TWENTY FIRST REPORT

OF THE

Industrial Commission of Colorado

For the Period
July 1, 1948
TO
June 30, 1950

Administering:

- Workmen's Compensation Act
- Industrial Relations Act
- Labor Relations
- State Compensation Insurance Fund
- Factory Inspection Department
- Boiler Inspection Department
- Department of Wage Claims
- Minimum Wage
- Child Labor
- Division of Unemployment Compensation
- Colorado State Employment Service, affiliated with United States Employment Service
- Private Employment Agencies
- Safety Department

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Publication approved by James A. Noonan, State Controller

TO HIS EXCELLENCY,

THE GOVERNOR OF COLORADO,

State Capitol Building,

Denver, Colorado.

Sir:

In accordance with the provisions of the law creating the Industrial Commission of Colorado as modified by the Labor Peace Act, we have the honor to transmit herewith the report of the activities and proceedings of the Commission for the period from July 1, 1948 to June 30, 1950.

R. C. ANDERSON,
H. E. DILL,
RAY H. BRANNAMAN,
Commissioners.

FEAY B. SMITH,
Secretary-Referee.

DAVID F. HOW,
Referee-Director.

RICHARD E. MOSS,
Referee.

RECOMMENDATIONS

WORKMEN'S COMPENSATION ACT

It is the opinion of the Industrial Commission that impartial administration of the Act as it is written is its primary function.

This Commission cannot and should not attempt to correct apparent deficiencies in the Act by extra legal rulings or decisions.

It is the function of the Legislature to correct deficiencies and to amend sections of the Act which do not afford equal redress to parties litigant whether they be employers or employees.

The Commission does not believe it is proper for it to sponsor or support legislation which favors one group to the disadvantage of another. However, the Commission does feel that it has the duty of inviting the attention of the Legislature to changes in the Act which are necessary or desirable to enable it to administer the Act in such a manner as to most effectually achieve its intent and purposes.

Accordingly, the Commission recommends amendment of the following sections of the Workmen's Compensation Act:

SECTION 9

It should be pointed out that elective officials of the state and of the various subdivisions thereof, with the sole exception of sheriffs, are not entitled to the benefits of the Workmen's Compensation Act if injured in accidents arising out of and in the course of their respective offices or employments. This distinction between elective officials and other public servants has resulted in the past in a rather unfortunate situation where two people have been injured in the same or similar accidents, one being compensated because he was an appointed official, whereas a companion was excluded because he was elected.

We believe that putting elective officials under the protection of the Act is worthy of consideration, provided a fair and adequate premium is given the State Compensation Insurance Fund for this additional coverage. With the various political subdivisions this could easily be done. With the state, however, inasmuch as the premium now paid by the state to the State Compensation Insurance Fund is far from adequate, we believe that no additional risks should be imposed upon the Fund without absolutely securing to the Fund an adequate premium for the risk carried.

SECTION 21

We have repeatedly directed attention to the fact that the Workmen's Compensation Act does not contemplate the employer collecting the cost of Workmen's Compensation insurance

from the employee. Complaints to the Commission indicate that the intent of the Act is violated in this respect from time to time. This section should be amended to specifically forbid this practice and to provide adequate penalties to insure observance of the Act.

SECTION 30

This section requires the employer to make a report of accident to this Commission within ten days after the occurrence but provides no penalty for failure to make a report within the specified time.

Since Section 31 of the Act requires the employee to report his accident to the employer within two days after the accident, and provides that if he fails to do so he shall be penalized one day's compensation for each day's failure to so report, it would seem equitable that some penalty should be imposed upon the employer for failure to perform his duty.

Failure on the part of certain employers to report accidents promptly accounts in a great part for otherwise unnecessary delay in compensating injuries.

It is obvious that insurance carriers cannot be expected to admit liability for accidents of which they have no knowledge when reports are delayed by the employer for 30, 60, or 90 days after the injury and in some instances longer. Compensation payments to the injured man are necessarily delayed a like period.

The Commission recommends imposition of a small penalty upon the employer for each day's failure to comply with Section 30 of the Act, such penalty to be paid by the employer direct to the injured man.

In view of the penalty imposed on the injured man by Section 31, it would appear that a penalty equivalent to one day's compensation for each day the employer fails to comply would be equitable.

SECTION 52

To clarify the apparent conflict which seems to exist between Section 52 and Section 57 of the Act as a result of judicial construction, we again recommend that paragraph (a), Section 52 of the Act be amended to read as follows:

> (a) Wife at the time of the accident, or a post-injury wife where the post-injury marriage was contracted in good faith and has existed for a reasonable period of time prior to death, unless it be shown in either case that she was voluntarily separated and living apart from the husband at the time of his injury or death, and was not dependent in whole or in part on him for support.

SECTION 58

This section provides that death benefits shall terminate upon remarriage and shall survive to the remaining dependents, if any. A widow without children loses all remaining compensation upon remarriage. Many other states provide for payment of a percentage of the unpaid compensation or for reduction of the remaining compensation to a specific sum in event of remarriage. It is believed that a provision of this nature is more equitable and that a payment of some part of the unpaid compensation upon remarriage is desirable from the viewpoint of public good and morals.

SECTION 63

By reason of a decision of the Colorado Supreme Court handed down September 22, 1947, being Case No. 15919, before that Court and titled Moffat Coal Co. et al vs. Mary Elizabeth McFall et al 117 Colo——, Section 63 should be amended to remedy a situation now existing in the law. The result of the McFall case is that in an instance where death results from a compensable injury more than two years after it occurs, the surviving widow or other lawful dependents have no claim before the Industrial Commission for death benefits, but that if death occurs more than two years after a compensable injury **not** as a result of that injury, the lawful dependents do have a claim before the Commission.

It seems unfair and not within the general intent of the Workmen's Compensation Act that the law should be such. Accordingly, it is proposed that Section 63 be amended by striking from the first sentence thereof the words "within a period of two (2) years" which words are the apparent cause of the present interpretation of the law as expressed in the McFall Case and have resulted in the existing conflict depriving certain dependents of rights to which they are equally or more deserving than those now confirmed in another class of dependents.

SECTION 73

Section 73 (c) of the Act provides that where amputation is made between any two joints (except amputation between the knee and hip) the resulting loss shall be estimated as if the amputation had been made at the point nearest thereto.

The Commission believes that a more equitable basis of determining the loss would be to estimate the loss as of the point above the point of amputation.

Section 73 also provides for payment of compensation for amputation or loss of use of a member by payment for the specified number of weeks at the prevailing compensation rate.

Thus one workman may receive $2,366.00 for the loss of a hand while another may receive as little as $1040.00.

The Commission believes that compensation for loss of a member should be equalized between individuals and that this schedule should be amended to provide for payment of the specific sum for amputations regardless of the weekly compensation rate.

Consideration should also be given to the fact that amputations are not compensated with due regard to the industrial handicap incurred. The loss of a foot or a hand are both compensated by payment of 104 weeks' compensation. In the vast majority of cases the loss of a hand is a far greater industrial handicap than the loss of a foot. It is a known fact that many men work without apparent handicap with an artificial foot. This is not possible with an artificial hand. The Commission recommends that the amounts paid for various losses of members be reconsidered with a view to more equitably compensating those injuries creating the greatest industrial handicap.

SECTION 85

This section presently provides that any disability beginning more than five years after an accident is conclusively presumed not to have resulted from that accident. It is felt that in view of the previous recommendation this section should likewise bar a death occurring more than five years after an accident. This can be simply accomplished by inserting the words "Death occurring or any disability" for the first two words in the first sentence of the section.

There is a section (62) which raises a **prima facie** presumption after two years following an accident that death is not the result of accidental injury. With the change recommended in Section 63 and the Amendment of Section 85, the result would be that dependents of persons injured in compensable accidents would have death claims up to five years following the injury whether the death resulted from the injury or not. In case of an accident connected death the dependents could claim the unpaid balance up to maximum death benefits, and in case of non-accident connected death the dependents could claim the unpaid balance of benefits awarded on account of the injury up to maximum death benefits.

SECTIONS 53 AND 54

There is in the Workmen's Compensation Act a conflict as to the date to be used in determining dependency and commencing compensation payments. The above designated sections prescribe the date of death as controlling whereas elsewhere throughout the Act the date of accident controls. For purposes of uniformity, these sections should be amended to be operative from the date of accident.

SECTIONS 154-161

Sections 154-161 of the Workmen's Compensation Act, same being Chapter 241, Session Laws of Colorado, 1941, as amended imposes a tax on insurance companies writing Workmen's Compensation Insurance in this State, upon the State Fund and on Self-insurers for the use of the Industrial Commission in promoting safety and accident prevention in industry.

Section 161 provides that, if at the end of any fiscal year, there remains unexpended any money derived pursuant to the Act in excess of Five Thousand ($5,000.00) Dollars, said excess shall be transferred to the General Fund, and that when the tax in any year exceeds $20,000.00, any excess shall be transferred to the General Revenue Fund.

Without exception those conversant with this situation have expressed the opinion, and the Commission agrees and recommends, that Section 161 of said Act should be amended so that these funds remain intact until a sufficient reserve is built up. The Commission should then be empowered to reduce or suspend the tax until the reserve is reduced to a point where additional funds are required, and then to reinstate the tax until a sufficient reserve is again established.

In this way money raised pursuant to a tax imposed for the promotion of safety and accident prevention would not be diverted for purposes other than for which it was intended. We earnestly recommend such an amendment.

Section 159 of the Act reads: "All funds received by or for the Industrial Commission of Colorado under the provisions of this Act shall be devoted solely to defray the expense of promoting and encouraging the adoption in industry of safety devices, standard safety methods, and the continuous study and improvement thereof, including the salaries of any employees, fees of experts, lecturers, and teachers appointed or employed in accordance with law."

Although the legislature has appropriated to the use of the Commission almost the entire $20,000.00 made available by the statute, the employees which the Commission may hire and expenses which the Commission may incur in this Department, limit the work which may be accomplished in this field. At least four (4) additional inspectors are required, and a clerk typist, at salaries sufficient to attract competent safety men, to adequately implement this program.

OCCUPATIONAL DISEASE DISABILITY ACT

Due to the limited coverage provided by Section 9 of the Act which limits recovery to twenty-one (21) specific poisonings or diseases, many diseases which are actually occupational in origin cannot be compensated.

A large number of people in Colorado are employed in the production of radium and radioactive substances. No provision is made by the Act to compensate disease due to exposure to radioactive materials. Prompt attention should be given to including coverage for these employees.

The time limits during which a claim may be filed under Section 11 of the Act are so short as to be harsh and inequitable and to a large extent serve to defeat any remedial purpose of the Act. Limitations upon the time in which a claim should be filed should be increased to correspond to those provided by the Workmen's Compensation Act. Weekly benefits and total recovery should likewise correspond to the Workmen's Compensation Act.

The existing Occupational Disease Disability Act might well be repealed and coverage provided by amending the Workmen's Compensation Act by adding to Section 15 of the Act two additional subsections numbered (d) and (e) to read substantially as follows:

(d) The words "accident", "accidentally sustained", "injury", "personal injury", and "death resulting therefrom" shall be deemed to include and apply equally to any disease or poisoning where there is a direct causal connection between the condition under which the work was performed and the disease or poisoning incurred and the disease or poisoning can be shown to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment and can be fairly traced to the employment as a proximate cause and does not come from a hazard to which the workman would have been equally exposed outside the employment.

(e) The provisions of this Act shall fully apply to disablement or death of an employee occurring after the effective date of this amendment as the result of an occupational disease or poisoning and shall be treated as if such disablement or death were an injury by accident within the provisions of the Act and the employee suffering such disablement or in case of death, his dependents shall be entitled to compensation as herein provided.

PRIVATE EMPLOYMENT AGENCIES

The Private Employment Agencies Act (sub-division 2, Ch. 97, C. S. A. '35) should be amended to require the Employment Agencies to refund upon demand any registration fee deposited by any preson seeking employment through the Agency upon the failure of such person to obtain the employment to which reference has been made by the Agency.

RECOMMENDATIONS

A study of the following recommendations relative to Colorado labor laws for women and children is suggested.

MINIMUM WAGE LAW

The present law was enacted in 1917, but did not become operative until 1937, when funds for administration were appropriated and an amendment to the law was made strengthening the powers and duties of the Commission.

Since the law makes it unlawful to employ women in any occupation for wages which are inadequate to supply the necessary cost of living and to employ minors for unreasonably low wages, it should be so amended as to simplify procedures leading to the establishment of minimum wage orders. To assist in accomplishing this, it is suggested that the Commission be given authority to issue a general wage order applicable to all women and minors employed.

For effective enforcement, it is suggested that a blanket penalty provision be provided for violation of any of the regulations promulgated by the Commission.

If workers are to receive full benefit of the law and if employers and employees are to be protected against those who do not comply, the making of regular periodic investigations must be made possible and funds should be provided for additional investigators and office help.

WOMAN'S EIGHT HOUR LAW

This law includes in its coverage only women who are employed in manufacturing, mechanical and mercantile establishments, laundries, hotels and restaurants. Many women who are employed in places of business not governed by the law are engaged in the same occupations as those who are protected by it. It is recommended that the law be expanded to include all women workers, with some exceptions. It is also suggested that consideration be given a six-day week provision, in which case, a change in title of the law would be necessary.

Revision of the law to include the following provisions would facilitate enforcement:

1. Emergency overtime limited.
2. Exemption for executives, including definition for "executive".
3. Conditions considered as emergencies, specified.

Since it is difficult and sometimes impossible to secure the relaxation permit before an emergency occurs, consideration should be given clarification or omission of this provision.

CHILD LABOR LAW

Since this law has not been revised or amended since its enactment in 1911, it is urged that it be revised or rewritten so that increased protection may be afforded employed children of the State.

Consideration should be given the following provisions when the work of revision is undertaken.

1. Minimum age of 16 years in any employment during school hours or in manufacturing and mechanical establishments at any time.

2. Minimum age of 14 years for general employment outside school hours.

3. Employment in specified hazardous occupations prohibited for those under 18 years. Commission authorized to determine other occupations hazardous.

4. Employment certificates required for all minors up to 18 years.

5. Provision for minimum age for boys engaged in any business or occupation on public throughfares, including the selling and distribution of newspapers, periodicals, and other publications. Provision for a higher minimum age for girls so engaged.

6. Funds provided to effectuate enforcement.

LABOR RELATIONS

The relationship between employers and employees shows a marked improvement over the years and the trend toward settlement of labor disputes and negotiations has continued during the past two years.

One of the functions of the Industrial Commission is to foster good relations between employer and employees by serving as an impartial umpire in disputes and assisting in securing an understanding before they result in a strike or lockout.

No record is kept of the innumerable cases in which the Commission has participated in a purely advisory capacity. Many cases are of such nature that they are best resolved informally without establishing a record and committing the parties to a formal stand which they will feel impelled to maintain in later proceedings. This procedure enables the parties to express themselves informally and often results in bringing to the surface the obstacle which is actually delaying an agreement. Many such cases result in voluntary agreements without any influence from third parties.

During the biennium there were 552 labor cases filed with the Commission. Each of these required acknowledgement and the routine follow-up. Some of them required extensive investigation and the services of the Commission and its agents in mediation. The others required more or less intervention by the

Commission in order to bring about a meeting of the minds by the parties involved.

There were 2408 strike notices filed against employers. In spite of the efforts of the Commission and other agencies, 48 strikes resulted. These involved 52,712 workers who were out 1,047,698 man days. Since most of the long and large strikes resulting in serious work stoppages have been national in character, the Industrial Commission has not been in a position to intervene to affect the outcome.

The Commission conducted 31 Collective Bargaining Unit Elections, 24 of them in Denver and the others throughout the State. In these elections Collective Bargaining Units were established in 24 cases and rejected in 7. Three All-Union Shop elections were held in one of which the voters rejected the all-Union Shop. There were 21 pre-election conferences conducted and in 19 cases hearings were had upon unfair labor practice complaints. There were 35 hearings in various other charges, complaints and jurisdictional questions. Formal mediation was conducted in 24 cases.

It will be seen that the Commission has been instrumental in keeping the employment relationship at a minimum of disagreement. The results can be charted only in a negative way but it is apparent that labor management relations have been extremely good in Colorado during the biennium covered by this report. Full credit must be given to the high level of integrity and appreciation of responsibility on the part of representatives of labor and management involved.

SAFETY DEPARTMENT

Under the provisions of Section 154-161 of the Workmen's Compensation Act, the Safety Department of the Industrial Commission has greatly expanded its safety activities the past two years.

Motion picture equipment and safety films have been acquired and have proved to be of great value in the promotion of all types of safety. This is particularly true the past year, and more industrial organizations are availing themselves of this service each month.

The Safety Division of the Industrial Commission in a little over a year has made showings of safety films and given safety lectures to 79 audiences ranging from as small as 11 to as many as 1500 persons per showing in Denver, Colorado, and 14 showings and lectures in various cities and towns throughout the state to audiences ranging from 16 to as high as 270 persons. This safety work has been taken into almost all fields such as Industrial Plants, Public Utilities, Universities, Public and Private Schools, Industrial Nurses, Unions, both A. F. of L. and C.I.O., Insurance Companies, Service Clubs, Federal Safety Organizations, Military Installations, Men's and Women's Clubs,

Professional Engineering Societies, Cattlemen's Associations, Boy Scouts, etc., and the interest in this Safety Division and what it has to offer is constantly increasing.

In this connection we feel that it will be necessary to purchase more equipment and enlarge the Safety Division so that this safety work can be taken to all interested parties throughout the entire State of Colorado, to a much greater extent than is possible at present.

Two safety and Accident Prevention Conferences, namely, the 11th and 12th annuals have been held, both of which were well attended and were very successful in objectives accomplished.

We have worked very closely with the Colorado Society of Safety Engineers and have found the assistance and co-operation of this Society to be of great value in the operation of our Safety Division.

INDUSTRIAL COMMISSION OF COLORADO STATE BOILER INSPECTION DIVISION

The Department of State Boiler Inspection was created in 1889 with the view of protecting human life and property specifically, and not for revenue. However, it has produced a return of many thousands of dollars each year for the state which reverts to the General Fund. The work has been carried on strictly in accordance with the law, the people receiving the protection afforded thereunder, and the state profiting from the revenue.

Colorado has no code to restrict dumping of any and all kinds of boilers on the operators in the state, the installation of which would be restricted or prohibited in many other states, and the purpose of our law being the protection of the public against possible accidents arising from the use of boilers which are in a deteriorated condition (or in other words, unsafe until certain repairs are made), it is necessary to have adequate inspection. State Boiler Inspectors are, therefore, required to have full knowledge of the construction and operation of boilers, enabling them to locate danger signals, the correction of which would avert accidents.

One of the duties of Boiler Inspectors is to make such recommendations for repairs of boilers as to insure their safety, and when boilers are shut down due to some kind of mechanical or human failure, it it rather discouraging to be compelled to turn down requests of plant operators for these special inspections due to lack of appropriation.

In spite of various handicaps, our inspectors are to be commended for their splendid co-operation in trying to make these special inspections, whenever humanly possible, by driving to

remote places in the state, over dangerous roads, in every kind of weather, and at all hours of the day or night.

We also feel that there are still many boilers throughout the state that are not being inspected, through no fault of the department, and if our appropriation was increased it would then be possible to carry on this important work in the manner in which it should be.

It is a well known fact, in engineering and mechanical circles, that unfired pressure vessels are as dangerous as fired ones, and are just as liable to failure and explosion.

There is no state law requiring inspection as to the fitness and strength in order to determine the safe working pressure of unfired pressure vessels.

We would recommend that such a law be passed which will include the inspection of pressure containers in all industrial plants, subject to the same rigid inspection and attention as boilers. This law should be included in or added to the present boiler inspection law.

A fair fee for this type of inspection would be $2.50 per year for each pressure vessel of small dimensions, up to $4.00 or $5.00 for the larger types.

We would also recommend that the inspection of hot water boilers be included in the amended law, as this type of boiler is just as dangerous as steam boilers. The fee for this type of inspection would have to be a graduated one, depending on size of boilers.

If the law is amended to include hot water boilers and unfired pressure vessels, it will be necessary to add at least two more inspectors to the present force, as well as extra office help, plus a larger appropriation.

It is gratifying to report that we have not had a fatality resulting from a boiler failure during the past two years.

INSPECTIONS MADE FROM JULY 1, 1948 TO JUNE 30, 1950

	Ed. G. Griswold	Geo. J. Heber	C. E. Messenger
July, 1948	134	117	142
August, 1948	153	99	140
September, 1948	169	95	57
October, 1948	46	68	73
November, 1948	88	64	71
December, 1948	76	127	58
January, 1949	71	94	103
February, 1949	76	133	81
March, 1949	108	143	81
April, 1949	119	111	114
May, 1949	155	106	113
June, 1949	108	90	107
July, 1949	166	134	161
August, 1949	146	89	160
September, 1949	122	97	Vacation
October, 1949	95	100	124
November, 1949	42	106	84
December, 1949	136	111	64
January, 1950	71	97	100
February, 1950	80	124	85
March, 1950	114		Sick 107
April, 1950	127		" 157
May, 1950	172	122	146
June, 1950	177	157	108
	2,751	2,388	2,436

Total Inspections 7,575

The above figures represent total number of inspections made, including those already collected for, those on which fees have not been paid and free inspections.

Following are inspections made of boilers at State Institutions, State Armories, etc., which are on the books as "Free Inspections".

July, 1948	14	July, 1949	11
August, 1948	16	August, 1949	8
September, 1948	4	September, 1949	14
October, 1948	7	October, 1949	7
November, 1948	5	November, 1949	17
December, 1948	5	December, 1949	3
January, 1949	1	January, 1950	2
February, 1949	9	February, 1950	5
March, 1949	15	March, 1950	10
April, 1949	22	April, 1950	26
May, 1949	3	May, 1950	7
June, 1949	8	June, 1950	1

Total Free Inspections 220

INDUSTRIAL COMMISSION OF COLORADO
BOILER INSPECTION DIVISION

July 1, 1948 to June 30, 1950

RECEIPTS:

July, 1948	$ 1,670.00	July, 1949	$ 1,547.50
August, 1948	1,192.50	August, 1949	1,325.00
September, 1948	1,227.73	September, 1949	1,172.50
October, 1948	1,140.00	October, 1949	865.00
November, 1948	850.00	November, 1949	1,080.00
December, 1948	930.08	December, 1949	940.00
January, 1949	880.38	January, 1950	1,095.00
February, 1949	1,035.05	February, 1950	945.00
March, 1949	1,055.00	March, 1950	855.04
April, 1949	1,432.56	April, 1950	1,317.50
May, 1949	1,290.00	May, 1950	1,127.50
June, 1949	1,052.50	June, 1950	1,287.50

TOTAL RECEIPTS $27,313.34

3,704 boilers @ $5.00	$18,520.00
3,511 boilers @ $2.50	8,777.50
Interest on registered warrants	.84
Expenses paid for special trip	15.00
	$27,313.34
Registered school and county warrants held	$35.00
Inspections made—fees not yet collected:	
120 inspections @ $5.00	$600.00
97 inpsctions @ $2.50	242.50
	$842.50

DISBURSEMENTS:

Salaries	$31,042.83
Maintenance and Operation (includes supplies and materials, travel expense and current charges)	12,557.14
TOTAL DISBURSEMENTS	$43,599.97

FACTORY INSPECTION DEPARTMENT

The paramount objective of the Factory Inspection Department is to prevent accidents and improve working conditions throughout the State, and to prevent catastrophies in industrial plants, public and parochial schools, places of public assemblage, theatres, etc., through proper inspection and calling to the attention of the proper authority the hazard existing and the method of correcting same.

To make investigations upon complaints that unsafe conditions exist and proceed to check and make proper reports to persons responsible for conditions found, also suggest proper method of making corrections if corrections are necessary according to the law.

The work of the inspectors in the Factory Inspection Department has been instrumental in preventing many accidents and in improving working conditions.

In the regular inspection of business establishments, theatres, schools and places of public assemblage the inspector ascertains whether or not machinery is properly guarded, that proper exits are available, together with sufficient fire escapes, that aisles are kept free, that doors open outward and are equipped with proper hardware and that doors are not locked when buildings are occupied, to issue orders for correcting defects, to see that the above places are safe and healthful places to work and assemble.

It should be noted that there is no direct charge for this service and when all requirements are met a certificate of inspection is issued by the Industrial Commission of Colorado to all places which comply with the rules and regulations of the Industrial Commission of Colorado.

During this biennium a concentrated effort has been made to inspect all the schoolhouses. During the war period it was not possible under gasoline rationing, etc., to make inspections of the schools located off the main roads, which resulted in some of the schools not being inspected for several years. At the present time most of the outlying schools have been inspected and the necessary orders entered to eliminate hazards. Many of the orders issued by this Department have not been complied with, however; in some instances owing to a lack of funds, and in others, school boards are considering the question of consolidation.

Labor and materials have been more plentiful during this biennium, which has resulted in obtaining better compliance with orders issued by this Department generally.

The figures given below for the period from July, 1949 to July 1, 1950, do not reflect the actual work of the Department, because during a great deal of this time the Department has had only the Chief Inspector and one Inspector on his staff, and also

due to the program recently inaugurated calling for a complete inspection of all state institutions. For instance, the inspection of one of the state institutions required the services of two inspectors for a period of three weeks. The Factory Inspection Department is making the inspection of state institutions, to the end that safety and fire hazards be eliminated and lives and property safe-guarded to the fullest extent possible.

It is recommended that the staff of this Department be increased to a total of six inspectors and one additional clerk-typist, bearing in mind that the law requires that every place of public assemblage, factory, workshop, office, bakery, laundry, store, schoolhouse, theatre, moving picture house, or other building in which four or more persons are employed shall be inspected annually and from time to time for the purpose of determining whether they do conform to such provisions and granting or refusing certificates of approval.

The Commission has formally adopted the American Standards Association safety codes and the National Safety Council Safe Practices Pamphlets and Manual for use by this Department.

Following is a tabulation of the inspections made by the Factory Inspection Department for the biennium, showing the number of employes and students extended the protection provided by law:

FACTORY INSPECTION DEPARTMENT

Inspections Made—July 1, 1948 to July 1, 1949

Business Classification	Number of Inspections	Number of Male Employes	Number of Female Employes	Total
Aircraft Schools & Service	2	4	....	4
Auto Industry	300	3,383	369	3,752
State and County Shops	....	....	....	....
Food:				
Bakeries	47	341	171	512
Beverages	44	761	58	819
Canning, Preserving, Processing	17	320	353	673
Confectionery	5	23	45	68
Creameries, Dairies and Dairy Products	40	566	135	701
Milling and Cereal	10	274	27	301
Sugar Refining	11	1,059	33	1,092
Foundries and Iron Works	5	100	....	100
Furniture Repair	....	....	....	....
Hotels	203	672	841	1,513
Ice and Cold Storage	7	70	12	82
Laundries, Cleaning and Pressing	98	411	1,084	1,495
Lumber:				
Lumber and Bldg. Materials	41	619	50	669
Logging and Saw Mills	5	336	4	340
Machine Shops	7	43	5	48
Manufacturing:				
Machinery Mfg.	8	290	45	335
Miscellaneous Mfg.	42	1,275	486	1,761
Steel and Metal Prod.	19	8,510	43	8,553
Meat Packing and Processing	14	374	46	420
Metal Plating	1	32	3	35
Mills and Elevators	44	566	43	609
Monument Works	1	5	1	6
Motion Picture Industry	1	300	250	550
Moving and Storage	3	70	7	77
Oil Industry	7	425	12	437
Oxygen, etc.	....	....	....	....
Printing and Publishing	54	774	345	1,119
Public Buildings	....	....	....	....
Public Utilities:				
Communications	1	33	85	118
Elec. Lt., Gas and Power	23	275	90	365
Railroads (Shops)	9	1,158	12	1,170
Trucking	2	14	....	14
Water Works	3	20	....	20
Sanitoriums	....	....	....	....
Schools	1,082	2,813	6,057	8,870
School Warehouse	2	77	12	89
State Institutions	....	....	....	....
Stores—all retail	91	850	1,675	2,525
Theatres and Amusements	121	445	410	855
Totals	2,370	27,288	12,809	40,097

Enrollment in Schools Inspected.....185,842

FACTORY INSPECTION DEPARTMENT

Inspections Made—July 1, 1949 to July 1, 1950

Business Classification	Number of Inspections	Number of Male Employes	Number of Female Employes	Total
Auto Industry	186	1,439	87	1,526
State and County Shops	6	118	4	122
Food:				
Bakeries	18	323	417	740
Beverages	8	44	1	45
Canning, Preserving and Processing	5	76	41	117
Confectionery	1	10	6	16
Creameries, Dairies and Dairy Products	16	176	55	231
Milling and Cereal	4	82	2	84
Sugar Refining	....	....	....	....
Foundries and Iron Works	2	85	....	85
Furniture Repair	1	2	....	2
Hotels	108	203	290	493
Ice and Cold Storage	5	39	7	46
Laundries, Cleaning and Pressing	32	92	245	337
Lumber:				
Lumber and Bldg. Material	27	155	9	164
Logging and Saw Mills	8	216	11	227
Machine Shops	15	92	6	98
Manufacturing:				
Machinery Mfg.	4	146	9	155
Miscellaneous Mfg.	28	1,250	286	1,536
Steel and Metal Prod.	16	654	71	725
Meat Packing and Processing	4	48	4	52
Metal Plating	....	....	....	....
Mills and Elevators	32	254	28	282
Monument Works	....	....	....	....
Moving and Storage	1	2	1	3
Oil Industry	....	....	....	....
Oxygen, etc.	....	....	....	....
Printing and Publishing	23	218	70	288
Public Buildings	1	11	2	13
Public Utilities:				
Communications	1	34	69	103
Elec. Lt., Gas and Power	9	149	14	163
Railroads (Shops)	4	164	1	165
Trucking	....	....	....	....
Water Works	....	....	....	....
Sanitoriums	2	20	34	54
Schools	549	1,403	2,281	3,684
State Institutions	4	572	886	1,458
Stores—all retail	60	308	433	741
Theatres and Amusements	61	189	200	389
Totals	1,241	8,574	5,570	14,144

Pupils enrolled in schools inspected.....59,422

THEATRICAL EMPLOYMENT AGENCY DIVISION

The following Theatrical Employment Agency licenses were issued, license fees in the amounts shown deposited with the State Revenue Department for credit to the General Fund and the Commission as provided by law:

7/1/48-49—7 Theatrical Agency Licenses @ $100.00 each	$ 700.00	
2 Theatrical Agent's Licenses @ $50.00 each	100.00	$ 800.00
7/1/49-50—7 Theatrical Agency Licenses @ $100.00 each	$ 700.00	
1 Theatrical Agent's License @ $50.00	50.00	750.00
Total for Biennium		$1,550.00

PRIVATE EMPLOYMENT AGENCY DIVISION

The following Private Employment Agency Licenses were issued, license fees in the amounts shown deposited with the State Revenue Department for credit to the General Fund:

7/1/48-49—43 Private Employment Agency Licenses	$2,050.00
7/1/49-50—44 Private Employment Agency Licenses	2,025.00
Total for Biennium	$4,075.00

MINIMUM WAGE AND CHILD LABOR DIVISION

The Minimum Wage and Child Labor Division is responsible for the administration and enforcement of the Minimum Wage and Labor Law for Women and Minors, the Woman's Eight Hour Law, and the Colorado Child Labor Law.

These laws were made to protect employed women and minors from conditions of work that might be detrimental to their health and morals. In July 1917, when the Minimum Wage Law was enacted it was evident then, as now, that "The welfare of the State of Colorado demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals" and "that inadequate wages and unsanitary conditions of labor exert such pernicious effect".

There are many more women actively engaged in gainful employment in Colorado now than there were before World War II. As the number of employed women increases, the role of the Division devoted to their interests and well-being becomes greater and more complex. Its importance to the general well-being of the State as well as to the women workers becomes daily more apparent.

In carrying out its responsibilities, the Division's principal work is to investigate all establishments employing women and children for the purpose of checking compliance with the minimum wage orders, the Woman's Eight Hour Law and the State Child Labor Law. How to cover the State and to obtain compliance with all regulations relating to the employment of women and children with a small staff, is a problem. During the past biennium with only one investigator the first year and but two the second year, investigations have been confined to the needs of those areas and those industries where there has appeared to be the greatest need for them, based on complaints and a study of conditions. In many instances because of the time and expense element involved, complaints from outlying districts have been handled by correspondence. This is, of course, not as satisfactory as making personal contacts.

The investigation procedure desired is to approach all investigations from the standpoint of prevention of the violation rather than to punish the employer after violation has occurred. It has been found that most violations occur as a result of misunderstanding or a lack of knowledge of the provisions of the law. The value of regular routine investigations can not be overemphasized in any program which attempts to bring to management and the workers full information on legal standards relating to the regulations which apply in the various industries and occupations. It has been found that employers are vitally interested in having comprehensive information on labor laws enforced by this Division. Many violations would be prevented if it were possible to visit every place of business in the State employing women and children, at least once a year.

According to the monthly reports of investigators which are compiled from daily records kept by them, there were a total of 7,836 routine visits made, 4,580 of which were found to be employing women or minors or both. During the two year period, 56 cities (or towns) of the State and approximately half of the city of Denver have been covered by routine investigations. In addition 262 complaints reported to the office have been promptly investigated and the necessary re-checks made to insure compliance. Complaint investigations were distributed according to industries, as follows:

Retail Trades	47
Beauty Service	5
Public Housekeeping	130
Laundry	6
Manufacturing & Wholesale	45
Misc. places (Child Labor)	29
Total	262

The table below shows the number of visits and the number of investigations made of establishments in four industries, and the number of women and minors covered by the investigations:

Industry	Visits	Investigations	Employees Women	Employees Male Minors
Retail trades	4349	2081	7782	611
Beauty Service	386	193	442	0
Public Housekeeping	2384	1627	7253	79
Laundry	177	139	1976	16
Total	7296	4040	17453	706

Investigations included a check on compliance with all three laws administered by the Division. In addition to the number listed above there were 188 special investigations made on Child Labor and 352 special investigations made on provisions of the Eight Hour Law.

Non-compliance with provisions, such as overtime, posting of Order, and the keeping of records, comprise the greater number of violations disclosed. Voluntary adjustment to comply with the law has been the result in most cases. Where violations of overtime pay provisions of wage orders or the Woman's Eight Hour Law have been found, back wages due employees are collected. Restitution in the amount of $5046.05 has been made for women and minors who have worked overtime and have not received legal overtime pay during this two year period. The amount paid in make-up pay by establishments in various industries is shown below:

Retail trades	$1178.55
Beauty service	16.35
Public Housekeeping	3018.59
Laundry	634.68
Manufacturing and Wholesale	197.88
Total	$5046.05

At the same time investigations are made with respect to the three laws, investigators inquire as to whether or not employers of four or more employees are carrying Workmen's Compensation Insurance. During this biennium names of 156 employers who did not carry the insurance were reported to the Insurance Division for enforcement.

In addition to the principal work of making investigations, such tasks as conducting wage surveys, passing on applications for emergency relaxation permits for overtime, granting permits in accordance with the provisions of the Woman's Eight Hour Law, and seeing to it that school officials are familiar with their duties in issuing Employment Certificates, add to the work of the Division.

The services of the Division, including the making of investigations and effecting corrections where conditions of work are found to be illegal, are available to all women and minors employed in industry. The services are equally available to employers. Frequently requests are received from employers for advice on the laws and for assistance in setting up of records and adjusting hours of work to comply with the law.

The Division acknowledges the cooperation extended by employers, employees, school officials, and all others who have supported it in its work, and wishes to express its gratitude for such cooperation.

MINIMUM WAGE

The substantial increase in the cost of living during the nine or ten years since the present wage orders became effective, has made minimum wage rates contained in them ineffective in accomplishing the purpose of the minimum wage law. According to the revised estimate of the cost of living for a single employed woman in Colorado as of January 1, 1949, an income of $1813.00 per year or $34.86 a week is necessary for moderate living. This figure shows the inadequacy of existing legal minima, which range lower than 30c an hour on two of the orders. Reports indicate that women and minors are receiving wages much higher than the minimum requirements of existing orders, which fact indicates that so far as minimum wage is concerned present orders are self-enforcing. There is a need, however, for checking on compliance with administrative regulations; such as overtime, rest periods, and the keeping of records, as is evidenced by inquiries, complaints, and reports of violations concerning them.

A total of 4355 establishments employing 17,453 women and 706 male minors were investigated with respect to wage order provisions. Reports disclosed compliance with wage order regulations as shown below:

Posting	43.3%
Hours	96.1%
Wage	97%
Age Certificates	94.4%
Records	72.2%

During the year 1949, a study of prevailing wages of women and minors employed in retail trades, public housekeeping, beauty service, and laundry industries was made for the purpose of providing data for use of the Commission in revising minimum wage orders. Information for the study was secured from reports of investigations made for the purpose of checking compliance with present wage order regulations. Reports of 1590 establishments located in 57 cities (or towns) including Denver and Colorado Springs were made and wages and hours of 5282 women and minor employees of these establishments were recorded. Since this study revealed that a substantial number of women are receiving wages below a living wage, a revision of present Wage Orders based upon findings from the investigation into wages and working conditions is contemplated.

WOMAN'S EIGHT HOUR LAW

The Eight Hour Law for women limits the employment of women in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant in this State to eight (8) hours during any twenty-four (24) hours of any one calendar day. An amendment to the law in 1947 permits overtime in case of emergencies (or) conditions demanding immediate action, or in the case of processing seasonal agricultural products, upon the payment of time and one-half the employee's regular hourly rate for the excess time worked and provided that the employer shall first have secured an emergency relaxation permit from the Industrial Commission.

There have been 352 special routine investigations, 45 complaint investigations and 36 re-inspections made with respect to this law. Failure to secure the emergency relaxation permit before allowing overtime in emergencies and permitting employees who are classed as executives to work overtime are the violations most frequently found. The provisions pertaining to these requirements have been found difficult to enforce. Where noncompliance with overtime pay provision has been found, wage adjustments have been made.

This law is generally well observed by employers in Denver and while it is known there are many violations occurring throughout the State, it is only possible to do "so much" to correct the situation because of the small staff to do the work.

The following table shows the number of relaxation permits issued during the biennium, according to industry:

Manufacturing	155
Mechanical	30
Mercantile	369
Laundry	75
Hotel	41
Restaurant	495
Total	1165

CHILD LABOR

According to the number of Employment and Age Certificates issued to minors during this biennium, there have been fewer children employed in industries than there were during the biennium ending July 1, 1948. The following table illustrates this.

Number of Certificates Issued

Period	Under 14 yrs.	14 & 15 yrs.	16 yrs. & over	Total
7/1/46 to 7/1/48	125	3270	4241	7636
7/1/48 to 7/1/50	349	2585	3364	6298

Most of the permits issued to children under 14 years of age had been issued as special exemptions to 12 and 13 year old children for summer vacation work. Some were for theatrical employment and a few were for agricultural work, where the children were to be employed by others than their own parents.

The number of certificates issued do not reflect an accurate index of the total number of minors employed either legally or illegally. Unless duplicates of all certificates issued throughout the State are sent to the Division and unless a survey could be made to determine the number of children employed in agriculture, or as domestics, or in work for which certificates are not required, an accurate record of those legally employed is not possible. It is not possible with present enforcement facilities to determine the number of illegally employed children.

There have been 188 special routine investigations, 29 complaint investigations, and 67 re-inspections made with respect to Child Labor in addition to those made in connection with minimum wage and hour investigations. Non-compliance with the age and school certificate requirement and the employment of children after 8 p. m. make up the greater percentage of violations. In most cases, the re-inspection report indicates complete compliance with the regulations. Due to the serious nature of violations found in three establishments that were investigated, employers were required to report monthly to the Division for a specified period of time.

A recent check of bowling alleys in Denver, Englewood, Lakewood, and Aurora revealed the fact that fewer boys are being employed as pin boys at the present time than were employed at the time of the last general check of the bowling alleys. Six of the 13 places investigated were employing only boys 16 years of age or over. Four places hiring a total of 10 boys under 16 years of age were found to be in total compliance with the law. The remaining three places were found violating the certificate requirement and the hours regulation. Adjustments to comply with the law were made immediately and a later recheck disclosed full compliance with all regulations.

The Industrial Commission agrees yearly to cooperate with the U. S. Department of Labor in seeing that Age Certificates are available for those minors who wish to be employed in establishments subject to the provisions of the Fair Labor Standards Act and to report monthly to the Bureau of Labor Standards of the U. S. Department of Labor data from all duplicate certificates received from issuing officers.

In May of 1949, all school superintendents in the State were sent the following child labor material: A letter explaining their duties as prescribed by law, instructions for issuing certificates, a summary of the Child Labor Law, and a questionnaire to be filled out and returned indicating the supplies needed. This procedure resulted in not only a most cooperative program between the school officials who are responsible for issuing the certificates and this Division, but it has been responsible for more effective enforcement of the law.

While work experience may be beneficial to children, unless properly safeguarded, it may prove to be a stumbling block rather than a stepping stone to success. Vigilance must be exercised to prevent industrial exploitation and premature employment at ages and under conditions detrimental to their health, education, and general welfare. To insure better protection to the children of Colorado there is need of revision and clarification of our present Child Labor Law, which was enacted in 1911.

DEPARTMENT OF WAGE CLAIMS

In January 1949, a definite policy was put into effect whereby all wage complaints were carefully screened to ascertain the validity of the complaint and unless the complaint conformed with Compiled Labor Laws of the State of Colorado it was not recorded and likewise not accepted. In all complaints where it was plainly indicated that a suit for judgment was necessary, complainants were advised to consult an attorney or a Justice of the Peace, as this office does not have the jurisdiction or authority to institute a law suit in behalf of a complainant.

All complaints which were accepted were pursued diligently until all means within the authority of the office were exhausted and if efforts of this office failed, complainants were advised to the best of our ability the next best step to take.

In the following report, no credit was taken for any collection on any accepted claim other than those obtained through the sole efforts of the Department of Wage Claims. In no instance where a claim had to be settled by the courts at the instigation of the claimant after the efforts of this office failed, was credit taken. No credit was taken for any collections obtained through the efforts of the Minimum Wage Division, which was done heretofore.

It has been noted that a complainant with a small claim under $50.00, up to this time, has had very little recourse, if the employer refused to pay, without a law suit. There has been no active small claims court to resort to.

In the last Biennial period $72,731.96 in acceptable wage claims has been collected. There were 1,452 claims recorded of which 977 were collected as of June 30, 1950. Many of the above mentioned claims are still in the process of collection.

DEPARTMENT OF EMPLOYMENT SECURITY

Report
To The
Colorado Industrial Commission

July, 1948—June, 1950

The Colorado Industrial Commission serves, ex-officio, as the Unemployment Compensation Commission in all matters of appeals from the decision of the referee, and also adopts all regulations relating to the Employment Security Act.

During the two year period from July, 1948, through June, 1950, employment in Colorado remained high, and the eligibility, disqualification, and penalty provisions of the Act were stringently applied. Despite this, the appeals load was not notably increased. Only fifty-three appeals from Department decisions were carried to the Commission. Forty-seven of the appeals were initiated by claimants, and only seven by employers. The Commission modified or reversed Department decisions in favor of two employers and nineteen claimant appellants . . . but upheld the Department in the other four employer and twenty-eight claimant protests.

The following regulations were adopted or revised by the Commission:

Regulation No. 7C—Filing of Claims by Mail (Revised November 24, 1948).

Regulation No. 1—Payment of Contributions (Revised April 6, 1949).

Regulation No. 19—Partial Benefits (Revised May 23, 1949).

Regulation No. 26—Experience Rating (Revised May 23, 1949).

Regulation No. 10—Separation From Work or Refusal to Accept Suitable Work (Revised July 21, 1949).

Regulation No. 20—Appeals to Referees (Revised July 21, 1949).

Under Section 3 (f) (2) of the Employment Security Act, the Commission is charged with holding hearings . . . upon written request . . . to determine the normal seasonal period for seasonal employers. The following hearings were held:

Lakeside Park Company of Denver

Kuner Empson Company of Brighton

Rocky Mountain Sports, Inc., of Denver

Rocky Mountain Motor Company of Chalet Ranch, Estes Park, Grand Lake Lodge, and Trail Ridge Museum

Rocky Mountain Parks Transportation Company of Rocky Mountain National Park, Estes Park, and Grand Lake

Fort Lupton Canning Company of Fort Lupton, Colorado

Section 5 (c) of the Act, dealing with disqualification for unemployment benefits, requires that the Commission determine whether or not a work stoppage is due to a strike and what categories of workers are involved. The Department then determines the claimants responsibility in connection with his unemployment. During the two year period covered by this report, the Commission was called upon to determine the nature of twenty-four work stoppages. Seventeen were held to be strikes. Seven were held not to be strikes . . . of which one was termed a lockout, three not a strike since no work stoppage existed, two others were determined not strikes since they were due to discharge of employees, and one not a strike since workers could not pass through a U.M.W. road block.

There were three union requests for review of decisions determining that a strike existed, but all three determinations were affirmed. The employer protested the determination that the work stoppage originated in a lockout, but this determination was also affirmed. Two craft unions protested that they were not parties to the 1950 construction crafts strike . . . and both were deemed not involved.

As jobs became somewhat less plentiful . . . and as the labor force increased . . . 1949 employment averaged 8,000 lower than in 1948. The State Employment Service completed its second year of responsibility for the Colorado farm labor program with 202,000 placements . . . a 77,000 increase over 1948. However, July 1, 1949, marked the termination of the Servicemen's Readjustment Allowance Program for most veterans . . . and their "adoption" under the Unemployment Compensation program of Colorado helped swell payments from $1,199,660.00 in 1948 to $3,578,702.00 in 1949. Another indication of 1949's employment "dehydration" was the increase in new work applications to an 18,000 monthly average, as compared with 11,000 in 1948. The number of "covered" workers also declined 10,000 during 1949 . . . to a total of some 195,000.

Slight improvement in employment, but still below 1948, marked the first six months of 1950. The Employment Service filled a total of 94,048 jobs . . . an increase in non-farm jobs of 3,600 over the first half of 1949, but unseasonal delays in agriculture reduced such placements almost 6,500. Claims for unemployment compensation are presently running ten percent below last year . . . and only about 3,500 workers are drawing out-of-work benefits.

STATE COMPENSATION INSURANCE FUND

July 19, 1950

Industrial Commission of Colorado
State Capitol Annex
Denver, Colo.

Gentlemen:

There is submitted herewith Income and Disbursement Statement covering the business done by the State Compensation Insurance Fund for the period beginning July 1, 1948, and ending June 30, 1950. This statement, as you will note, reflects the fact that the Fund continues to maintain the eminent position it has achieved in the field of Workmen's Compensation Insurance in Colorado.

Respectfully submitted,
STATE COMPENSATION INSURANCE FUND
H. C. Wortman, Manager.

STATE COMPENSATION INSURANCE FUND INCOME AND DISBURSEMENTS

INCOME	July 1, 1948 to Dec. 31, 1948		Jan. 1, 1949 to Dec. 31, 1949		Jan. 1, 1950 to June 30, 1950	
Premiums Written	$1,137,148.51		$2,567,378.78		$1,751,951.85	
Interest Received	89,419.15		193,810.94		95,119.46	
Sale and Redemption of Bonds	76,500.00		380,500.00		373,000.00	
Registered Warrants	56.00		571.00		387.00	
Miscellaneous	6,287.16		9,492.94		3,382.13	
	$1,309,410.82		$3,151,753.66		$2,223,840.44	
Cash on Hand	562,313.53	(6-30-48)	744,005.20	(12-31-48)	785,671.87	(12-31-49)
Premiums Outstanding	138,613.74	(6-30-48)	17,899.49*	(12-31-48)	20,127.00	(12-31-49)
	$2,010,338.09		$3,877,859.37		$3,029,639.31	

DISBURSEMENTS						
Compensation and Medical Benefits Paid	$ 710,839.37		$1,650,879.53		$ 964,183.85	
Premiums Written Off	.....		1,261.47		48.00*	
Dividends to Policyholders	279,043.70		568,263.27		488,289.88	
Operating Expenses	115,907.30		281,924.41		122,730.50	
Investments						
Bonds	.....		569,152.82		185,573.66	
Warrants	178,442.01		579.00		254.00	
	$1,284,232.38		$3,072,060.50		$1,760,983.89	
Cash on Hand	744,005.20	(12-31-48)	785,671.87	(12-31-49)	920,113.56	(6-30-50)
Premiums Outstanding	17,899.49*	(12-31-48)	20,127.00	(12-31-49)	348,541.86	(6-30-50)
	$2,010,338.09		$3,877,859.37		$3,029,639.31	

*Minus.

WORKMEN'S COMPENSATION INSURANCE

Premium Income and Losses Paid—Colorado

Net Premium Income

Year	Stock Companies	Mutual and Reciprocal Companies	State Fund	Totals
1915-1929	$11,870,309.33	$ 5,380,037.70	$ 6,430,370.60	$23,680,717.63
1930-1939	7,719,776.00	3,194,665.00	11,721,102.00	22,635,543.00
1940	767,904.00	408,683.00	1,637,739.00	2,814,326.00
1941	862,387.00	854,283.00	1,826,659.00	3,543,329.00
1942	1,736,642.00	827,601.00	1,867,979.00	4,432,222.00
1943	1,286,499.00	690,877.00	1,940,702.00	3,918,078.00
1944	985,036.34	635,417.95	1,986,683.00	3,607,137.29
1945	1,339,704.25	625,733.64	1,911,523.74	3,876,961.63
1946	1,318,394.00	493,745.00	2,117,885.00	3,930,024.00
1947	1,744,441.00	693,361.00	2,286,457.00	4,724,259.00
1948	2,089,095.00	698,101.00	2,453,374.00	5,240,570.00
1949	1,747,578.00	656,162.00	2,567,379.00	4,971,119.00
Totals	$33,467,765.92	$15,158,667.29	$38,747,853.34	$87,374,286.55

NET LOSSES PAID

Year	Stock Companies	Mutual and Reciprocal Companies	State Fund	Totals
1915-1929	$ 6,008,897.55	$ 1,674,021.75	$ 2,995,889.72	$10,678,809.02
1930-1939	4,567,351.00	1,836,382.00	7,905,581.00	14,309,314.00
1940	347,688.00	205,364.00	1,170,470.00	1,723,522.00
1941	351,726.00	243,375.00	1,277,257.00	1,872,358.00
1942	499,911.00	314,399.00	1,240,398.00	2,054,708.00
1943	483,485.00	288,110.00	1,090,484.00	1,862,079.00
1944	381,095.00	258,088.00	941,241.00	1,580,424.00
1945	506,064.00	235,628.00	902,709.33	1,644,401.33
1946	498,011.00	207,943.00	953,083.00	1,659,037.00
1947	596,266.00	214,519.00	1,185,432.00	1,996,217.00
1948	773,338.00	220,571.00	1,411,427.00	2,405,336.00
1949	745,950.00	245,044.00	1,650,880.00	2,641,874.00
Totals	$15,759,782.55	$ 5,943,444.75	$22,724,852.05	$44,428,079.35

TRUST FUND ACCOUNTS

One of the most important functions of the Industrial Commission is to protect the interests of minor dependents. In fatal cases compensation is usually ordered paid to the mother for the use of herself and any minor dependents. If the mother remarries her right to compensation terminates and survives to the minor dependents. In such cases it is customary to allow direct payment to the mother of a part of the monthly compensation for the care of the children and to deposit the balance of the monthly payments in Trust Fund Accounts in the names of the minor dependents.

In many instances there are relatives who are willing to take care of the child, thus enabling the Commission to place the full amount of compensation in trust. The money placed in trust can be released only upon written order of the Commission. The money will be released to a minor upon his attaining his majority or from time to time upon a showing that the child is in need of money for medical attention, schooling or other purposes. Many children have been able to obtain an education from money that was placed in trust for them in this manner. No charge is made for handling these accounts and the entire fund is preserved for the child. On July 1, 1950 there were 317 trust accounts totaling $267,215.03.

SUBSEQUENT INJURY FUND

Legislation providing a Subsequent Injury Fund became effective April 9, 1945. This requires payment into the Subsequent Injury Fund of $500.00 in each fatal case in which there are no dependents.

Workmen who have previously lost a major member and who lose an additional major member in a compensable accident are paid by the insurance carrier for the loss of the member and when this sum is exhausted, payments at the same rate are initiated from the Subsequent Injury Fund and continue for the lifetime of the claimant.

A total of $37,000.00 has been paid into the Subsequent Injury Fund to June 30, 1950. $972.16 has been paid to one claimant leaving a balance of $36,027.84. In July 1950 another case will be eligible for monthly payments at $76.04 per month. Payments to two other claimants will begin in May 1951 and in August 1951 respectively. Considering the life expectancy of these claimants the reserve necessary to carry these cases to conclusion will be $45,070.17. There is, therefore, $9,042.33 less in this fund than should be available to protect these four cases.

However, it is believed that it is yet too early to determine whether the $500.00 payment required in each fatal case is adequate to maintain a sufficient reserve. By July 1952 the trend should be sufficiently definite to permit the Commission to formulate reasonably accurate recommendations to correct the situation if a deficit still exists.

WORKMEN'S COMPENSATION CLAIM DEPARTMENT ACTIVITIES

During the two-year period covered by this report, this Department received 86,488 reports of accidental injuries suffered within the course of employment and supervised payment of compensation in 9,920 cases where liability was admitted. During this period the Commission entered 906 awards and orders, of which 394 were lump sum settlement orders, and the Referees of the Commission entered 2,616 awards and orders. The Referees conducted 209 sessions of hearings in 55 towns and cities other than Denver, at which 1269 compensation cases were heard.

In addition, the Referees held hearings on compensation claims in Denver three days each week and conducted some hearings by consent on other days of the week, hearing 1408 cases in Denver. Hearings are conducted in the leading industrial cities of the State every sixty to ninety days and in other parts of the State as frequently as the need requires and traveling appropriations will permit. In addition, the Referees in the administration of the Labor Peace Act considered 19 unfair labor practice cases, held preliminary conferences on 21 petitions for collective bargaining unit or all-union shop elections and conducted 34 such elections, 27 of them in Denver and 7 in other cities of the State.

SUMMARY OF ORDERS AND AWARDS

July 1, 1948 to June 30, 1950.

	Commission	Referees
Compensation:		
Fatal—Granted		41
—Denied		15
Non-Fatal—Granted	4	497
—Denied		431
Hospital or Medical Expenses—Granted		52
—Denied		12
Facial Disfigurement—Granted		43
—Denied		14
Re-hearings:		
Fatal—Granted	—	—
—Denied	3	
Non-Fatal—Granted	126	11
—Denied	32	
Lump Sums:		
Fatal—Granted	37	
—Denied	26	
Non-Fatal—Granted	288	
—Denied	43	
Medical only		76
Orders determining dependency		37
Miscellaneous orders	9	92
Show Cause orders	3	143
Continuance orders	1	102
Orders vacated	4	13
Orders to pay to subsequent injury fund		29
Cases dismissed		69
Orders directing claimant to accept surgery or treatment		5
Orders determining extent of permanent disability	1	334
Orders reversed	14	2
Compensation reduced	3	7
Compensation increased	3	50
Orders closing cases	1	24
Orders suspended or cancelled	3	4
Orders affirmed	149	9
Orders corrected	4	30
Orders amended		7
Third party settlement approved by order	4	2
Hearings cancelled by order	1	17
Orders approving compensation or medical paid	1	31
Orders approving admissions		122
Orders creating trust funds	1	21
Orders granting trust fund withdrawals	113	
Orders denying trust fund withdrawals	6	
Orders ruling fatal cases non-compensable		4
Orders assessing penalty against insurance company	8	8
Orders terminating compensation		4
Orders fixing termination of disability	2	174
Transcripts issued	9	
Orders directing payment from subsequent injury fund	2	
Orders approving compromise	1	4
Orders directing carrier to offer surgery or treatment		12
Orders re-instated		4
Orders granting penalty for safety rule violation		2
Orders denying penalty for safety rule violation	1	5
Orders allowing attorneys' fees	1	13
Orders denying attorneys' fees	2	2
Orders finding no permanent disability due to accident		42
	906	2616

ANNUAL AVERAGE NUMBER OF ORDERS AND AWARDS

	Commission	Referees
Aug. 1, 1915 to Nov. 30, 1930	479	1296
Dec. 1, 1930 to June 30, 1948	777	1755
July 1, 1948 to June 30, 1950	453	1308

ANNUAL AVERAGE OF ACCIDENTS REPORTED

Aug. 1, 1915 to Nov. 30, 1930	16539
Dec. 1, 1930 to June 30, 1948	32874
July 1, 1948 to June 30, 1950	43244

SUMMARY OF ORDERS AND AWARDS

From August 1, 1915 to June 30, 1950

	Aug. 1, 1915 to June 30, 1948		July 1, 1948 to June 30, 1950		TOTAL Aug. 1, 1915 to June 30, 1950	
	Commission	Referees	Commission	Referees	Commission	Referees
Compensation:						
Fatal—Granted	1061	3506	—	41	1061	3547
—Denied	267	726	—	15	267	741
Non-Fatal—Granted	3287	26734	4	497	3291	27231
—Denied	937	6934	—	431	937	7365
Re-hearings:						
Fatal—Granted	131	104	—		131	104
—Denied	328	53	3		331	53
Non-Fatal—Granted	1729	2469	126	11	1855	2480
—Denied	2026	695	32	—	2058	695
Lump Sums:						
Fatal—Granted	932		37		969	
—Denied	775		26		801	
Non-Fatal—Granted	3722		288		4010	
—Denied	1470		43		1513	
Facial Disfigurement:						
Granted	117	961		43	117	1004
Denied	14	108		14	14	122
All other orders and awards	4227	8427	347	1564	4574	9991
	21023	50717	906	2616	21929	53333

ANALYSIS OF INDUSTRIAL ACCIDENTS

July 1, 1948 to June 30, 1950.

ANALYSIS OF ACCIDENTS BY AGE GROUPS
(All Accidents)

Under 20	5812
20-29	25307
30-39	21627
40-49	14329
50-59	8602
60-69	3606
70-79	398
80-89	11
Not given	6796
	86488

ACCIDENTS BY SEX AND MARITAL STATUS
(All Accidents)

Male, single	16292
Male, married	55596
Male, divorced	1074
Male, widowed	557
Male, marital status unknown	5658
Female, single	2207
Female, married	3334
Female, divorced	528
Female, widowed	698
Female, marital status unknown	544
	86488

BY CARRIER

	No. of Accidents
Stock Companies	24982
Mutual Companies	5939
Reciprocal Companies	18
State Fund	48561
Self Insurers	6907
Non-insurers	81
	86488

ANALYSIS OF ACCIDENTS BY INDUSTRY

Agriculture and livestock	1263
Agricultural Services	418
Forestry and Fishing	15
Metal Mining	3821
Coal Mining	1907
Petroleum Production	654
Quarrying	529
General Construction	5243
Heavy Construction roads, dams, etc.	4187
Special Const. Trades, (Plumbing, painting, etc.)	4823
Food processing and manufacturing	5235
Packing house	2803
Grain and feed mills	736
Apparel and textile manufacturing	320
Lumber production, timber products	1122
Furniture and finished wood products	816
Paper and paper products	290
Printing and publishing	639
Chemical and allied products	1151
Petroleum Refining	186
Rubber products	1316
Leather products	362
Stone, glass, clay and allied products	1613
Iron and steel and their products	4717
Transportation equipment	358
Non-ferrous metal products	764
Electrical machinery manufacturing	211
Other machinery manufacturing	2291
Motor vehicles and equipment (Trailers)	522
Miscellaneous manufacturing industries	599
Street car and bus transportation	57
Trucking and warehousing	2363
Air, Taxi and pipe-line transportation	881
Transportation services	364
Communications	238
Utilities (Electric and gas)	1643
Water, sanitary and irrigation systems	191
Wholesale trade	4207
Lumber and building materials dealers	1457
Retail general merchandise	1540
Retail food and liquor stores	2372
Retail automotive	380
Retail apparel	269
Retail miscellaneous (drugs, hardware, etc.)	2255
Eating and drinking places	1879
Retail filling stations	375
Banks, real estate, insurance, etc.	523
Hotels, camps, rooming houses	1272
Personal services, laundries, cleaning & dyeing, barber and beauty shops, etc.	777
Business services—advertising, auditing, radio broadcasting, cleaning and other office and building services	237
Employment services, vocational schools	39
Automotive repair service, parking lots, etc.	4238
Miscellaneous repair and hand trades	733
Motion picture productions and shows	206
Amusements	635
Medical and Health services	846
Legal and related services	4
Education, including libraries and museums	1510
Professional, religious and charitable services	376
Labor, fraternal, political and trade associations	147
Private households	25
Public agencies, including police and fire, highway and sanitation, military, correctional, judicial and legislative departments	3573
Public agencies, including administrative engineering, health, taxing, municipal utilities and recreational	1962
Non-classified	3
	86488

COMPENSABLE ACCIDENTS CLASSIFIED BY EXTENT OF INJURY

Temporary total	9477
Temporary partial	317
Permanent partial (amputation)	415
Permanent partial (loss of use of)	1144
Permanent partial (working unit)	339
Permanent total	34
Facial	54
Fatal	205
Medical only or 1st aid	76568

COMPENSABLE ACCIDENTS CLASSIFIED BY TYPE OF ACCIDENT

(NOT INCLUDING CASES IN WHICH ONLY MEDICAL EXPENSE WAS PAID)

Burns, shock, poisoning, etc.	622
Occupational	26
Fall on same level	721
Fall on different level	1037
Slip	360
Struck by	2593
Caught in, under or between	1469
Struck against	1160
Strain by pushing, pulling, lifting	1838
Other or not specified	94
	9920

COMPENSABLE ACCIDENTS CLASSIFIED BY CAUSE — UNSAFE ACT

(NOT INCLUDING CASES IN WHICH ONLY MEDICAL EXPENSE WAS PAID)

Improperly guarded agencies	718
Defective or broken equipment or material	613
Hazardous procedure by employee	814
Unsafe personal factor, including lack of skill or physical defects such as sight, etc.	172
Improper illumination or ventilation	13
Failure to use protective devices or unsafe apparel	92
Unsafe physical or mechanical conditions or arrangements chargeable to employer	980
Insufficient data or unclassified	345
Act of another person	424
Ordinary accident, no unusual conditions classed as unpreventable	5749
	9920

COMPENSABLE ACCIDENTS CLASSIFIED BY CAUSATIVE AGENCY

(NOT INCLUDING CASES IN WHICH ONLY MEDICAL EXPENSE WAS PAID)

Machines (Total 1428)	
Concrete mixers	23
Mixers NEC	14
Buffers, Grinders, Polishers	19
Press, metal	18
Press, drill	10
Press, punch	48
Oxyacetylene Torch	10
Crushers, rock, etc.	4
Meat Grinders	20
Lathe	11
Well Drill	9
Rock or coal drill	36
Wrappers	7
Printing press	15
Laundry—clothes press	20
Joiners and jointers	36
Planers	19
Washing machines	7
Power saws	186
Coal cutter	39
Cutters except rock and coal	22
Slicer	12
Sewing machine	9
Farm machinery NEC	31
Road graders, rollers, etc.	15
Fans	17
Office machines	8
Tire and tube makers	4
Pumps	9
Boilers and pressure vessels	20
Passenger elevators	13
Freight elevators	25
Cranes, other large hoisting machines	93
Dredges, steam shovels, etc.	26
Conveyors	82
Jacks, other small hoisting machines	29
Gears, pulleys, belts, etc.	180
Motors, not electrical	18
Motors, electrical	10
Electric switches, live wires, etc.	46
Miscellaneous machines	208
Hand tools	500
Electrical welding torch	7
Electrical powered hand tools NEC	24
Pneumatic tools	50
Explosives	13
Gases, vapors	34
Acids	7
Lime, caustic soda, etc.	26
Alcohol and petroleum	5
Poisonous vegetation	8
Occupational disease—compensable agencies	19
Miscellaneous substances causing poison	12
Chemicals NEC	8
Hot substances,	
Chemicals causing burns	13
Fire and Flame	33
Gases	44
Hot liquids and steam	70
Hot or molten metal	35
Gases where explosion occurs	42
Tar, asphalt, petroleum products	31
Grease	20
Hot substances NEC	15
Dusts	17
Silicates	2
Working Surfaces (Total 1322)	
Floors	329
Stairs and steps	164
Roofs and ceilings	42
Ice as part of working surface	143
Scaffolds, etc.	173
Ramp—platforms	82
Streets—roads, sidewalks	78
Working surfaces NEC	311
Vehicles (Total 981)	
Animal drawn	7
Passenger automobiles	142
Trucks and trailers	317
Tractors and heavy powered vehicles	97
Motorcycles	6
Railroad cars or engines	37
Mine cars or motors	168
Airplanes	16
Motor vehicles NEC	16
Hand powered vehicles	157
Street cars and buses	18
Animals, etc.	
Horses	107
Cattle, hogs, sheep, etc.	52
Dogs	10
Other domestic animals	2
Wild animals	3
Birds and fowls	3
Insects	15
Snakes and reptiles	1
Acts, not material objects as agencies	
Injured persons physical condition	22
Working in cramped, stooped position	110
Improper method of lifting	37
Sprain, no agency responsible	59

Strain, no agency responsible	200
Difference in elevations	154
Over exertion	11
Exposure	1
Working conditions	2
Miscellaneous agencies	
Bales, rolls, etc.	137
Barrels, kegs, cylinders	123
Metal bars—rods	85
Beams, girders	50
Tables, benches, chairs, etc.	97
Boards, sticks (lumber)	155
Bottles, dishes, etc.	53
Boxes, crates, etc.	237
Rocks, coal, bricks, stones, etc.	506
Ropes, cables, etc.	108
Pipes	135
Ditches, trenches	60
Doors, windows, lids, etc.	149
Dust particles (foreign objects)	55
Piles or stacks of materials	36
Firearms	16
Stoves, furnaces, etc.	28
Hooks (not hand tools)	15
Hose	34
Ice (not as a working surface)	45
Ladders	212
Nails, screws, etc.	55
Moving objects NEC	70
Persons other than the injured	77
Splinters—wood, metal, glass	99
Tires, rims	48
Trees, limbs, etc.	58
Wind, lightning and other weather hazards	26
Wheels, not as parts of machinery	40
Wires, not electrical	38
Logs, timbers, poles, etc.	265
Other miscellaneous agencies	1154
	9920

COMPENSABLE ACCIDENTS CLASSIFIED BY OCCUPATION

(NOT INCLUDING CASES IN WHICH ONLY MEDICAL EXPENSE WAS PAID)

Agricultural workers	246
Livestock, poultry workers, apiarist	97
Florist, gardener, greenhouse workers	44
Trappers, hunters, fish hatchery employees	19
Metal miners (including trainmen, motormen, timbermen, etc.)	442
Coal miners (including trainmen, motormen, timbermen, etc.)	512
Assayers, smelter and ore mill employees	55
Oil production workers	84
Quarry workers	33
Carpenters	544
Construction workers (including road, dam, heavy construction)	239
Plumbers, plasterers, electricians, painters, all special construction trades	548
Surveyors, civil engineers	9
Bakery, grain milling, beverage, dairy, creamery, sugar and all food mfg. workers	356
Packing house employees	161
Milliners, seamstresses, tailors	54
Tractor and large power machine operators	149
Loggers, saw mill workers	258
Cabinet makers, box factory, lumber yard, furniture and other wood product workers	130
Printers, typesetters, book binders, engravers, reporters	51
Chemical workers, explosive manufacturing employees	10
Oil refinery workers	13
Tire makers, repairmen, and all other rubber products manufacturing workers	82
Shoemaker and repairmen and other leather workers	6
Brick maker, glass blowers, lens grinders, pottery workers	34
Steel workers, boiler makers, blacksmith, machinists, foundry workers and iron and steel product manufacturing machine operators	504
Butchers, meat cutters (not in packing houses)	43
Assemblers, all others listed as "factory workers."	182
Warehousemen, packers, graders	178
Salespersons, floorwalkers, newsboys, soda dispensers, tradespeople	170
Traveling salesmen, canvassers, solicitors, buyers	73
Wholesale, retail dealers, NEC, office managers	55
Managers, NEC	11
Officers of corporations, unions, fraternal, trade and professional organizations	29
Inspectors, private investigators, private detectives	18
Installers, appliances and machinery	22
Irrigation workers	17
Laborers	979
Machinery maintenance and repairmen, oilers, metal workers (not construction)	305
Welders	66
Ice house workers, including manufacturing and storing	32
Service station attendants	52
Stock room and parts men	40
Cooks, waiters, dishwashers, all kitchen help	408
Druggist	3
Weighmasters	3
Bartenders	20
Office clerks, cashiers, auditors, messenger boys, stenographers	104
Bank tellers, clerks and officers	16
Shipping and receiving clerks	4
Artists, designers, window trimmers	2
Hotel employees NEC	43

Sewing machine operators	5
Laundry, cleaning and dyeing plant employees	77
Station agents, baggage men, traffic supervisors	40
Steam shovel and crane operators	59
Firemen (not fire department), stokers	26
Chauffeurs, taxi drivers	557
Dock workers, loaders, route salesmen, driving laundry, bakery, etc. trucks	375
Airplane pilots, air stewardesses, airport attendants	14
Fruit and vegetable packers, graders and other produce workers	8
Linemen—telephone operators	74
Telephone and other electrical equipment installers, power plant workers	70
Teachers, librarians, coaches	43
Janitors, guards, building maintenance men, watchmen, yardmen	278
Barbers, beauty shop operators, undertakers	4
Servants and private home employees	12
Agents, insurance, advertising, etc.	11
Garage mechanics, car greasers, and washers	250
Upholsterers, photographers, jewelers and miscellaneous hand trades	20
Motion picture machine operators, actors, dancers	3
Radio repairmen, radio announcers and technicians	7
Recreational workers, NEC, athletes, life guards, pin setters	73
Dentists, doctors, nurses	113
Chemical engineers, civil and other technical engineers	17
Police and fire men, municipal and state employees NEC	225
Teamsters	10
Total	9920

COMPENSABLE ACCIDENTS CLASSIFIED BY NATURE OF INJURY

(NOT INCLUDING CASES IN WHICH ONLY MEDICAL EXPENSE WAS PAID)

Unclassified	224	Concussion	55
Amputation and enuculation	379	Crushing	264
Asphyxiation, including drowning	31	Dislocation	192
Shock, electrical	26	Foreign object	152
Shock, other than electrical	13	Fractures	2515
Loss of consciousness from heat	1	Hemorrhage	10
Loss of consciousness from blow	5	Infection	45
Loss of consciousness from heart attack	18	Poisoning	6
Burns	454	Laceration	1256
Frozen	12	Puncture	149
Irritation	44	Rupture (not hernia)	86
Contusion	1503	Sprain	1064
		Strain	1390
		Occupational	26
			9920

COMPENSABLE ACCIDENTS CLASSIFIED BY LOCATION OF INJURY

(NOT INCLUDING CASES IN WHICH ONLY MEDICAL EXPENSE WAS PAID)

Not given	50	Wrist	292
Eye	239	Hand	470
Ear	24	Thumb	302
Skull	71	Fingers	1111
Scalp	38	Thumb and fingers	32
Brain	50	Hand and arm	35
Head	135	Upper leg	153
Forehead	31	Knee	456
Eyelids	3	Lower leg	483
Nose	27	Ankle	403
Cheek or jaw	43	Foot	717
Teeth	23	Toes	354
Tongue	2	Arm and leg	23
Throat	4	Coccyx	20
Lips and chin	17	Pelvis	67
Neck	43	Heart	47
Face	128	Lungs	72
Vertebrae	156	Other internal organs	78
Spine	50	Abdomen, external	40
Back	926	Anus, rectum	11
Ribs or side	430	External generative organs	52
Sacrum	38	Hernia	792
Hip	179	Trunk, body, general	149
Chest	110	Blood	13
Sternum	10	Arteries and veins	19
Shoulder	308	Skin	6
Collar bone	44	Groin (not hernia)	26
Elbow	137		9920
Arm	381		

ANALYSIS OF INDUSTRIAL ACCIDENTS by County Location

(Includes Occupational Disease Reports)

COUNTY	Reports	COUNTY	Reports
Denver	42241	Elbert	13
Pueblo	5768	Saguache	129
Weld	2715	Crowley	97
El Paso	4727	Phillips	63
Las Animas	856	Costilla	10
Larimer	3218	Sedgwick	221
Boulder	2644	Gunnison	383
Mesa	1661	Lake	1898
Otero	758	Moffat	444
Arapahoe	2230	Teller	281
Jefferson	1475	Eagle	182
Adams	1363	Kiowa	90
Logan	660	Cheyenne	29
Fremont	1034	Douglas	239
Morgan	687	Archuleta	55
Huerfano	346	Rio Blanco	617
Prowers	534	San Miguel	573
Delta	456	Clear Creek	279
Yuma	148	Custer	23
La Plata	843	Grand	851
Montrose	568	Park	154
Baca	120	San Juan	130
Rio Grande	317	Ouray	436
Garfield	549	Pitkin	115
Conejos	122	Dolores	93
Kit Carson	348	Jackson	393
Washington	72	Gilpin	77
Routt	618	Summit	105
Bent	130	Mineral	80
Alamosa	375	Hinsdale	1
Chaffee	247	Out of State or unknown	16
Montezuma	565		86488
Lincoln	66		

FATAL ACCIDENTS

In the period July 1, 1948 to June 30, 1950, there were 205 fatal accidents, but one was ruled a Kansas case and one a suicide. 11 were not accidental, being heart failure or similar causes; 5 were non-compensable accidents, and 7 were denied. One case was dismissed, 1 concluded on stipulation, and 10 cases are pending. 123 of the 205 were State Compensation Fund cases, 21 self-insurer cases, 2 non-insured cases, 39 stock company cases; 20 were mutual company cases.

After deducting the 13 cases considered not chargeable as accidental, we have 192 fatalities divided as follows: Agriculture 4, metal mining 13, coal mining 15, general construction 10, heavy construction (dams, roads, etc.) 16, special construction trades (plumbing, electrical, plastering, etc.) 10, quarrying 1, petroleum production 6, food manufacturing or processing (dairies, breweries, bakeries, etc.) 6, manufacturing of stone, clay or glass products 3, manufacturing of iron and steel and their products, including smelting, 11, gas and electric utilities 7, communications 2, transportation 15, 1 hotel, 19 trade, 3 garages, 3 lumber production, 3 education, 10 public agencies, covering health, engineering, taxing and administrative, 13 fire and police forces, military and correctional, and 8 public streets or highway maintenance, 3 printing, 2 rubber industry, 3 nonferrous metal products, 1 employment service, 1 banking, 1 hospital, 1 motor vehicle manufacturing, and 1 amusements.

146 cases of full dependency were determined, 8 partial and 23 with no dependents. Non-compensable and pending cases not shown.

Occupations in fatal accidents were: Agriculture and livestock workers 3, coal miners 12, metal miners 12, smelter-ore mill workers 3, oil well workers 6, carpenters, etc. 12, heavy construction workers (includes highway workers) 6, special construction trades (plumbers, painters, roofers, etc.) 10, surveyor 1, tractor or large powered vehicles 5, chauffeurs or truck drivers 20, dock workers-loaders 6, boiler firemen 1, taxidermist 1, steelworkers, iron foundry workers 7, linemen 7, power plant workers or electrical installers 2, machinist or maintenance repairmen 4, laborers 26, workers in food manufacturing and processing 6, kitchen help 2, game and fish technicians 2, sales clerk 1, solicitors, salesmen, buyers 8, mine inspector 1, sawmill employees 2, watchmen, janitors, and caretakers 7, garage mechanic 1, firemen, policemen and other municipal employees 8, rubber workers 2, corporation officer 1, chemical engineer 1, printing industry 2, teacher 1, factory workers 2, occupation unknown 1.

COLORADO SUPREME COURT DECISIONS

INDEX

INDUSTRIAL COMMISSION vs. PACIFIC EMPLOYERS INS. CO.

118 Colo. 496
197 Pac. (2d) 157

I. C. No. 810450 — Index No. 396

Judgment Affirmed

En Banc.

Opinion by Stone, J.

This is a claim for compensation for hernia. Claimant testified that on December 16, 1947 he engaged in lifting a heavy object. Two or three days later he happened to be in the shower and noticed swelling in his inguinal region; that he had never noticed the swelling before but that it was possible that the swelling was there and he had not noticed it. A physician recommended surgical repair.

Claimant in both his statements and his testimony specifically states that he suffered no pain either after the strain or upon the appearance of the hernia; that he "just felt sick, sick at my stomach all during that day, like all the energy had left me, like you feel when you have the grippe."

In affirming the District Court's denial of claimant's claim, the Supreme Court

HELD: "Whether the hernia first appeared on December 20th, when first observed by him, or before that date, cannot be determined, as there was no pain nor soreness to call it to claimant's attention. This evidence is indubitably not the clear proof of pain required by the statute."

ARVAS vs. McNEIL COAL CORPORATION

119 Colo. 289
203 Pac. (2d) 906

I. C. No. 687343 — Index No. 397

Reversed and Remanded

In Department.

Opinion by Holland, J.

Claimant, a coal miner, was injured in the course of his employment on October 18, 1944. In due course claimant was awarded compensation for temporary total disability equivalent to 75% loss of use of

right arm at the wrist. Award was paid by the carrier and the case closed.

In January, 1948 claimant petitioned the Commission to reopen the case upon the report of Dr. T. H. Madigan, who estimated claimant's disability as 85% as a working unit. Claimant's petition was granted. Upon hearing three doctors testified. Dr. Bradford Murphey, for the claimant, an admittedly qualified specialist in nervous and mental diseases, testified that in his opinion claimant was totally disabled; fifty per cent (50%) of his disability being due to traumatic neurosis and fifty per cent (50%) to physical disability.

For the respondents Dr. Robert G. Packard, an admittedly qualified orthopedist, testified that he did not know whether or not claimant was suffering from a neurosis as that subject is not within his specialty. Also Dr. Charles Freed, as an admittedly qualified neuro-surgeon, testified that claimant has no disability from a neurological standpont, but admitted that claimant could have a genuine numbness due to a mental condition, but that a psychiatrist was in a better position to evaluate neurosis than he who specializes in neuro-surgery.

The Commission found no error, mistake or change in condition and afirmed its former Order of 75% loss of use of the right arm at the wrist. The District Court affirmed the Commission. In its reversal the Supreme Court

HELD: "Considering that the Workmen's Compensation Act is to be liberally construed, it is our opinion that there is no conflict in the testimony as to the matter of claimant's present disability from traumatic neurosis, at least, not sufficient to warrant a denial of compensation for total disabiilty. * * *

"Since we hold that claimant has disability from traumatic neurosis, we leave the percentage of disability for a finding to be made by the Commission. The contention has been made that claimant could do some kind of work. It is not disputed that he has permanent partial disability of his right arm equal to a loss of seventy-five per cent (75%) measured at the wrist. When the neurosis element is added, in consideration of claimant's history and background, it is doubtful if he is not totally disabled as a working unit, however, we do not impose this suggestion on the Commission."

The judgment of the district court affirming the award of the Commission is reversed with directions to remand the case back to the Industrial Commission for its finding in accordance with the views herein expressed.

ZUZICH vs. LEYDEN LIGNITE CO.

120 Colo. 21
206 Pac. (2d) 833

I. C. No. 681279 — Index No. 398

Judgment Affirmed

En Banc.

Opinion by Alter, J.

Mike Zuzich was killed on August 14, 1944 as a result of an accident arising out of and within the course of his employment by respondent. Claim for death benefits was filed by Frances Tegel Zuzich, allegedly the common-law widow and dependent.

At the first hearing before a Referee, findings were adverse to claimant and were approved by the Commission. On appeal to the District Court the case was remanded to the Commission with instructions to determine whether claimant and decedent entered into an agreement of marriage, and specifically whether they had cohabited, and what was their reputation as to marital status. At the second hearing before another Referee his findings were favorable to the claimant but upon appeal to the Commission were set aside on the

grounds that Zuzich had not entered into a mutual agreement of marriage, and that during their cohabitation their general repute in the neighborhood in which they resided was not that of husband and wife and that, therefore, claimant was not the common-law wife of Zuzich.

The evidence of the relationship which existed between claimant and decedent was extensive and conflicting and is reviewed by the court in detail. In affirming the District Court's affirmance of the Commission's Order denying compensation the Supreme Court

HELD: "The matter of determining the probative effect of evidence in such cases, where there is a conflict, still remains exclusively with the Commission where there is evidence for its consideration or from which it could draw a reasonable inference. In numerous cases we have said that the Workmen's Compensation Act precludes courts from passing upon the evidence in such cases and we have refused to change awards of the Commission which were supported by the evidence, even though we, like the district court in this case, may have reached a conclusion differing from that of the fact-finding body.

"An examination of decisions by this court, wherein the question for determination was dependency resulting from a common-law marriage and which the Commission found to exist, discloses that we have approved uniformly the Commission's findings. * * *

"We also have held that, considering the statutory limitations as to grounds on which a court may review the Commission's award, it is apparent that even in a case where the Commission has never seen the witnesses, it was the legislative intent that its findings of fact nevertheless should be binding on the district court and therefore binding on us."

CHANEY vs. INDUSTRIAL COMMISSION AND MISNER

120 Colo. 111

207 Pac. (2d) 816

I. C. No. 853508 **Index No. 399**

Reversed and Remanded

In Department.

Opinion by Holland, J.

Claimant's employer was engaged in the raising, processing, and marketing of chickens. During the summer months he operated a "drive in" where his customers could either consume their purchases on the premises, or carry them away. During the entire year the employer was engaged in the business of raising chickens. In the summer, respondent had more than four employees, during the balance of the year less than four employees.

The claimant was employed to assist in the feeding, killing and packing of chickens, and his injury occurred during the winter months. The accident occurred when claimant attempted to open a tool room door in order that his employer's nine-year old son might obtain a table therefrom. The son had been told by his mother that he might use the table, and to get someone to help him open the door. Son having thus advised the claimant, he undertook the task and was injured in the process. The wife and mother usually assisted in the operation of this business, but had not been actively engaged for some months because of pregnancy.

An award to the claimant by the Commission's Referee was affirmed by the Commission in District Court. In its reversal, the Supreme Court

HELD: "The two places of operation are so closely related in purpose and object, and especially where at times the employees were interchangeable, and when it is shown that

the employer at times engaged more than the statutory limit, then that he became subject to the provisions of the Workmen's Compensation Act. There is no evidence that he ever attempted to withdraw from the act, and the findings of the Commission on this question of fact and the judgment of the district court affirming same, according to our firmly established rule, will not be disturbed.

"It is clear that the boy said he wanted a table out of the tool room and claimant volunteered to leave his employment, go outside the building to another building, the tool shed, to assist the boy in opening the door to get the table. Claimant testified that he thought he had better do it as long as he was working for Mr. Chaney. The table was not to be used in any manner connected with the business, but was to be for the boy's use and enjoyment in his room in the home.

"It convincingly appears from the above, that the employee was not expressly ordered to do the thing that resulted in his injury by someone authorized to direct him as to his work. Leaving his work at the request of a nine-year old boy to do something separate and apart from anything connected with his employment was not a risk of the employment, and he became a volunteer. There was no causal connection between the employment and the injury here sustained, * * * and, the accident and injury to claimant, as we determine, did not arise out of, or in the course of his employment."

ICE vs. INDUSTRIAL COMMISSION

120 Colo. 144

207 Pac. (2d) 963

I. C. No. 808551 **Index No. 400**

Judgment Affirmed

En Banc.

Opinion by Moore, J.

This controversy involves two claims. The employer of claimant operates a moving and storage business and claimant's duties included the driving of trucks, moving of household goods of all kinds and delivering household appliances sold by business houses. The accidents out of which these claims arise occurred on December 12, 1947, and on January 15, 1948.

As to the first injury the Commission's Referee found that claimant sprained his back which aggravated a pre-existing arthritic condition; that claimant was able to, and did return to full time work at his former wage on December 18, 1947, without permanent partial disability. Having been temporarily and totally disabled for less than ten days and having sustained no permanent partial disability only medical benefits were awarded.

As to the second injury the Referee found that there was an accidental injury to claimant on January 15, 1948; that the injury aggravated a pre-existing arthritis. Claimant was temporarily and totally disabled from February 27, 1948 to March 25, 1948 on which date he was able to return to work without permanent partial disability.

The medical evidence in conection wth both injuries was conflicting. In affirming the Commission's award the Supreme Court

HELD: "It is not the fact that claimant had pre-existing arthritis that bars the allowance to him of any additional compensation. It is the fact that the Commission found that he had no remaining disability attributable to accidental injuries, sustained in the course of his employment, which prevents payment of benefits for permanent disability. This finding has ample support in the evidence."

Counsel for claimant takes the position that the Supreme Court could substitute its interpretation for that of the medical experts whose theory was adopted by the Commission on the theory "that neither the courts nor the Commission are bound by the expert medical testimony. The law and the decisions are to the contrary."

DOWNING vs. GENERAL IRON WORKS COMPANY

120 Colo. 104
207 Pac. (2d) 525

I. C. No. 528209 **Index No. 401**

Judgment Affirmed

En Banc.

Opinion by Hilliard, C. J.

The employer's insurance carrier admitted liability and in due course admitted for such permanent partial disability as it then appeared existed. Subsequently further surgery, consisting of amputation, was required and the degree of permanent partial disability accordingly increased. The Commission ordered compensation paid for the extended period of temporary total and the increased permanent partial, allowing the carrier credit for the compensation which it had already paid. Claimant contends that no credit should have been allowed the carrier for the reason, among others, that claimant should be compensated for pain and suffering. In affirming the credit for compensation already paid, the Supreme Court

HELD: "The Award is the full or entire compensation, and whatever the insurer has already paid may and should be credited upon the Award."

"Another thing that should be considered in this connection is the pain and suffering and financial loss which the workman sustains by reason of one of these injuries." The weakness of the Idaho court's declaration, as we are persuaded, is that it is a misconception of the purpose of industrial commission acts, including that of Colorado. Such acts provide for compensation for loss of earning power and recovery pursuant thereto; they are not comparable to the right to recover damages in an action founded upon negligence, in the assessment of which pain and suffering, and the like, may be taken into consideration. Compensation acts provide for "limited and certain, not full but uncertain, compensation for the results of an injury."

INDUSTRIAL COMMISSION vs. PACIFIC EMPLOYERS INS. CO.

120 Colo. 373
209 Pac. (2d) 908

I. C. No. 834059 **Index No. 402**

Judgment Affirmed

En Banc.

Opinion by Holland, J.

Claimant, a resident of Granby, Colorado, suffered a compensable injury on July 2, 1948. The local doctor sent him to a specialist in Denver. After hospitalization he was obliged to remain in Denver for "whirlpool" treatments at the doctor's office. He then returned to Granby, but being unable to continue with his work, he returned to Denver for treatments.

While claimant was in Denver the first time his wife gave up their apartment at Granby and came to Denver, secured a room and obtained employment. When claimant returned to Denver for further treatment he lived with his wife at this room. The Commission awarded $28.00 per week for board and room for the first period and $25.00 per week for board and room for the second period. The District Court

affirmed the allowance for the first period but set it aside as to the second. In affirming the District Court, the Supereme Court

HELD: "That no hospitalization is indicated and claimant is not required to maintain two places of residence but is shown to be living in Denver at home with his wife. He is not entitled to an additional allowance for board and room as weekly compensation is paid to absorb such expense."

MERRIMAN vs. INDUSTRIAL COMMISSION

120 Colo. 400
210 Pac. (2d) 448

I. C. No. 825245 **Index No. 403**

Judgment Affirmed

En Banc.

Opinion by Hays, J.

Claimant sustained a compensable injury on May 1, 1948 when he slipped and fell in a sitting position. Pain in his lower spine subsided and claimant returned to work May 9, 1948, but was unable to continue and again left work May 16, 1948. Thereafter four doctors were unable to positively diagnose claimant's condition and an exploratory operation was performed whereat a pre-existing diseased kidney or hydronephroma was found, the symptoms of which were found by the Commission to have been precipitated by the trauma. Respondent contends there is no evidence that said pre-existing condition was either accelerated or aggravated by claimant's fall. In affirming the Commission's Order for compensation, the Supreme Court

HELD: "Under the circumstances here considered, in the light of the provisions of section 330, chapter 97, '35 C. S. A. (Supp.), we are convinced that, regardless of any aggravation of claimant's pre-existing condition, he was entitled to recover the amounts he expended for surgical and hospital treatment which was deemed by competent physicians reasonably necessary to relieve him from the effects of the accident, and he also was entitled to recover for the disability resulting from the operation.

"The above conclusion is not changed by the fact that the surgical treatment here involved, contrary to the preoperation diagnosis, was not performed to relieve from the effects of the accident, but rather, as subsequently discovered, was needful to relieve from the pre-existing disease. The commission made a finding, based upon competent evidence, that the operation was necessary as a result of the accident, and found, in effect, that all disability following the operation resulted naturally from the accident.

The above circumstances clearly show the causal connection between the injury, the operation, and the disability, and in those respects meet the requirements set forth in *Aetna Casualty and Surety Co. vs. Industrial Commission*, 116 Colo. 98, 179 P. (2d) 973."

NATIONAL FUEL COMPANY vs. ARNOLD, AND INDUSTRIAL COMMISSION OF COLORADO

121 Colo.
(Pac. (2d)

I. C. No. 456550 **Index No. 404**

Judgment Affirmed

En Banc.

Opinion by Hilliard, C. J.

Claimant, a miner working underground, suffered an injury for which respondent insurance carrier admitted liability. Some three years later, after hearing, it was determined that claimant was per-

manently and totally disabled as a result of this injury. Some six and a half years later the insurance carrier petitioned the Commission to reopen the case on the ground that there was error, mistake or change in condition. After further hearing, a Referee determined there had been no change in condition but that there had been error in that claimant was only 75% disabled as a working unit and ordered compensation on that basis. On review the Commission affirmed the Referee and upon the second petition for review reversed the Referee concluding that claimant was permanently and totally disabled. Claimant's injuries were described as to his back and pelvis. The testimony was uncontroverted that both of his feet were completely and permanently paralyzed and that the same was partially true of his legs. However, much of the time prior to the Referee's second award claimant had been employed within the year prior to the Referee's second award when he was employed approximately eight months and received "$49.00 or $70.00 per week" depending upon his physical ability to remain on the job. In its affirmance of the Commission's action, the Supreme Court stressed the fact that during the times claimant was employed there was a great demand for unskilled labor intimating that claimant could probably not obtain employment during normal times. Further the Court

HELD: "The loss of * * * both feet or both legs * * * , by injury in or resulting from the same accident, shall prima facie constitute total and permanent disability to be compensated according to the provisions of this section." (W.C.A. Section 77, Sec. 356, Chapter 97, C.S.A. '35) For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of accidental injury shall be deemed equivalent to the loss thereof. (W.C.A. Section 73, Section 352, Chapter 97, C.S.A. '35) 'In determining the extent or degree of an injured workman upon the facts of each case, it is axiomatic that the Industrial Commission is vested with widest possible discretion with the exercise of which the courts will not interfere.' (Citing Colorado cases).

"We do not believe, the record fairly appraised, that either the employer or the insurance carrier involved may take advantage of the fact that this most unfortunate young man, who, persevering to the utmost, has at times, and under unusual circumstances been able to obtain employment, and work his undoing in the matter of compensation vouchsafed by statutory enactment. They have not pursued the course outlined in section 356, supra, that is to say, obtained 'suitable employment for such disabled person which he can perform,' etc. In consequence, they are not in position to complain on that score.

"Plaintiffs in error sought to introduce original evidence at the trial in the district court, and complain of the exclusion thereof. We cannot think the court erred. 'Trial' reads the statute, 'shall be to the court without a jury and upon the record of the Commission returned to said court.' (Sec. 384, Chapter 97, C.S.A. '35, 105 W.C.A.)"

GREGORICH, JR. vs. INDUSTRIAL COMMISSION AND OLIVER COAL CO.

121 Colo.
Pac. (2d) **Index No. 405**

I. C. No. 694691 **Judgment Affirmed**

En Banc.

Opinion by Jackson, J.

Claimant was employed by respondent employer as a miner working underground. He filed a claim for compensation benefits on January 8, 1945 alleging that on March 31, 1941 he was rolled between a mine car and the rib (or wall) of the mine suffering an injury to his back. Respondents moved dismissal because Section 84 Workmen's Compensation Act (Section 363, Ch. 97 '35 C. S. A.) had been amended to read that * * * "the furnishing of medical, surgical or hospital treatment by the employer shall not be considered payment of compensation or benefits within the meaning of this section." The Commission denied the motion on the ground that the law as it existed on the date of injury prevailed and awarded compensation. The District Court reversed the Commission and the Supreme Court dismissed the writ of error on the ground that the specification of points was not filed in apt time, whereupon the Industrial Commission dismissed its award in favor of claimant as per order of the District Court.

On October 28, 1946 the Colorado Supreme Court in the case of *State Highway Dept. vs. Stunkard*, 115 Colo. 358 held that the law at the time of injury applied, whereupon claimant petitioned the Commission to reopen his case on the grounds of error or mistake which the Commission refused to do because of the language used by the Supreme Court in its first consideration of this case. The Commission's refusal was appealed and the Supreme Court in *Gregorich vs. Industrial Commission*, 117 Colo. 423 held that the Commission was in error and ordered consideration of Gregorich's claim on the merits.

At a subsequent hearing the Referee dismissed claimant's claim on the ground that the employer had never paid for medical expense for an injury to claimant's back, but that payments made by the employer were on account of an injury to claimant's left arm, and that, therefore, claimant's claim for compensation by reason of an injury to his back was barred by Section 84 Workmen's Compensation Act. On review of this order the Commission added that there was insufficient evidence to establish that claimant had injured his back in the course of his employment.

In the case at bar claimant appealed on the ground that the Commission had no right to retry the case and make new findings of fact and conclusions of law; that the case in respect to the evidentiary facts was closed and res judicata; that respondents should have introduced their evidence at the hearing in January, 1945. The Commission's action was approved by the District Court. In affirming the Supreme Court

HELD: "When we remanded the case to the Industrial Commission to be tried on its merits, we did not intend that that fact-finding body should be foreclosed from taking any more evidence, but quite the contrary. It also is to be noted that when the hearing was adjourned in January, 1945, counsel for plaintiff did not rest but, when his witness last testifying had concluded, stated: 'That is all *for this witness.*' Furthermore, Dr. Gould was called as claimant's witness in the more recent hearing. * * * Claimant's counsel now, fruitlessly it seems to us, seek to disown Dr. Gould as claimant's witness, and refer to him as the company's witness.

"We can only conclude that there is substantial evidence to support the findings and award of the Commission and the judgment of the court, and that, contrary to the contention in the specifications, neither Commission nor Court is guilty of an abuse of discretion in entering their respective orders."

UNITED STATES FIDELITY AND GUARANTY COMPANY vs. INDUSTRIAL COMMISSION AND NEFF

121 Colo.
Pac. (2d)

I. C. No. 856653 — Index No. 406

Judgment Reversed

En Banc.

Opinion by Hays, J.

Claimant while employed as a sightseeing driver for respondent made a trip with tourist passengers intending to go to Mt. Evans. The party paused at Lookout Mountain to give passengers an opportunity to observe the Buffalo Bill museum and grave. While one side of the hood of the automobile was raised and claimant was attempting to cool the motor by pouring cold water upon the radiator, a fire broke out causing an explosion sufficient to blow the other side of the hood open. Fire extinguishers were not provided and claimant hastily proceeded to scoop up and carry dirt in a gallon can a distance of 25 or 30 feet which he dumped upon the motor for the purpose of extinguishing the fire, all of which required approximately ten minutes. Thereafter claimant reported the incident to his employer by telephone and asked for a relief vehicle. Subsequently, and while talking to patrons of the soda fountain claimant suffered a heart attack and was taken to Denver General Hospital.

Claimant called three physicians, the first of whom testified that "the excitement may have been a precipitating factor." The second, that he "did not know" whether excitement had anything to do with the heart attack or not, and the third, that "it is a possibility."

An award in favor of the claimant was sustained in the District Court. In reversal the Supreme Court then

HELD: "A careful examination of the record before us fails to disclose any evidence to support the findings of the Commission that 'claimant sustained a heart attack on August 11, 1948, consequent upon over-exertion and excitement resulting from the fire in the motor of the automobile.'

'A resort to mere conjecture or possibilities will not take the place of direct or circumstantial evidence. No number of mere possibilities will establish a probability.'"

In view of the fact that the Commission's findings are based wholly on conjecture and possibilities and not upon competent evidence, the findings are unwarranted and cannot properly be sustained.

MEYER AND INDUSTRIAL COMMISSION vs. LAKEWOOD COUNTRY CLUB

121 Colo.
Pac. (2d)

I. C. No. 829774 — Index No. 407

Judgment Affirmed

En Banc.

Opinion by Holland, J.

Lakewood Country Club is a nonprofit organization with properties which it operates solely for the benefit, convenience and pleasure of its members and their guests. The main club building has a sewer line approximately 30 feet long connecting with the city sewer line. This became clogged and the board of directors decided that three manholes should be installed along the line so that it could be cleared without excavating and marring the turf. The chairman of the property committee engaged Rudolph E. Meyer, a drainage contractor, to dig three manholes and prepare them for a cement basis on a contract price of $100.00. Meyer undertook the job and while he was so engaged a shovel came in contact with a high voltage electric wire. The

Commission's award was in favor of the widow and children. The District Court reversed the Commission's award on the grounds that decedent was not an employee of Lakewood Country Club. Claimant contends that under Section 49 of the Workmen's Compensation Act she is entitled to benefits on the grounds that respondent was "operating or engaged in or conducting its business by leasing, or contracting out any part or all of the work." In sustaining the District Court the Supreme Court

HELD: "The Lakewood Country Club, as an organization, is not engaged in the kind of business, any part of which could be contracted out * * * By the contract with deceased, the club contemplated his doing work on the property of the club, and not his doing work as a part of the business of the club * * * the club retained no control whatever over the work that was to be performed and there was no time limit. The decedent was an independent contractor and as such contracted with such people or organizations as desired or required his services in a particular type of work. He falls within the same classification as that of a plumber, electrician, painter or other skilled worker who may be engaged for special work. Digging manholes is not a part of the underlying business of the club here involved."

BALLAH vs. INDUSTRIAL COMMISSION AND VALENCIA

121 Colo.
Pac. (2d)

I. C. No. 858616 — Index No. 408

Judgment Affirmed

En Banc.

Opinion by Hilliard, J.

Award in favor of the claimant was affirmed by the District Court. In its affirmance the Supreme Court

HELD: "We are in accord with the findings and decree of the distinguished district judge, that since the 'evidence is conflicting,' the question presented thereby was resolvable by the Commission, which, addressing itself thereto, found and awarded as already stated."

INDUSTRIAL COMMISSION AND WEST vs. STATE FUND AND ANTLERS HOTEL

121 Colo.
Pac. (2d)

I. C. No. 863707 — Index No. 409

Commission Affirmed

En Banc.

Opinion by Holland, J.

Claimant is a plasterer, mason and cement worker who employs others and carries a policy of Workmen's Compensation Insurance with the American Employers Insurance Company. He performs services for those who wish to hire him, either under contract or by the day. About January 1, 1949, he undertook to finish a job of plastering for the respondent employer which had been commenced by another, but terminated by respondent because the work was not being performed satisfactorily. In the doing of this work claimant was to receive $4.00 per hour for each pair (one plasterer and his helper) employed on the job. The hotel furnished all materials, tools and equipment except occasionally claimant used some of his own scaffolding, when employer's supply was insufficient, and the work to be done was indefinite both as to time and amount. It was optional whether claimant worked on the job himself or not. The Referee found that under these circumstances, although claimant was an insured employer,

he was also an employee of respondent hotel company and ordered the latter's insurance carrier to pay compensation benefits.

"The only question before us is whether or not claimant, in doing the work herein outlined on the agreement as stated by him, was an employee of the hotel company or whether or not the hotel company contracted the work out to him, and the fact that he had insurance on his men, which he had carried for about two years, precluded his recovery when injured on the job as a workman."

The Referee's Order was adopted by the Commission. The District Court reversed the Commission on the grounds that claimant's claim was barred by Section 49 of the Workmen's Compensation Act. In reversing the District Court the Supreme Court

HELD: "Difficulty usually arises in making a determination from the facts as to whether the classification is that of servant or a contractor. To make the distinction here, we look to the following undisputed facts: The understanding contemplated claimant working on the job; that the hotel company had complete control and directions over the work; that it furnished the materials and all equipment; that it could discharge claimant at any time without liability, and that claimant was free to quit at any time without liability; and that the compensation for the work was not measured by the job.

"It is clear that the hotel company, the owner of the property, had the right to terminate the employment at any time without liability to claimant. 'Where such right exists, the workman is usually a servant. Where it does not exist he is usually a contractor. The measure of compensation is also important for where it is based upon time or piece the workman is usually a servant and where it is based upon a lump sum for the task he is usually a contractor.'

"Under our interpretation of the statute as applied to the facts herein, the referee of the Commission was right in determining that the hotel company was not only the employer in law, but was the employer in fact. It is our opinion that the Act under discussion is constitutional; however, if it could be subject to the interpretation given it by the trial court, we would then be compelled to say that it is unconstitutional. The findings and award of the Industrial Commission on the matters discussed herein were right and should be, and are, affirmed, and the judgment of the trial court is reversed."

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