 69 Colo. 382, Olson-Hall v. Ind. Com., 69 Colo. 518. But if there is no competent evidence we may reverse on that ground. Passini v. Ind. Com., 64 Colo. 349. Though we cannot reverse for the admission of incompetent evidence, C. L. Sec. 4477.

The plaintiffs in error say that the evidence of an accident was all hearsay. It is true that most of it was so, and, if all, the award cannot stand. We think there was other evidence.

The alleged accident was a fall on September 10th, 1923, which injured the hip. On September 13th, the decedent consulted one Dr. Maul, who testified "From the acute symptoms he certainly had received a recent injury." This is evidence competent and sufficient to support the findings that there was an accidental injury.

But it is said that there was no proof that he died of this injury. That is a mistake. He was treated by Dr. Maul for some weeks and had several X-ray examinations. Finally, February 17th, 1924, he went to a hospital and on the 18th underwent an operation which disclosed a severe abscess with complications. He was taken home on March 30th in an improving condition but died April 24th. Dr. Maul was in doubt as to the exact cause of his death but seems to have been of the opinion that it was embolism of the lung or brain caused by an injury. Apart from his opinion, however, it is certain that the man died after an operation and severe conditions that may well have caused death and there is no other cause shown; we must

say then that there is evidence to show that he died of such operation and conditions, and there is the evidence noted above that these conditions were caused by an accidental injury. Was there proof that the accident happened in the course of the decedent's employment? All the evidence detailed above may be true and yet the accidental injury may have taken place anywhere. The evidence that it happened in his employment is, 1. That he was night engineer of Armour & Company, .. undisputed. 2. That he told Dr. Maul that he was hurt by a fall while at work on the engine . . . hearsay. 3. That he told his family the same, . . hearsay. 4. That about January 25, 1924, he told his employer the same, . . hearsay. 5. That on September 10th, 1923, one Anderson, night watchman for Armour & Co., went into their engine-room and found Bengston sitting on a stool and he said to Anderson, "I got a dirty fall." The witness further testified, "I says, 'Are you going to start up your machine?' He says, 'Yes;' He got up . . . and walked over there and put the lever in the fly-wheel and I helped him pull down on the lever and he turned the steam on and started and went about his business the same as he always did."

Elsewhere Anderson testifies: "He told me . . . that he got a dirty fall and I says 'What is the matter now, can't you stand up any more?' and 'yes,' he says, 'But I went to turn the ice machine off of center and the lever slipped.'"

The witness also says that he does not know how long after the fall he saw Bengston but he usually went through the engine room once in 15 minutes to an hour and a half.

Is this hearsay? If we consider merely what Anderson saw we have only that he found Bengston seated as usual, in his usual place; helped him start his engine, which was on dead center, and then Bengston went about his usual duties. This proves nothing. The question then is this: Is Bengston's part in the conversation hearsay? There can be no doubt that it is, and self-serving at that. Is it then within any exception to the hearsay rule? None, unless res gestae, i. e., a verbal act accompanying the thing in question. Was it that? What was the res gestae? The accident and the injury. The words did not accompany them but were spoken of them, a narrative of a past event. Bengston said nothing about pain or suffering nor anything of his feelings. Were the words near enough to the accident to justify the conclusions that they constituted verbal acts? There is no rule for exact measurement here. Ins. Co. v. Mosley, 8 Wall. 397. Wig. Ev. Sec. 1747. We know that the statement that he had fallen was not long after the fall (the engine was still on dead center) as was the fact in the case last cited. In this respect the cases are almost identical. There is no more a narrative of a past event here than there, and while that case was perhaps a reason for the admission of the statement not in the present case, viz., that the decedent showed and expressed present pain and suffering, yet this case has what that lacks, viz., that the statement was made at the place of the fall and in the presence of its cause—the engine still on dead center. Upon the Mosley case then we hold that Bengston's declarations to Anderson were not hearsay.

Judgment affirmed.

CARL A. CARLSON v. INDUSTRIAL COMMISSION OF COLORADO AND THE COLORADO FUEL AND IRON CO.
244 Pac. 68

FACTS: **I. C. 26745** **Index No. 79.**

This writ has been sued out to review the proceedings in the district court of the City and County of Denver which resulted in a judgment for defendants, following the sustaining of their demurrer to the plaintiff's complaint. The action is one to set aside an award of the Industrial Commission, which denied compensation to the claimant, the plaintiff below, plaintiff in error here.

The sole question presented by the record for our determination is whether an application for review must first be made to the Commission before an action to review the award may be brought, in case first heard by the referee and where a petition for review had been duly filed after the award of the referee, and where the referee thereafter referred the entire case to the Commission.

In the instant case, a hearing was first had before the referee of the Industrial Commission. The referee made an order denying compensation. Section 95 of the Act of 1919, as amended by Chapter 203, S. L. 1923, (p. 755) provides that "said order shall be the final award of the Commission, unless a petition for review is filed."

The claimant filed such petition for review, and under Section 97 of the Act of 1919, as amended by Section 6, Chapter 203, S. L. 1923 (p. 757), the referee may, in that case, "refer the entire case to the Commission." This he did in the instant case. It was then the duty of the Commission, under the section last cited, to "review the entire record." This the Commission did in the instant case. And, as provided in the same section, the Commission entered its award. The award denied compensation. The claimant did not file any further petition for rehearing. The question is: Was he required to do so, before bringing an action in the district court?

DECISION: (Excerpt)

The question must be answered in the affirmative. Section 97, last above cited, clearly contemplates a further petition for review in the following clause: "The award of said Commission shall be final unless a petition to review the same shall be filed by an interested party."

Under Section 95 of the Act of 1919, as amended, first above cited, the order of the referee is the order of the Commission if a petition for review is not filed, but, from Section 97, as amended, it is seen that if such a petition is filed, and the reference refers the entire case to the Commission, and the Commission itself afterwards makes an order, that order and not the referee's order, is the award of the Commission.

The solution of the question before us is completed by noting Section 98 of the Act of 1919, as amended by Section 7 of the Act of 1923, (Sec. 7, Ch. 203, p. 757, S. L. 1923), which provides, among other things, that "no action . . . to set aside . . . any . . . order . . . of the Commission . . . shall be brought unless plaintiff shall have first applied to the Commission for a review as herein provided."

The claimant, plaintiff below, should have filed a petition for rehearing after the Commission itself acted, and having failed to do so, the district court had no jurisdiction to review the proceedings. Passini v. Industrial Commission, 64 Colo 349; 171 Pac. 369; Stacks vs. Industrial Commission, 65 Colo. 20; 174 Pac. 588.

The court did not err in sustaining the demurrer.

The judgment is affirmed.

MARY AMERICA NEWKIRK v. THE GOLDEN CYCLE MINING AND REDUCTION COMPANY, A Corporation
244 Pac. 1019

FACTS: **I. C. 35611** **Index No. 80.**

"The Industrial Commission denied compensation to Mary A. Newkirk for the death of her husband, the district court affirmed the order and she brings the case here. The judgment was right.

The accident was taking cold by exposure while fighting a fire on the employer's premises. Pneumonia appeared seven or eight days later, of which the victim died in six days."

DECISION: (Excerpt)

"The Commission found that there was no connection between the cold and the pneumonia. There was evidence of competent physicians, among whom was the attending physician, to that effect; we, therefore as well as the district court, must take the finding as true. Bohmann v. Ind. Com., 76 Colo. 588; Passini v. Ind. Com., 64 Colo. 349. It is urged that the cold made the employee more susceptible to the pneumonia germ, but that is not a sufficient connection with the accident to justify compensation, Prouse v. Ind. Com., 69 Colo. 382, because the accident must be the proximate cause of the death or of the disease which causes the death. Ib. The denial was therefore right.

IDA MAY VAUGHN v. THE INDUSTRIAL COMMISSION OF COLORADO, AND ERNEST STENGER, RECEIVER FOR THE DENVER TRAMWAY COMPANY, A Corporation
245 Pac. 712

FACTS: **I. C. 32309** **Index No. 81**

"The Industrial Commission denied compensation to Ida May Vaughn for the death of her husband; the district court affirmed the Commission and she brings the case here.

The finding of the Commission was that at his death she was voluntarily living apart from him and not dependent on him for support, which, if true, precludes her claim. . . . "

DECISION: (Excerpt)

"That Mrs. Vaughn was living apart and was independent of her husband at his death is conclusively shown by the evidence; that this was voluntarily on her part is found by the Commission and we cannot review their finding if there was any evidence to support it."

"It is claimed that hearsay evidence was admitted but we cannot reverse an award of the Industrial Commission on that ground. C. L. Sec. 4477. Armour v. Ind. Com., **supra.**

Judgment affirmed."

JAMES BRADY v. INDUSTRIAL COMMISSION OF COLORADO AND COLORADO FUEL AND IRON COMPANY
249 Pac. 6

FACTS: **I. C. 38218** **Index No. 82.**

This action was brought by the plaintiff Brady in the district court to review and set aside the findings and award of the defendant, the Industrial Commission, entered against him on October 22, 1925. The defendant, The

Industrial Commission, will be referred to here as the "Commission," and the defendant, The Colorado Fuel and Iron Company, as the "Fuel Company."

The Commission answered the complaint, and the Fuel Company filed a demurrer thereto.

On April 14, 1926, the Commission asked leave to withdraw its answer and join in the demurrer of the Fuel Company, which was granted. The demurrer was then heard and sustained, and the plaintiff electing to stand by his complaint, judgment was entered for defendant. Plaintiff brings the case here for review. From the record it appears that plaintiff presented to the Commission his application for compensation on account of injuries alleged by him to have been sustained in the course of his employment, while acting as switchman, coupling a yard engine to a car loaded with steel and being at the time, as alleged, in the employ of the Colorado-Wyoming Railway Company and The Colorado Fuel and Iron Company.

On September 1, 1925, a hearing was had before a referee of the Commission as to the liability of the Fuel Company, the claim against the Colorado-Wyoming Railway Company having theretofore been dismissed, and findings and award entered by the referee against the plaintiff.

Thereupon plaintiff petitioned the Commission for a review of the findings and award of the referee. The referee did not amend or modify the order, but referred the entire case to the Commission.

On October 22nd, 1925, the Commission made and entered a supplemental award, after having reviewed the entire record and prior proceedings and denied plaintiff's claim for compensation.

Plaintiff's complaint did not allege that a petition for review had been filed by plaintiff after the supplemental findings and award had been made by the Commission on October 22.

Plaintiff contends that the court erred in permitting the Commission to withdraw its answer and join in the demurrer of the Fuel Company; also that the Court erred in sustaining the demurrer and holding that the complaint should have disclosed that plaintiff filed with the Commission a petition for review of its supplemental award of October 22nd."

OPINION:

"We think the court did not err in either particular. As to the first: The Commission, by its answer did not waive the question of the court's jurisdiction of the subject matter of the action, and, consequently there was no error in permitting it to join in the demurrer of the Fuel Company.

As to the second: The facts disclosed by the record bring this case within the authority of Carlson v. Industrial Commission, 244 Pac. 68, and that authority is decisive of the instant case.

It is urged, however, that the filing of a petition for review of the order made by the Commission on October 22 would accomplish nothing, and that this case is controlled by Carroll v. Industrial Commission, 69 Colo. 473. We do not think so. The distinction is noted in the Carlson Case, **supra,** and need not be repeated here.

At the request of counsel for plaintiff, we have read the entire testimony and the record of proceedings before the referee and the Commission. While we cannot, in this proceeding, review the action of the Commission, we might say that if it be a fact, as found by the Commission, that at the time he was injured the claimant was employed by the Colorado and Wyoming Railway Company, an Interstate Commerce Carrier, then the plaintiff could not recover, regardless of the question of the insufficiency of the complaint. The evidence was ample to sustain that finding.

The demurrer was properly sustained, and the judgment should be affirmed.

Affirmed.

LONDON GUARANTEE AND ACCIDENT COMPANY, LIMITED, AND WEICKER TRANSFER AND STORAGE COMPANY, v. INDUSTRIAL COMMISSION OF COLORADO AND WILLIAM CHAMBERS
249 Pac. 642

FACTS: **I. C. 40295** **Index No. 83.**

"The district court affirmed an award of the Commission to the claimant Chambers for the accidental injury of his wooden leg.

"Compensation can be awarded for personal injuries only C. L. Secs. 4389, 4387, 4388, 4404, which means injury to the person, 1 Hennold on W. Comp., Sec. 92, Miller v. Am. Steel and Wire Co., 90 Conn., 349, 360, 97 Atl., 345, Linnane v. Aetna Brewing Co., 91 Conn., 158, 99 Atl., 407.

C. Jr. Treatise on Work. Comp., p. 63, Sec. 54. So in criminal law, State v. Clayborne, 14 Wash., 622, 45 Pac. 303, 30 Cyc. 1529, Bouv. L. D. A wooden leg is a man's property not part of his person and no compensation can be awarded for the injury.

Judgment reversed with directions to disaffirm the award."

STATE COMPENSATION INSURANCE FUND, v. INDUSTRIAL COMMISSION OF COLORADO, LORA A. TODD, WIDOW, M. WANDA TODD, et al., MINOR CHILDREN OF JOHN E. TODD, DECEASED, AND THE CITY OF LAMAR, COLORADO
249 Pac. 653

FACTS: **I. C. 27785** **Index No. 84.**

The Commission awarded compensation to Lora A. Todd, widow, and to certain others, children, of John E. Todd, deceased, against the State Compensation Insurance Fund.

The Fund, as it might under S. L. 1923, p. 746, Sec. 18, brought suit in the district court to set aside the award, were there defeated, and bring error. The Commission and the court were right.

The original finding and order of the referee denied compensation. The first point made by plaintiff in error is that since there was no petition for review of this order the action of the Commission, **sua sponte,** in setting it aside, taking new evidence and ultimately awarding compensation was beyond its powers, because of C. L. Sec. 4471, or rather the amendment thereto, S. L. 1923, p. 757, Sec. 97, which is as follows:

> Section 97. Any party in interest who is dissatisfied with the order entered by the referee may petition to review the same, and the referee may reopen said case, or may amend or modify said order, and such amended or modified order shall be a final award unless objection be made thereto by further petition for review. In case said referee does not amend or modify said order, he shall refer the entire case to the Commission, and the Commission shall thereupon review the entire record in said case, and, in its discretion, may take or order the taking of additional testimony, and shall make its findings of fact and enter its award thereon. The award of said Commission shall be final unless a petition to review same shall be filed by an interested party. Every petition for review shall be in writing and shall specify in detail the particular errors and objections. Such petition must be filed within ten days after the entry of any referee's order or award of the Commission unless further time is granted by the referee or the Commission within said ten days, and, unless so filed, said order or award shall be final. All parties in interest shall be given due notice of the entry of any referee's order or any award of the Commission, and said period of ten days shall begin to run only after such notice and the mailing of a copy of said order or award addressed to the last known address of any party in interest shall be sufficient notice.

If we take this section literally we must say that the referee's order denying the compensation was final because no petition for review was filed within the ten days, but we are of the opinion that the meaning of the section is that no one can claim a right of review unless the petition is filed, and that it does not relate to acts of the Commission on its own motion. Can it be said that when the Commission knows its decision was wrong or seriously doubts whether it is right, it may not, before any one has acted on it, review its own work, take more evidence, and if necessary, modify or change its decision? The question is settled by C. L. Sec. 4484.

It is claimed that "mistake" in Sec. 4484 does not include a mistake of law, but we have held otherwise. Em. Mutual v. Ind. Com., 79 Colo. 242 Pac. 988. Our opinion is that said section also includes a mistake of fact, any mistake; so whether on a mistake of fact or law, the Commission had power to take new evidence.

The Commission, as above indicated, on March 18th, after the referee had, on January 3rd, 1924, ordered the denial of compensation, ordered new evidence taken. The Fund moved to review this order but the motion was denied. A further hearing was ordered and had, and June 9, 1924, the Commission made a finding that death was caused by accident arising out of and in course of his employment and awarded compensation.

It is claimed that the findings do not support the award. We think they do. Todd, the deceased, was superintendent of the electric light system of the city of Lamar, Colo., an engineer of the system was about to resign and Todd had permission to go to Dodge City, Kansas, to look for a substitute. He went by auto to Wichita, stopping at Dodge City only for dinner, there met his family who had been in Coffeyville; he spent two days at Wichita and attended there to a considerable amount of his employer's business, returned to Dodge City with his family but stopped there only for dinner and went on to Cimarron, where he left his family to take the train for Lamar, while he continued in the auto toward that place. He was murdered and robbed on the way, for which the perpetrators are now in prison in Kansas.

The claim here is that these findings do not support an award of compensation, because it appears that he was not killed in the course of his employment; he was, however, employed to go to Dodge City and did so, in returning thence he was killed; he, then, was acting in the course of his employment when killed.

It is argued that because Todd did not stop at Dodge City, where alone he was authorized to go, but went through to Wichita, where he was not authorized to go, that his whole trip was without the course of his em-

ployment. It is found, however, that "While in Wichita" he "transacted quite a lot of business for the light plant and purchased a number of supplies from the United Electric Company of that place, and also requested Mr. Cooper, president of that company, to see if he could not get an engineer for the light plant at Lamar. He also endeavored while in Wichita to secure the services of an engineer to go to Lamar and work in the light plant. He also discussed with Mr. Cooper a number of engineering problems connected with the Lamar plant, and as to electric light lines adjacent to the City of Lamar. Todd remained at Wichita two days, August 28th, and August 29th." (Fol. 63).

There is no express finding that the City of Lamar accepted these services, but it is a fair, and we think a necessary conclusion that it did so, and thus ratified all that Todd did at Wichita and made it as much a part of his employment as if it had been originally authorized.

Did the accident arise out of his employment? We think it did. The employment required him to go to Dodge City and return. Robbers have always been and are an ordinary risk of the road; a risk, it is true, that all travelers, whether employed like this man or not must run, yet this man's employment was to go and come, it was then a part of his work, and death arose out of it. Ind. Com. v. Hunter, 73 Colo. 226, 229; Ind. Com. v. Pueblo Co., 71 Colo. 425.

The judgment of the district court is affirmed.

G. W. LACKEY v. INDUSTRIAL COMMISSION OF COLORADO AND J. W. LAWLOR, AND G. W. LACKEY v. INDUSTRIAL COMMISSION OF COLORADO, AND W. E. JACKS
249 Pac. 662

FACTS: **I. C. 29237 and I. C. 29435** **Index No. 85.**

"The case comes here from the district court of Otero county, which affirmed awards of the Industrial Commission in favor of Jacks and Lawler against Lackey for injuries received by the claimants while in the employ of Lackey.

We can find no substantial controversy in the evidence Lackey was a farmer and made up his mind to build and operate a filling station in the town of Fowler. He procured a site for the purpose and employed men by the day to prepare the ground by pulling down a building and to put up a filling station thereon. This was accomplished and he went into the business of the filling station and continued it thereafter up to the time of the hearings in these matters. Jacks was hurt while pulling down the old building; Lawlor while putting up the filling station. More than four men were employed by Lackey about this business when each accident took place."

OPINION:

"By S. L. 1923, page 751, Sec. 9, paragraph (b) "The term employee shall mean and include . . . every person in the service of any other person . . . under any contract of hire express or implied . . . but not including any persons . . . whose employment is but casual and not in the usual course of trade, business, profession, or occupation of his employer." The position of the plaintiff in error is that the employment of each of these claimants was casual and not in the usual course of trade, etc., of himself, their employer, and that therefore they were not employees within the terms of the act. Jacks was employed by the day, not exceeding six days in all. When he left Lackey would tell him when to come back. Casual is an antonym of regular; Jack's employment was irregular and therefore casual. Lawlor was employed to relay some cement floor or driveway, to be paid by the day. When hurt he was helping to lay shingles because rain prevented work on the cement job. By no process of reasoning can he be called a regular employee.

But even though casual, if the employee is engaged in the usual trade, business, etc., of his employer, he still is an employee within the meaning of the act. Was the preparation of the ground and the erection of the building for a filling station within this category? It is not claimed that it was farming. It is clear enough that if Lackey had been merely constructing the building without intention to use it in a new business the construction would not have been in the usual course of his trade or business. The real question then is: Is the construction of a building to be used by the builder in a business new to him within the usual course of that business? The defendants in error on this point cite State ex rel Lundgren v. District Court, 141 Minn. 83; 169 N. W. 488, as parallel, but we do not think so. In that case the

> "employer was engaged in the lumber and material trade, and, for the purpose of adding thereto a line of fuel, constructed a shed in which to keep and store the new stock. . . . While the defendant was not a building contractor, nor engaged in specific work of that kind, the construction of the shed in question was in furtherance of its established business, a necessary part thereof and we discover no

sufficient reason for holding that it was outside of and beyond what is customary and usual in a situation of the kind. That should be the test in construing the statute."

It will be observed that the decision is based upon the proposition that the work in which the claimant was hurt was in furtherance of an established business, that is in furtherance of a usual business. The usual business of the firm was merchandising and they added a new kind of merchandise. It would have been a case parallel to the one before us if the employers there had decided in addition to their merchandising business to establish a manufacturing plant or something not connected with their merchandise some miles away, or let us say a filling station. We could scarcely say that the filling station was in the usual course of their business of merchandising. Then even should we agree with it, that case does not help us.

We do not think that the erection of a building can be said to be within the usual course of a business to be carried on in that building unless, perhaps, such business be the business of building and the structure be erected in the course of that business. Suppose a building contractor resolves to go into the hotel business, and for that purpose erects the hotel himself. The erection of that hotel may be in the usual course of his business as building contractor but how can it be said that it is in the usual course of his business as a hotel keeper? He is an innkeeper when he opens his house for guests, not before. He is a filling station keeper when he opens his place to fill, not before. Illustrations and analogies might be multiplied without end. We must say that neither the preparation for the erection of a building for the filling station nor the erection of it was within the usual course of business of farming or keeping a filling station.

It is claimed that there is a question of fact here which the Commission has decided. We do not think so. We think the facts are unquestioned and that the only question is one of law, namely, what is the proper construction of the word "casual" and the words "usual course of trade."

The judgments are reversed with directions to the district court to set aside the awards of the Commission.

THE INDUSTRIAL COMMISSION OF COLORADO, SMUGGLER-UNION MINING COMPANY, AND STATE COMPENSATION INSURANCE FUND, v. LUKA AHEL
249 Pac. 866

FACTS: **I. C. 26943** **Index No. 86.**

"The claimant is the aged father of Adam Ahel who was killed July 9th, 1923, in the Smuggler mine, San Miguel County. The Commission, two to one, denied compensation on the ground that dependency was not shown; the district court set aside that decision on the ground that there was no evidence to support it, because the unquestioned evidence showed that the claimant was partially dependent on deceased for support. Ind. Com. v. Elkas, 73 Colo. 475. The Commission comes here for a review."

OPINION:

"The district court was wrong. Under the statute, S. L. 1923, p. 737, to constitute a dependent the claimant must have been "wholly or partially supported by the deceased employee at the time of his death and for a reasonable period of time immediately prior thereto." This was not shown.

There is no conflict in the evidence, which is all by deposition. It is that sometime in 1921 the deceased sent his father one hundred dollars. He came to America in 1902, and from that time till 1921 sent home about 2,000 dinars which, at present exchange, is about $20. That the father is very poor, and was, at the son's death, about seventy-seven years old and able to do but little work. On this evidence the Commission found as follows: . . . -"The decedent had sent no money to his father during the year before his accident." . . . 'The Commission therefore finds that the father, Luke Ahel, was not dependent upon the decedent for his support." The district court could not question this finding because the evidence shows the fact as to sending money, and the finding, which is necessarily implied, that there was no support at the death or for a reasonable time immediately theretofore, is a reasonable deduction from that fact. There was, then, evidence to support the denial of compensation.

The evidence, indeed, does not justify a finding of less than a year and a half, and would justify a finding that the son had sent nothing for two and a half years before his death. The effect, then, of the court's decision is to hold as a matter of law that two years and a half before death is a reasonable time within which contributions to support make the recipient a dependent and that the Commission has no power to find to the contrary. It is a question of fact and it is for the Commission to say what length of time is reasonable under the statute, and, as in case of a jury, the occasion must be extraordinary before the court can interfere. Ind. Com. v. Elkas, supra.

The judgment is reversed with directions to affirm the award of the Commission.

AETNA LIFE INSURANCE COMPANY AND HENRY L. LOWELL, v. THE INDUSTRIAL COMMISSION OF COLORADO AND LAURA C. OAKLEY
Pac.

FACTS: **I. C. 39611** **Index No. 87.**

"Laura C. Oakley was awarded compensation by the Industrial Commission for the death of her son, Lyle Oakley. The district court affirmed the award and the insurance carrier and the employer bring error.

The deceased was a farm hand and was sent by his employer to work for a day on a neighbor's farm. While returning by the most feasible route, with a team of horses but without a wagon, crossing a high rocky hill near a wire fence, he and the horses were killed by lightning. He was so near the horses that one of them fell on him and he was so found.

The sole question for us is whether the death was one arising out of his employment. C.L. Sec. 4389."

OPINION:

"In Hassell vs. The Industrial Commission, 70 Colo. 386, an award for death by lightning was sustained because the victim was working on a steel bridge over water, and it was said, page 390, that because of that that employment involved special risk, and so there was a casual relation between the employment and the death.

It is common knowledge and scientific fact that persons traveling over high, rocky ground, in wide open space are more subject to strokes of lightning than elsewhere, and still more so when very near animals and wire fence, as this boy was. The conclusion must be that his death arose out of his employment.

For analogous cases see Ind. Com. v. Pueblo Co., 71 Colo. 425; 207 Pac. 479; Ind. Com. v. Hunter, 73 Colo. 226, and State Compensation Insurance Fund v. Ind. Com., decided at the present term.

Judgment affirmed."

STATE COMPENSATION INSURANCE FUND

The volume of premiums written by the State Fund during the past year has again shown an increase over the preceding year. Premiums written for the year ending November 30, 1926, amounted to $587,253.77 as compared with $551,406.91 written for the year ending November 30, 1925. Operating expenses paid for these two years were $27,809.02 and $27,999.96, respectively.

Attention has been called year after year in this report to the totally inadequate amount which the Fund is allowed, by the Legislature, to spend out of its income for operating expenses. Under present conditions, it is absolutely impossible for this Fund to continue to give to its increasing number of policyholders the service to which they are entitled.

A structure whose foundation is crumbling at a dozen places on account of the constantly increasing overloading cannot be stabilized for an extended superstructure by adding a brick here and there, nor can the Fund be placed in a position to take care of its greatly increasing business by a clerk or two being added to the present force.

Our difficulty is based upon the fact that we have assumed it to be the Legislature's intent in creating the Fund, to provide a means whereby the employees of the State can obtain *complete protection and service* at a reasonable cost; and also to provide means whereby the Industrial Commission can obtain experience as the administrative body of a fully equipped insurance organization to assist it in determining the proper rates to be charged by other companies writing workmen's compensation insurance in this State. (Approving rates of all companies writing this form of insurance is one of the Commission's important duties.)

It is axiomatic that the cost of operating any business bears a direct proportionate relation to the volume of business handled. This fact was overlooked, however, when the State Compensation Insurance Fund was created. As the State started out to subsidize the Fund to the extent of its operating expenses, these expenses were a part of the General Appropriation Bill. This was in 1915 when little was known as to the cost of operating State Funds. So we got off to a bad start, with a grossly inadequate appropriation.

The appropriations for the following years were likewise inadequate. Provision for a budget based upon any scientific or even business-like survey of the needs of the Fund was never made.

This was the condition of affairs when the Fund was put upon a basis of paying its own expenses on April 1, 1921.

Then, instead of determining the best method of providing for the expenses of the Fund in a competitive business, and placing the control of its expenses in the hands of the Industrial Commission, the same old hit or miss method was followed.

So that, while the premium income of the Fund has increased by leaps and bounds, its expenses have remained practically stationary, and its *expense ratio* (which is the proper basis of comparison), has decreased about 33⅓%.

When it is realized that the expense ratio of the Fund has been too low from the beginning, it is not difficult to see that the present *method* of providing for its expenses is wrong. Discussions of the requirements of the Fund for expenses often convey the impression that the present method of providing for them is based upon a definite and well considered theory. The above are facts. They speak for themselves.

Now for the remedy. We are not going to suggest a new and untried solution of this problem, but simply the obvious one, which is used by practically every competitive State Fund. That is, amend Section 125 of the present Workmen's Compensation Act to provide that the Fund shall be applicable not only to the payment of losses, but also to the payment of the Fund's expenses, thus removing the Fund's expenses from the Appropriation Bill.

Under this amendment the Fund can give to its policyholders full and efficient service, and operate as any other competitive business. It can also determine accurately from its own records that the principal industries covered under this Law, such as the Metal Mining industry, are charged rates for this insurance based upon their own losses and not upon those of other industries, nor those of other States.

THE COAL MINING SITUATION

There is at present an urgent demand that the State Fund write insurance covering coal mining operations. Up to the present time, the Fund has insured none of this business for several reasons. When the Fund was organized in 1915, no provision was made in the law for allowing the Fund to purchase reinsurance covering the catastrophe hazard, as a company had been organized expressly for the purpose of handling coal risks, and as the stock companies were also accepting such risks, there was no particular demand that the Fund enter this hazardous field. Later, the Law was amended to permit the purchase of catastrophe reinsurance by the Fund. The coal operators were already well provided for, however, and the Fund's business was now increasing so fast that it could be taken care of only with the greatest difficulty.

During November the stock companies gave notice that they would cease writing coal mine insurance and are extending policies only to May 1, 1927, and the sole remaining company writing such insurance indicated a policy of handling none of the smaller properties. This situation leaves the coal operators, and especially the mines with a small number of employes, in a very precarious condition.

The class of risks left uninsured are, of course, the least desirable. Until it has an opportunity of obtaining relief from the Legislature, the State Fund does not feel that it should sacrifice

the business which it has built up for the purpose of taking on a large number of new risks. We feel that the Fund should not be forced to take the undesirable risks in any classification of industry, unless it is in a position to compete for its share of the desirable risks also. Otherwise, the employers already insured in the Fund would be taxed to pay for the excessive losses of this new business. The Metal Mining industry has insured with the Fund almost as a unit since the Fund was organized in 1915. They have contributed greatly to its success. It hardly seems fair that the present policyholders of the Fund should be forced to accept insufficient service by reason of the Fund's entry into this new field before it is equipped to take on this new business.

INVESTMENTS

The Fund is limited to the purchase of State of Colorado bonds and warrants, at market price, and United States Government bonds at market *not exceeding par*. We are submiting a bill in the legislature permitting the Fund to purchase municipal bonds with certain restrictions, and removing the present restriction in the purchase of United States Government issues. Under the present restrictions, the Fund is fast approaching the position of being unable to invest its funds. United States Government bonds are all above par, and State of Colorado bonds are practically off the market, with the exception of the Highway bonds, which are short term obligations, and which we are buying exclusively.

It is obvious that this situation needs correction. However, it is also obvious that the field of investment open to the Fund should be limited to bonds of unquestioned safety, such as general obligations of the better class of counties, cities, and school districts.

STATE COMPENSATION INSURANCE FUND

STATEMENT OF INCOME AND DISBURSEMENTS
DECEMBER 1, 1925 TO NOVEMBER 30, 1926

Income

Premiums Written		$ 587,253.77
Interest Received		85,409.71
		$ 672.663.48
Received from sale of U. S. Government Bonds	$275,029.88	
Redemption of State of Colo. 1909 Bonds	1,600.00	
State of Colorado Warrants	25,201.20	
County, City and School Dist. Warrants	2,206.02	304,037.10
Total Receipts		$ 976,700.58
Due from State Treasurer, Custodian November 30, 1925	$ 86,514.11	
Premiums Outstanding November 30, 1925	22,475.16	$ 108,989.27
		$1,085,689.85

Disbursements

Compensation and Medical Paid		$ 305,833.01
Dividends Paid Policyholders		55,960.31
Operating Expenses		27,809.02
		$ 389,602.34
Investments Made:		
State of Colorado Bonds	$625,041.00	
Accrued Interest on same	7,830.00	
State of Colorado Warrants	1,558.29	
Registered County, City, School Districts, etc., Warrants received in payment of premiums due and held as Investments	3,209.71	$ 637,639.00
		$1,027,241.34
Balance November 30, 1926:		
Due from State Treasurer, Custodian	$ 24,631.81	
Unpaid Premiums	33,816.70	$ 58,448.51
		$1,085,689.85

COMPARISONS OF PREMIUMS WRITTEN AND EXPENSES PAID FOR YEARS 1922 TO 1926, INCLUSIVE

Year	Premiums Written	Expenses Paid	Ratio of Expenses to Premiums
1922	$339,537.41	$23,349.43	.069
1923	404,562.16	28,442.11	.070
1924	412,733.56	26,794.90	.065
1925	551,406.91	28,423.67	.052
*1926	575,495.59	25,575.49	.044

*These figures are for eleven months only.

Our average expense ratio, as per the above exhibit, for the period from January 1, 1922 to November 30, 1926 was 4.8%.

This should be considered in relation to the average expense ratio for all State Funds throughout the country, which exceeds 15%.

The average expense ratio for Mutual Compensation insurance companies is 25%.

The average expense ratio for stock companies writing workmen's compensation insurance exceeds 40%.

SUMMARY OF CASES

The following is a list of the disputes handled by the Commission during the past two years, with an epitomized statement of the facts relating thereto:

Case No. 1161. Bill Posters Union No. 59 vs. Employers, Denver, Nov 14, 1924. Notice from Employees of proposed new wage scale. No information after notice of demand. Case closed account of lack of information.

Case No. 1162. National Store Fixtures Company v. Employees, Denver, Dec. 4, 1924. 1 Employer, 8 Employes. Notice to Commission from employees that employer had reduced wages without giving the thirty-day notice as required by law. The Commission notified the employer of the requirements of the law and notice was then filed, the effective date of wage reduction being Jan. 2, 1925. No protest received and case was closed.

Case No. 1163. Yellow Cab Company v. Employees, Nov. 1, 1924. Notice from company of a change in wages to commission basis. Case settled by mutual agreement.

Case No. 1164. Printing Pressmen's Union No. 163 vs. Employers, Pueblo, Dec. 2, 1924. Notice from Union of a demand for increase in wage scale. Case settled by mutual agreement.

Case No. 1165. Steam and Operating Engineers No. 11 vs. Employers, Denver, Dec. 3, 1924. 81 employers, 300 employees. Notice from Union of demand for an increase in wage scale effective Jan. 1, 1925. Case set for hearing. Findings and award by Commission granting increase.

Case No. 1166. Plasterers No. 32 vs. M. E. Scott, Denver, Dec. 19, 1924. Notice from Union that M. E. Scott had been placed on unfair list. Case settled by mutual agreement.

Case No. 1167. Steam Fitters & Helpers No. 208 vs. Employers, Denver, Jan. 1, 1925. Notice of mutual agreement between employers and employees. No protest. Case closed.

Case No. 1168. Plumbers vs. Employers, Denver, Jan. 5, 1925. Notice from employees of a mutual agreement for wage increase. No protest. Case closed.

Case No. 1169. Lathers No. 68 vs. Employers, Denver, Jan. 14, 1925. Complaint from Union that one of contractors was working in violation of agreement with Union. After investigation Commission terminated jurisdiction.

Case No. 1170. Electrical Workers No. 68, Denver, Jan. 7, 1925. 45 employers, 230 employees. Notice from Union of a demand for an increase in wage scale effective April 1, 1925. Demands granted by employers and case closed.

Case No. 1171. Painters and Decorators No. 79 vs. Employers, Denver, Jan. 17, 1925. 30 employers, 600 employees. Notice from Union of a demand for an increase in wage scale, effective April 1, 1925. Case settled by mutual agreement.

Case No. 1172. Glass Workers and Glaziers Union No. 930 vs. Employers, Denver, Jan. 21, 1925. 6 employers, 60 employees. Notice from Union of demand for an increase in wage scale effective April 1, 1925. No protest. Jurisdiction terminated.

Case No. 1173. Painters and Decorators Union No. 790 vs. Employers, Fort Collins, Jan. 28, 1925. 5 employers, 14 employees. Notice from Union of demand for wage increase effective March 1, 1925. Settled by mutual agreement.

Case No. 1174. Typographical Union No. 175 vs. Employers, Pueblo, Jan. 28, 1925. 2 employers, 33 employees. Notice from Union of proposed new contract with publishers. Case closed. New notice filed later and case set for hearing. Findings and award by Commission granted increase, effective Jan. 1, 1926.

Case No. 1175. Stone Cutters vs. Employers, Denver, Jan. 30, 1925. Notice of a demand for an increase in wage scale to become effective May 1, 1925. Settled by mutual agreement.

Case No. 1176. Asbestos Workers No. 28 vs. Employers, Denver, Dec. 25, 1924. Notice of demand for increase in wage scale to become effective Feb. 1, 1925. No protest. Jurisdiction terminated.

Case No. 1177. Hoisting and Portable Engineers vs. Employers, Denver. Feb. 24, 1925. 40 employees. Notice of demand for wage increase to become effective April 1, 1925. No protest. Jurisdiction terminated.

Case No. 1178. Sheet Metal Workers No. 118 vs. Employers, Pueblo, Feb. 26, 1925. 7 employers, 23 employees. Notice of demand for wage increase to become effective April 1, 1925. No protest. Jurisdiction terminated.

Case No. 1179. Black Canon Coal & Fuel Company vs. Employees, Denver, Feb. 26, 1925. 1 employer, 41 employees. Notice from employer of proposed wage reduction to become effective April 1, 1925. Notice from Union advising that mutual agreement had been reached. Jurisdiction terminated.

Case No. 1180. Plasterers Union No. 32 vs. Employers, Denver, Feb. 27, 1925. Notice from Union of change in working conditions. No protest. Jurisdiction terminated.

Case No. 1181. Sheet Metal Workers No. 9 vs. Employers, Denver, Feb. 28, 1925. 40 employers, 136 employees. Notice from Union of wage increase. Case set for hearing and evidence introduced by both sides. Findings and award by Commission refusing wage increase.

Case No. 1182. Sunnyside Coal Mining Co. vs. Employees, Denver, Feb. 28, 1925. 1 employer, 60 employees. Notice from employer of wage reduction. No protest. Jurisdiction terminated.

Case No. 1183. Rapson Coal Mining Company vs. Employees, Colorado Springs, March 2, 1925. 1 employer, 75 employees. Notice of wage reduction received from employer. No protest. Jurisdiction terminated.

Case No. 1184. Painters and Decorators No. 302 vs. Employers, Pueblo, March 3, 1925. 15 employers, 53 employees. Notice from Union of demand for wage increase. Settled by mutual agreement.

Case No. 1185. Alamo Coal Company vs. Employees, Denver, March 5, 1925. 1 employer, 75 employees. Notice from employer of wage reduction. Agreement to accept wage reduction filed by employees. Jurisdiction terminated.

Case No. 1186. Corley Coal Mining Company vs. Employees, Colorado Springs, March 7, 1925. 1 employer, 75 employees. Notice from employer of wage reduction. No protest. Jurisdiction terminated.

Case No. 1187. Employees Sterling Mine vs. Grand Junction Mining and Fuel Company, March 7, 1925. Notice from employees of proposed change in working conditions. Case set for hearing and evidence of both employer and employees taken. Finding and award by the Commission to the effect that employees had agreed to said change at time change was made.

Case No. 1188. Gordon Coal Company vs. Employees, Walsenburg. 1 employer, 38 employees. Notice from employer of wage reduction. Agreement to wage reduction filed, signed by employees. Jurisdiction terminated.

Case No. 1189. Jewel Collieries Co. vs. Employees, Walsenburg, March 9, 1925. Notice of wage reduction from employer. Agreement signed by employees to accept wage reduction. Jurisdiction terminated.

Case No. 1190. Colorado Fuel & Iron Co., vs. Employees, Southern District. Employer filed agreements bearing signatures of employees' representatives at various mines in this district, agreeing to accept reduction proposed by employer. Protest filed by employees and case set for hearing. Award by Commission finding that agreement had been entered into in good faith and that no valid reason for protest was presented by the employees.

Case No. 1191. National Fuel Company vs. Employees, Denver, March 12, 1925. Notice from company of proposed reduction, to 1917 scale. Protest from employees against accepting the 1917 scale, but stated they were willing to accept 20% reduction. Case set for hearing and findings and award entered granting 20% reduction.

Case No. 1192. Royal Fuel Company vs. Employees, Aguilar, March 12, 1925. 1 employer, 235 employees. Notice of wage reduction from employer. No protest from employees. Jurisdiction terminated.

Case No. 1193. Temple Fuel Company vs. Employees, Trinidad, March 12, 1925. Notice from employer of wage reduction. No protest. Jurisdiction terminated.

Case No. 1194. Colorado & Utah Coal Company vs. Employees, Harris Mine, Mt. Harris, March 12, 1925. 1 employer, 70 employees. Notice from employer of wage reduction. Case set for hearing at Mount Harris. Findings and award entered by Commission granting wage reduction.

Case No. 1195. Dick Coal Co. vs. Employees, Walsenburg, March 13, 1925. 1 employer, 66 employees. Agreement to accept wage reduction filed by employees. Jurisdiction terminated.

Case No. 1196. Sign and Pictorial Writers vs. Employers, Denver, March 17, 1925. 7 employers, 40 employees. Notice from Union of a demand for an increase in wage scale. Case set for hearing. Findings and award entered denying wage increase.

Case No. 1197. Crested Butte Anthracite Mining Co. vs. Employees, Gunnison, March 17, 1925. 1 employer, 42 employees. Notice from employer of wage reduction. No protest. Jurisdiction terminated.

Case No. 1198. Crested Butte Coal Co. vs. Employees, Gunnison, March 17, 1925. 1 employer, 30 employees. Notice from employer of wage reduction. No protest. Jurisdiction terminated.

Case No. 1199. Fraker Coal Co. vs. Employees, Bear River, March 17, 1925. 1 employer, 80 employees. Notice of wage reduction from employer. Case set for hearing at Mount Harris. Findings and award by Commission granting wage reduction.

Case No. 1200. McNeil Coal Co. vs. Employees, MacGregor, March 17, 1925. 1 employer, 24 employees. Notice from employer of wage reduction. Case set for hearing. Findings and award by Commission, granting wage reduction.

Case No. 1201. Moffat Coal Co. vs. Employees, Oak Hills, March 17, 1925. 1 employer, 300 employees. Notice from employer of wage reduction. Case set for hearing. Findings and award by Commission, granting wage reduction.

Case No. 1202. Victor-American Fuel Co. vs. Employees, Southern District, March 17, 1925. 1 employer, 1105 employees. Notice from employer of wage reductions at its various mines. Case set for hearing. Findings and award by Commission granting wage reduction.

Case No. 1203. Ross Coal Company vs. Employees, Crested Butte, March 17, 1925. 1 employer, 64 employees. Mutual agreement for reduction of wages filed with Commission. No protest. Jurisdiction terminated.

Case No. 1204. Empire Coal Company vs. Employees, Aguilar, March 17, 1925. 1 employer, 100 employees. Mutual agreement for reduction of wages filed with Commission. No protest. Jurisdiction terminated.

Case No. 1205. Union Coal and Coke Co. vs. Employees, Prior Mine, March 19, 1925. 1 employer, 82 employees. Agreement for reduction of wage scale. No protest. Jurisdiction terminated.

Case No. 1206. Vesta Mines Company vs. Employees, Walsenburg, March 20, 1925. Notice of wage reduction filed by company. Company would not respond to communications of Commission. No protest from employes. Case closed.

Case No. 1207. Electrical Workers Union No. 12 vs. Employers, Pueblo, March 20, 1925. Notice from Union of demand for an increase in wage scale. Settled by mutual agreement, the Union receiving an increase of $1.00.

Case No. 1208. Caliente Coal Company vs. Employees. Maitland and Ravenwood Mines, March 21, 1925. Notice from company of reduction in wages. No protest from employees. Jurisdiction terminated.

Case No. 1209. American Smelting and Refining Co. vs. Employees, Boncarbo and Cokedale Mines, March 21, 1925. 1 employer, 271 employees. Agreements to wage reduction signed by employees filed by employer. No protest. Jurisdiction terminated.

Case No. 1210. Vezzetti and Moschetto vs. Employees, Canon City, March 23, 1925. 1 employer, 8 employees. Employees filed signed petition for wage reduction. Mutual agreement. Jurisdiction terminated.

Case No. 1211. Canon-Reliance Coal Co. vs. Employees, Canon City, March 25, 1925. 1 employer, 65 employees. Notice from employees with signed petition for wage reduction. Case set for hearing and findings and award entered by Commission granting reduction to 1917 wage scale.

Case No. 1212. Double Dick Coal Company vs. Employees, Coal Creek, March 25, 1925. 1 employer, 12 employees. Letter from employees protesting wage reduction. Case set for hearing. Findings and award by Commission granting 20% reduction.

Case No. 1213. International Fuel Company vs. Employees, Mt. Harris, March 25, 1925. 1 employer, 41 employees. Letter from employees protesting wage reduction. Case set for hearing. Investigation disclosed mine not working and no justification for protest. Case closed.

Case No. 1214. Calumet Fuel Company vs. Employees, Calumet No. 1 and No. 2 and Somerset Mines, March 26, 1925. 1 employer, 389 employees. Employer filed agreement signed by employees accepting wage reduction. Mutual agreement. Jurisdiction terminated.

Case No. 1215. Stanley Mine vs. Employees, Boncarbo, March 27, 1925. Letter from committee of employees protesting wage reduction. Case set for hearing and findings and award entered by Commission.

Case No. 1216. Juanita Coal Company vs. Employees, Bowie, March 27, 1925. 1 employer, 49 employees. Notice from company of mutual agreement with employees accepting wage reduction. No protest and jurisdiction terminated.

Case No. 1217. Aztec Coal Mining Company vs. Employees, Toltec Mine, Huerfano County, March 31, 1925. 1 employer, 100 employees. Notice of wage reduction from employer. No protest. Jurisdiction terminated.

Case No. 1218. Grand Junction Mining & Fuel Company vs. Employees Cameo, April 1, 1925. 1 employer, 47 employees. Notice of wage reduction from the company. No protest from employees. Jurisdiction terminated

Case No. 1219. Calumet Fuel Company vs. Employees, Perins Peak Mine, La Plata County, March 28, 1925. Notice of wage reduction filed by employer. Protest filed by employees. Case set for hearing and Commission found from the evidence submitted that the employer had discharged a number of its employees in violation of the Industrial law for the purpose of coercing its employees to accept the reduction, and further found that the men so discharged were entitled to their wages for every day that the mine worked from the time of their attempted unlawful discharge and so long as they remained unemployed elsewhere from the date of the discharge until the date of the award. Company filed receipts showing payment as ordered by award and case closed.

Case No. 1220. Palisade Fuel and Supply Co. vs. Employees, Palisade, March 30, 1925. Company filed notice of wage reduction and advised that employees had agreed to accept said reduction. No protest. Jurisdiction terminated.

Case No. 1221. Culinary Workers No. 43 vs. Employers, Pueblo, March 30, 1925. 21 employers, 71 employees. Notice from Union of a new contract. Letter from Union advising that mutual agreement had been reached. Case closed.

Case No. 1222. Bakers and Confectionery Workers No. 26, (Jewish Branch) vs. Employers, Denver, April 1, 1925. Notice from Union of a demand for wage increase and a reduction in hours of one hour per day. No protest from employers. Jurisdiction terminated.

Case No. 1223. Colorado Springs Company vs. Employees, Colorado Springs, April 1, 1925. 1 employer, 65 employees. Notice from employer of reduction in wages. Case set for hearing. Findings and award by Commission granting 20% reduction.

Case No. 1224. Keystone Mining Company vs. Employees, Colorado Springs, April 1, 1925. 1 employer, 30 employees. Notice from employer of reduction in wages. Notice of protest filed by employees. Case set for hearing and findings and award entered by Commission approving 20% reduction.

Case No. 1225. Pikes Peak Fuel Company vs. Employees, Colorado Springs, April 1, 1925. 1 employer, 130 employees. Notice from employer of wage reduction. Protest by employees and case set for hearing. Award by Commission approving 20% reduction.

Case No. 1226. Altitude Coal Company vs. Employees, Colorado Springs, April 2, 1925. 1 employer, 10 employees. Notice of wage reduction filed by employer. No protest from employees and case closed.

Case No. 1227. Denver and Western Window and House Cleaning Co. vs. Employees, Denver, April 2, 1925. 1 employer, 12 employees. Notice from employer of wage reduction. No protest from employees and jurisdiction terminated.

Case No. 1228. Bakers and Confectionery Workers No. 26 vs. Employers, Denver, April 3, 1925. Notice from Union of demand for change in working conditions. No protest filed by employers. Jurisdiction terminated.

Case No. 1229. International Union of Elevator Constructors, Local No. 25 vs. Employers, Denver, April 6, 1925. 4 employers, 23 employees. New contract filed by employees. No protest from employers. Jurisdiction terminated.

Case No. 1230. Carpenters and Joiners Union No. 1231 vs. Employers. Canon City, April 8, 1925. Notice from Union of a demand for wage increase. No protest from employers. Jurisdiction terminated.

Case No. 1231. Plumbers and Steam Fitters No. 451, Fort Collins vs. Employers, Fort Collins, April 14, 1925. Notice from Union of demand for wage increase. No protest from employers. Jurisdiction terminated.

Case No. 1232. Bricklayers Union No. 1 vs. Employers, Denver, April 16, 1925. Notice from Union of demand for wage increase. Letters of Commission not answered and case closed for lack of information.

Case No. 1233. Colorado Fuel and Iron Company vs. Employees employed in the Open Hearth Department at its Steel Mills, Pueblo, April 16, 1925. Agreements from employer signed by representatives of its employees agreeing to certain reductions in wages. No protest from employees. Jurisdiction terminated.

Case No. 1234. Painters and Paperhangers No. 832 vs. Employers, Trinidad, April 16, 1925. Notice from Union of demand for wage increase. No protest from employers. Jurisdiction terminated.

Case No. 1235. Electrical Wrokers No. 113 vs. Employers, Colorado Springs, April 18, 1925. Notice from Union of demand for wage increase. Case set for hearing. Conference held and settled by mutual agreement.

Case No. 1236. North Park Coal Company vs. Employees, Coalmont, April 21, 1925. Notice of wage reduction from employer. No protest from employees. Jurisdiction terminated.

Case No. 1237. Bear Canon Coal Company vs. Employees, Trinidad, April 21, 1925. Notice from employer that mine opened for work at the 1917 scale to which employees had agreed. No protest. Case closed.

Case No. 1238. Cedar Hill Coal and Coke Co. vs. Employees, Greenville Mine, Las Animas County, April 23, 1925. Notice from company that mine would re-open at 1917 scale. No protest from employees. Case closed.

Case No. 1239. Crested Butte Coal Co. vs. Employees, Bulkley Mine, April 28, 1925. 1 employer, 22 employees. Complaint in regard to working conditions filed by employees. Commission notified that the matter had been satisfactorily adjusted and case close.

Case No. 1240. Palisade Coal and Supply Co. vs. Employees, Palisade, May 2, 1925. Notice from company of wage reduction to 1917 scale. Company later advised that the 20% reduction made in Case No. 1220 would be allowed to stand and a further reduction would not be made at that time.

Case No. 1241. Stanley Mine, C. O. Stanley vs. Employees, Trinidad, May 2, 1925. Notice from employer of wage reduction. No protest from employees. Jurisdiction terminated.

Case No. 1242. Stone Cutters' Ass'n vs. Employers, Colorado Springs, May 5, 1925. Notice from employees of demand for wage increase. No protest filed by employers. Jurisdiction terminated.

Case No. 1243. Three Pines Coal Company vs. Employees, Vallorso, May 14, 1925. Notice from company of wage reduction to 1917 scale. No protest. Case closed.

Case No. 1244. Wm. E. Russell Coal Co. vs. Employees, Russell Mine, Firestone, Weld County, May 21, 1925. Notice from employer of wage reduction to 1917 scale. Employees protested against reduction and case set for hearing. Findings and award by Commission granting 20% reduction.

Case No. 1245. Consolidated Coal and Coke Company vs. Employees, Baum Mine; Frederick, Weld County, May 21, 1925. (See Case No. 1244).

Case No. 1246. Grand Junction Mining and Fuel Company vs. Employees, Sterling Mine; Dacono, Weld County, May 21, 1925. (See Case No. 1244).

Case No. 1247. Clayton Coal Company vs. Employees, Clayton Mine, Erie, Weld County, May 21, 1925. (See Case No. 1244).

Case No. 1248. The Big Four Coal and Coke Co. vs. Employees, Centennial Mine, Louisville, Boulder County, May 21, 1925. (See Case No. 1244).

Case No. 1249. The Boulder Valley Coal Co. vs. Employees, Boulder Valley Mine, Weld County, May 21, 1925. (See Case No. 1244).

Case No. 1250. S. Domenico and Sons vs. Employees, Louisville, Boulder County, May 22, 1925. (See Case No. 1244).

Case No. 1251. The Matchless Fuel Company vs. Employees, Marshall, Boulder County. Notice from employer of wage reduction to 1917 scale. Case set for hearing. Evidence disclosed that the mine had been shut down for approximately two months and would not be reopened until August. Jurisdiction terminated.

Case No. 1252. The Crown Fuel Company vs. Employees, Marshall, Boulder County. Notice from employer of wage reduction to 1917 scale. Case set for hearing. Findings and award by Commission granting 20% reduction.

Case No. 1253. The National Fuel Company vs. Employees, Monarch No. 2 Mine, Boulder County. (See Case No. 1244).

Case No. 1254. The National Fuel Company vs. Employees, Puritan Mine, Weld County. (See Case No. 1244).

Case No. 1255. The Rocky Mountain Fuel Co. vs. Employees, Columbine Mine, Weld County, May 25, 1925. Protest of employees against wage reduction. Case set for hearing. Case settled by mutual agreement after hearing by Commission and before findings and award.

Case No. 1256. Denver Press Assistants' Union No. 14 vs. Employers, Denver, May 26, 1925. Notice of demand for wage increase and new agreement. No protest from employers and jurisdiction terminated.

Case No. 1257. The Leyden Coal Company vs. Employees, Leyden Mine, Jefferson County, June 2, 1925. (See Case No. 1244).

Case No. 1258. Wood, Wire and Metal Lathers, Union No. 68 vs. Employers, Denver, July 1, 1925. Notice of change in working conditions. No protest and case closed.

Case No. 1259. Congress Hotel Employees vs. Congress Hotel, Employer, Pueblo, July 1, 1925. Complaint that employer was working women employees over eight hours. Investigation disclosed no justification for complaint. Case closed.

Case No. 1260. Musicians' Union No. 154 vs. The Burns Theatre, Colorado Springs, July 2, 1925. Notice of demand for wage increase. No protest from employer. Jurisdiction terminated.

Case No. 1261. Colorado Springs Typographical Union No. 82 vs. Employers, Colorado Springs, Colorado, July 3, 1925. Notice of demand for wage increase. No protest. Jurisdiction terminated.

Case No. 1262. The Colorado Fuel & Iron Co. vs. Employees, Pueblo,

July 6, 1925. Agreement in regard to wage scale of wire drawers. No protest and case closed.

Case No. 1263. Clayton Coal Company vs. Employees, Weld County, July 15, 1925. Protest from electric machine men and helpers against wage reduction. Case set for hearing. From the evidence it was found that the Commision granted 20% reduction in Case No. 1247 and that employer had made this reduction from the 1917 wage instead of the "peak" wage, that the company had discharged several employees. Award entered granting reduction to 1917 scale and ordering reinstatement of discharged employees.

Case No. 1264. The Ajax Coal Mining Co. vs. Employees, Capital Mine, Louisville, July 20, 1925. Notice from employer of agreement with employees to 20% reduction in wages. No protest. Jurisdiction terminated.

Case No. 1265. Merchant Tailoring Ass'n vs. Employees, Denver, July 22, 1925. Notice of non-renewal of Union agreement. Jurisdiction terminated.

Case No. 1266. E. I. duPont de Nemours & Co. vs. Employees, Louviers, July 23, 1925. Notice of rent increase of tenant houses. No protest. Jurisdiction terminated.

Case No. 1267. Bridge, Structural and Ornamental Iron Workers, Local Union No. 24 vs. Employers, Denver, July 24, 1925. Copy of agreement with Associated General Contractors for year July 1, 1925 to July 1, 1926, filed by employees. No protest and case closed.

Case No. 1268. Wood, Wire and Metal Lathers vs. Employers, Denver, July 24, 1925. Notice from employees of demand for $1.00 per day increase on out-of-town work. No protest and case closed.

Case No. 1269. Denver Web Pressmen's Union, Local No. 22 vs. Denver Newspaper Publishers, July 24, 1925. Notice of expiration of contract and demand for an increase in wages and change in working conditions. No protest. Jurisdiction terminated.

Case No. 1270. Denver Moving Picture Machine Operators vs. Theatrical Managers' Ass'n., Denver, July 27, 1925. Notice from employees of a demand for an increase in wages and for changes in working conditions. Case set for hearing and findings and award entered, the decision of the Commission being that the contract be continued for another year, unless a different agreement had been entered into between any of said employers and employees.

Case No. 1271. Denver Musical Protective Ass'n, Local No. 20 vs. Theatrical Managers' Association, Denver, July 27, 1925. Notice from employees of a new agreement. Case set for hearing, which was later canceled. Settled by mutual agreement.

Case No. 1272. Denver Theatrical Stage Employees, Local Union No. 7 vs. Theatrical Managers' Ass'n, Denver, July 30, 1925. Notice from employees for a demand for an increase in wages and changes in working conditions. Case set for hearing. Findings and award by Commission, decision being that the same contract be continued in force for year beginning September 6, 1925.

Case No. 1273. Theatrical Stage Employees, Local No. 62 vs. Employers, Colorado Springs, Colo., August 3, 1925. Notice from employees of a demand for an increase in wages. Case set for hearing. Findings and award entered by Commission granting increase demanded.

Case No. 1274. Moving Picture Operators, Local No. 448 vs. Employers, Pueblo, August 3, 1925. Notice from employees of a demand for an increase in wages. Case set for hearing. Commission's finding: For the six months ending February 28, 1926, conditions in contract to remain the same. For the next six months ending August 31, 1926, employees shall work six days per week at the rate of $40.00 per week. All other conditions settled by mutual agreement.

Case No. 1275. Employees of the Dick Coal Company employed at Dix Mine vs. Dick Coal Company, Boncarbo, August 4, 1925. Notice from employees advising that company had requested them to sign agreement for a reduction in wages which they refused to do and that the company notified them that the mine would close the rest of the month, the employees complaining that the company did not give them the 30-day notice as required by law. Case set for hearing, the Commission finding that the company had fully complied with the law and terminated jurisdiction.

Case No. 1276. Gordon Coal Company vs. Employees, Walsenburg, Aug. 5, 1926. Notice of agreement with employees to accept reduction in wage scale. No protest from employees and jurisdiction terminated.

Case No. 1277. Jewel Collieries Corp. vs. Employees, Walsenburg, Aug. 5, 1925. Notice from employer that agreement had been made with employees to accept reduction in wages. No protest. Jurisdiction terminated.

Case No. 1278. Bill Posters and Billers, Denver Local No. 59 vs. Employers, Aug. 5, 1925. Notice from Union of new agreement. Case set for hearing. Parties appeared at hearing and agreed they had no differences that could not be adjusted. Jurisdiction terminated.

Case No. 1279. Empire Coal Mining Company vs. Employees, Empire

Mine. Agreement signed by employees agreeing to reduction in wages. No protest. Jurisdiction terminated.

Case No. 1280. Colorado Fuel and Iron Co. vs. Employees, Aug. 11, 1925. Agreement is submitted by company between representatives of employees at the Cameron, Robinson No. 1, Robinson No. 2, Kebler No. 1, Kebler No. 2, Rouse-Lester and Ideal Mines in Walsenburg District, and the Toller, Tobasco and Frederick Mines in the Trinidad District. Also agreement relating to operations at the Coke Ovens at Segundo. Protest filed by employees at Crested Butte Mine. No protest from employees in the Walsenburg and Trinidad Districts and jurisdiction terminated. No protest from employees at the Segundo Coke Ovens and jurisdiction terminated.

Case No. 1281. Crested Butte Coal Company vs. Employees at Bulkley No. 2 Mine, Gunnison County, Aug. 18, 1925. Notice from employer of reduction in wages. No protest. Jurisdiction terminated.

Case No. 1282. Colorado Fuel & Iron Co. vs. Employees at Rockvale, Fremont, Nonac and Coal Creek Mines, Aug. 24, 1925. Agreements filed showing agreement of employees to wage reduction at mines named. No protest. Jurisdiction terminated.

Case No. 1283. Stereotypers and Electrotypers Union No. 13, vs. Employers, Denver, Aug. 20, 1925. Notification from employees of the expiration of their contract, stating that if necessary to file new contract same would be forwarded. Commission advised that new contract should be filed. Contract was not filed. Jurisdiction terminated.

Case No. 1284. Stage Employees Local No. 47 vs. Employers, Pueblo, Aug. 29, 1925. Notice from employees of demand for increase in wage scale. No protest. Jurisdiction terminated.

Case No. 1285. Calumet Fuel Company vs. Employees employed at Calumet No. 1 and No. 2 Mines. Notice from employer that agreements had been entered into with its employees to accept wage reduction. No protest. Jurisdiction terminated.

Case No. 1286. Calumet Fuel Company vs. Employees employed at Somerset Mine, Gunnison County, Sept. 11, 1925. Notice from employer of reduction in wages. No protest from employees. Jurisdiction terminated.

Case No. 1287. Denver Typographical Union No. 49 vs. Employers, Denver, Aug. 2, 1925. Notice of change in wage scale. Case settled by arbitration agreement entered into between employers and Union.

Case No. 1288. Calumet Fuel Company vs. Employees, Perins Peak Mine, La Plata County, Sept. 8, 1925. Notice from employer of reduction in wages. No protest from employees. Jurisdiction terminated.

Case No. 1289. Boulder Coal Mining Company vs. Employees, Oct. 8, 1925. Notice from employer of reduction in wages of underground employees at Black Diamond Mine. No protest from employees. Jurisdiction terminated.

Case No. 1290. Colorado Fuel & Iron Company vs. Employees of Rail Mill Dept. of Minnequa Works, Pueblo, Oct. 13, 1925. Notice from employer that the Rail Mills Department of the Minnequa Works had been closed down for about two months and would be reopened at adjusted wage scale. No protest. Jurisdiction terminated.

Case No. 1291. Plumbers and Steam Fitters, Local No. 208 vs. Employers, Denver, Oct. 13, 1925. New apprenticeship rules filed by Union. On Dec. 31, 1925, an amended copy of rules filed with Commission. Case pending.

Case No. 1292. Meat Cutters & Butcher Workmen No. 634 vs. Employers, Denver, Oct. 15, 1925. Copies of proposed new contract filed by Union. No protest by employers. Jurisdiction terminated.

Case No. 1293. Thompson Mfg. Co. vs. Employees, Denver, Sept. 11, 1925. Agreement filed by employer wherein employees agree to accept 10% reduction in wages. No protest. Jurisdiction terminated.

Case No. 1294. Pikes Peak Fuel Company vs. Employees, Pikeview Mine, Nov. 9, 1925. Notice of increase in wage scale. Case pending.

Case No. 1295. Colburn Hotel vs. Waitresses employed by said Employer, Denver, Dec. 1, 1925. Notice filed by said employer of reduction in wages to waitresses from $60.00 per month to $45.00 per month. No protest from employees and case closed.

Case No. 1296. Granite Cutters' Union vs. Employers, Denver, Dec. 12, 1925. Notice from Union of new contrct and demand for wage increase. Settled by mutual agreement—increase granted from $8.50 to $9.00 per day.

Case No. 1297. Cigar Makers' Union No. 129 vs. Cuban Cigar Co. and Dry Climate Cigar Co., Denver, Jan. 14, 1926. Letter from Union informing Commission that the employers named had made a request for a reduction of $1.00 per thousand for making cigars. Put to vote of members of Union, and every member present at meeting voted against accepting reduction. No further information from any of the parties. Case closed.

Case No. 1298. Plumbers and Steam Fitters Local Union No. 451 vs. Fort Collins Master Plumbers' Ass'n., Fort Collins, Feb. 1, 1926. Notice of demand for changes in agreement between employees and employers.

Case set for hearing and testimony taken, but before leaving the court house, case was settled satisfactorily. Findings and award not necessary.

Case No. 1299. Slate, Tile and Composition Roofers, Local Union No. 55 vs. Employers, Denver, Feb. 1, 1926. Notice from Union of demand for increase in wage scale. Case set for hearing. Conference was held before hearing and case settled by mutual agreement. Jurisdiction terminated.

Case No. 1300. Alexander's Bakery vs. Employees, Denver, Feb. 4, 1926. Notice from employer of intention to go on "open shop" basis. No protest from employees. Jurisdiction terminated.

Case No. 1301. Heat and Frost Insulators and Asbestor Workers, Local Union No. 28 vs. Employers, Feb. 4, 1926. Notice from Union of demand for increase in wages. Case set for hearing. Findings and award entered finding that increase not justified at this time.

Case No. 1302. Colorado Fuel and Iron Company vs. Employees of 14" Mill, Pueblo, Feb. 6, 1926. Agreement between employer and employees in regard to change in tonnage rate at 14" Mill. No protest. Jurisdiction terminated.

Case No. 1303. Salida Branch, Granite Cutters' Ass'n vs. Salida Granite Corporation, Salida, Feb. 15, 1926. Notice from employees of a demand for increase in wage scale. No protest. Jurisdiction terminated.

Case No. 1304. Allison Motors, Inc. vs. All Mechanics and Shop Employees and J. M. Pikes, Denver, March 1, 1926. Notice from employer that payment of wages to said employees on hourly basis would be discontinued and, effective April 1, 1926, they would be paid on basis of Kotcher flat rate system. No protest from employees. Jurisdiction terminated.

Case No. 1305. American Smelting & Rfg. Co. vs. Employees at Cokedale Plant, Cokedale, March 5, 1926. Agreement between employer and employees for reduction in wage scale filed by employer. No protest from employees. Jurisdiction terminated.

Case No. 1306. Carpenters' District Council, Denver and Vicinity vs. Employers, Denver, March 15, 1926. Notice from Union of demand for wage increase. Case set for hearing. Findings and award granting increase from $9.00 to $10.00 per day, effective June 1, 1926.

Case No. 1307. Business Service Employees' Union No. 29 vs. Employers, Denver, March 25, 1926. Notice from Union of demand for increase of fifty cents per day. Settled by mutual agreement. Contract to remain same for one year.

Case No. 1308. Campbell-Sell Baking Company, et al. vs. Employees, Denver, March 29, 1926. Notice of wage decrease and change in working conditions. Settled by mutual agreement.

Case No. 1309. Denver Musical Protective Ass'n vs. Rialto Theatre, Denver, April 1, 1926. Complaint in regard to violation of agreement. Settled by mutual agreement.

Case No. 1310. Vickers Coal Company vs. Employees, Aguilar, May 17, 1926. 1 employer, 30 employees. Notice from employer of reduction in wages. No protest. Jurisdiction terminated.

Case No. 1311. American Crate and Basket Co., Denver, May 25, 1926. Information given to Commission that employer had reduced wages by posting notices on May 21st to take effect May 24th and that four girls had walked out. Commission notified employer of the requirements of the law in regard to giving notice of wage reduction or other changes. Letter received from company giving the required notice. No protest. Case closed.

Case No. 1312. Typographical Union No. 49 vs. Employers, Denver, June 12, 1926. Notice to effect that Union wished to open contract as per contract existing. Case pending waiting for decision from Union headquarters as to some sections of standing contract.

Case No. 1313. Carpenters and Joiners vs. Employers, Golden, July 22, 1926. Notice from employees of demand for increase in wage scale. Settled by mutual agreement.

Case No. 1314. Moving Picture Operators Union No. 230 vs. Employers, Denver, July 31, 1926. New contract filed by Union. Notice from employers of 10% wage reduction. Settled by mutual agreement.

Case No. 1315. Theatrical Stage Employees Union No. 7 vs. Employers, Denver, July 30, 1926. New contract filed by employees and employers. Settled by mutual agreement.

Case No. 1316. The Elitch Gardens Co. vs. Employees employed in orchestra, Denver, Aug. 11, 1926. Notice from employer of wage reduction to members of orchestra. No protest. Case closed.

Case No. 1317. Cigar Makers' Union No. 129 vs. Cuban Cigar Co. and Dry Climate Cigar Company, Denver, Aug. 12, 1926. Notice from Union of demand for increase in wages. No protest. Jurisdiction terminated.

Case No. 1318. Asbestos Workers' Union No. 28 vs. Employers, Denver, Aug. 10, 1926. Notice from Union of demand for wage increase. No protest. Jurisdiction terminated.

Case No. 1319. Manhattan Restaurant vs. Employees, Denver, Aug. 23, 1926. Notice from employer of reduction of wages to conform to wage scales of unions whose members were employed by said employer instead of higher rate then being paid. Mutual agreement. Case closed.

Case No. 1320. Swift and Company vs. Employees. Notice of a premium to employees for increased production. No protest. Case closed.

Case No. 1231. National Store Fixtures Company vs. Employees, Denver, No. 1, 1926. Notice from employer of change from eight to nine-hour day and from Union to "open shop" basis. Settled by mutual agreement.

Case No. 1322. Burns Theatre vs. Stage Hands Union No. 62. Colorado Springs, Nov. 27, 1926. Controversy over admission of employee to Union. Case set for hearing Dec. 20, 1926.

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 tables have been continued to include December, 1926, 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.

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	1925	1926
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	$1,194.33	$1,212.84
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	1,187.46	1,218.61
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	1,173.89	1,195.74
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	1,166.77	1,199.79
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	1,177.37	1,202.91
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	1,177.63	1,204.73
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	1,201.03	1,194.17
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	1,201.03	1,190.69
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	1,192.25	1,199.73
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	1,200.31	1,187.41
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	1,209.04	1,180.60
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	1,216.06	1,185.95

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	36.36	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
1925	January	$173.40	$45.45	$506.90	$286.20	$54.50	$25.00	$22.88	$80.00	$1,194.33	159.8
	February	173.40	45.45	500.03	286.20	54.50	25.00	22.88	80.00	1,187.46	158.9
	March	173.40	45.45	486.46	286.20	54.50	25.00	22.88	80.00	1,173.89	157.1
	April	173.40	45.45	479.34	286.20	54.50	25.00	22.88	80.00	1,166.77	156.1
	May	173.40	45.45	489.94	286.20	54.50	25.00	22.88	80.00	1,177.37	157.5
	June	173.40	45.45	490.20	286.20	54.50	25.00	22.88	80.00	1,177.63	157.5
	July	173.40	45.45	513.60	286.20	54.50	25.00	22.88	80.00	1,201.03	160.7
	August	173.40	45.45	513.60	286.20	54.50	25.00	22.88	80.00	1,201.03	160.7
	September	173.40	45.45	504.82	286.20	54.50	25.00	22.88	80.00	1,192.25	159.5
	October	173.40	45.45	512.88	286.20	54.50	25.00	22.88	80.00	1,200.31	160.6
	November	173.40	45.45	521.61	286.20	54.50	25.00	22.88	80.00	1,209.04	161.7
	December	173.40	45.45	528.63	286.20	54.50	25.00	22.88	80.00	1,216.06	162.7
1926	January	$173.40	$45.45	$525.41	$286.20	$54.50	$25.00	$22.88	$80.00	$1,212.84	162.3
	February	173.40	45.45	531.18	286.20	54.50	25.00	22.88	80.00	1,218.61	163.0
	March	173.40	45.45	508.51	286.20	54.50	25.00	22.88	80.00	1,195.74	160.0
	April	173.40	45.45	512.36	286.20	54.50	25.00	22.88	80.00	1,199.79	160.5
	May	173.40	45.45	515.48	286.20	54.50	25.00	22.88	80.00	1,202.91	160.9
	June	173.40	45.45	517.30	286.20	54.50	25.00	22.88	80.00	1,204.73	161.2
	July	173.40	45.45	506.74	286.20	54.50	25.00	22.88	80.00	1,194.17	159.8
	August	173.40	45.45	503.26	286.20	54.50	25.00	22.88	80.00	1,190.69	159.3
	September	173.40	45.45	512.30	286.20	54.50	25.00	22.88	80.00	1,199.73	160.5
	October	173.40	45.45	499.98	286.20	54.50	25.00	22.88	80.00	1,187.41	158.9
	November	173.40	45.45	493.17	286.20	54.50	25.00	22.88	80.00	1,180.60	158.0
	December	173.40	45.45	498.52	286.20	54.50	25.00	22.88	80.00	1,185.95	158.6

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