TWENTY-SECOND REPORT

OF THE

Industrial Commission of Colorado

For the Period
July 1, 1950
TO
June 30, 1952

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, 1950 to June 30, 1952.

RAY H. BRANNAMAN, Chairman
H. E. DILL
F. W. ANDRESEN
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 is 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 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 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 Commssion 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.

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.

SAFETY DEVICES AND METHODS

(SECTION 161)

Section 161 of the Compensation Act provides that if at the end of any fiscal year there remains unexpended in this fund an amount in excess of $20,000.00 the tax imposed by Section 154 of the Compensation Act shall abate and shall not become effective and collectable until the first day of the next ensuing fiscal year.

It is entirely conceivable that the tax may be abated at a time when there is but a small amount over the required $20,000.00 in this fund and even though appropriations from the fund for salary and expenses are in excess of $20,000.00 the Commission would be limited to the amount on hand to operate throughout a year.

An efficient and satisfactory safety program must be a continuing program which is not subject to interruption by variable financial support. It is apparent to all who are familiar with the safety situation that unless the states conduct adequate safety programs the Federal Government will assume jurisdiction.

It is the opinion of the Commission that the safety program in Colorado can be administered more effectively by a state agency than by a Federal agency.

The Commission is again requesting the Legislative authority for expenditure of sufficient amounts from the Safety Devices and Methods Fund to assure an efficient and satisfactory safety program. Accordingly, it recommends that this Section of the Act (161) be amended to permit accumulation of any surplus in this Fund, thus insuring a continuing safety program even though the collections of the premium tax may vary from year to year.

REHABILITATION CENTER

Colorado has long been backward in the matter of rehabilitating injured employees under the Workmen's Compensation Act. Many men are now returning to industry or left to shift for themselves with disabilities which could be greatly reduced with proper treatment and training.

A properly equipped rehabilitation center, operated by a trained personnel, can reduce the degree of permanent disability and the period of temporary total disability in many cases.

It can often return the injured worker to gainful occupation at a better job and at higher wages than would otherwise be possible.

The Industrial Commission does not propose that a rehabilitation center be established by an appropriation from the general fund of the State of Colorado.

The State Compensation Insurance Fund has been, for a number of years, building a reserve intended to establish a rehabilitation center to care for the employes of its policy holders.

The Commission recommends that authorization be granted for the expenditure of funds to establish a rehabilitation center.

Such authorization should include authority to treat and care for injured employees covered by the policies of other insurance carriers, at their request and expense, when the facilities of the center are available and not required to care for cases originating under State Compensation Insurance Fund policies.

It is not expected that the operation of this project would result in any great financial saving to the State Fund but it is believed that the amounts saved by reducing permanent disability ratings and returning employees to employment at an earlier date than is now possible would largely defray the cost of operation.

The primary purpose of the project is to return injured workers to their work with a minimum physical handicap.

APPROPRIATION FOR PREMIUMS

to

STATE COMPENSATION INSURANCE FUND

For the year beginning July 1, 1952, the Legislature appropriated only $15,000.00 for payment of premiums to the State Compensation Insurance Fund to cover employes of the State of Colorado. In 1951 the workmen's Compensation Act was amended to include elective officials as employes within the meaning of that Act.

Attention of the Legislature has been directed many times to the fact that the appropriation for payment of premiums was inadequate. The Commission is of the opinion that failure on the part of the State to pay an adequate premium on its employes is casting an unfair burden upon the other political subdivisions and upon private employers.

The Commission recommends that the Legislature appropriate an amount equivalent to ½ of 1% of the State pay roll as a proper premium.

OCCUPATIONAL DISEASE DISABILITY ACT

The Commission again directs attention to the fact that the Occupational Disease Disability Act is so restrictive that many kinds of disease actually occupational in origin cannot be compensated.

Medical benefits are limited to $500.00, whereas the Workmen's Compensation Act allows $1,000.00, although many occupational diseases require long periods of treatment at great expense to the afflicted person.

The Commission again recommends that action be taken to correct this situation either by amendment to the Workmen's Compensation Act to make all occupational disease cases compensable as in the case of accidental injury or by enactment of a more liberal occupational disease disability act.

Since a Legislative Committee is presently studying this problem the Commission does not submit specific recommendations at this time.

BOILER INSPECTION DIVISION

This Department was, in former years, self-supporting. With operating costs and traveling expenses spiraling as they have for the past several years, and no increase in inspection fees, the Department has not been self-sustaining for some time.

The Commission recommends the following change in the basis of arriving at the fee to be charged for boiler inspections, i.e., instead of charging $2.50 for cast-iron heating boilers, $5.00 for boilers not exceeding five hundred pounds pressure per square inch, and $10.00 for all other boilers carrying a pressure of more than five hundred pounds per square inch, we recommend that the inspection fees be based as follows:

Cast-iron boilers	$ 2.50
Boilers not exceeding 5 H.P.	3.00
Boilers not exceeding 100 H.P.	5.00
All others	10.00

We feel that this change would result in increased revenue for the Department and also that the fees would be figured on a more equitable basis.

The Commission further recommends that the law be amended to provide for the inspection of unfired pressure vessels in use in all industrial plants, making them subject to the same rigid inspection required for steam boilers, the fee to be based on the dimensions of the vessels.

The Commission has also recommended in the past, and again makes the recommendation, that the inspection of hot water boilers also be included in the amended law, as this type of boiler is potentially as dangerous as a steam boiler. The fee for this type of inspection should be a graduated one, depending upon the size of the boilers.

The Commission also recommends that the law be amended to give the Industrial Commission power to adopt rules and regulations; to license dealers in used or second hand boilers, and to require a state inspection of boilers before sale.

In the event the law is amended to incude the inspection of unfired pressure vessels and hot water boilers, it will be necessary to add at least three inspectors to the present force, as well as additional office personnel, and to provide appropriations for travel and incidental expenses sufficient to cover the enforcement of the law.

FACTORY INSPECTION DEPARTMENT

The itemized report on subsequent pages shows the work accomplished for the past biennium by the factory Inspection Department, which at the present time, consists of one Chief Inspector, two Field Inspectors, and one Clerk. It shound be noted that Colorado has over 26,000 industries with more than 233,400 employees and 1,936 Public School buildings in which there are over 9,700 employees and 235,600 students plus twenty Colleges and Universities with an enrollment totaling 35,200. There are 1,200 hotels with 5,000 employees, in addition to a large number of theatres and places of public assemblage. The Factory Inspection Department is charged with the inspection of all the above.

At the present time this Department is three years behind in inspections, with only two inspectors in the field. With the growing industries in Colorado it is impossible to make these inspections as the law requires.

The Factory Inspection Law was enacted in 1911. Since the enactment of this law there has been no provision made for additional inspectors. At the time of the enactment of this law (1911) there was allowed one Chief Inspector, four Deputy Inspectors and a Clerk. Since that time Colorado has grown by leaps and bounds, but the inspection staff now has only two Deputy Inspectors. The present inspections being made are more thorough, thus more orders are being sent out of this office.

During the past two years we have had excellent co-operation from all industries and schools that we have had the opportunity

to inspect. There has been no major catastrophe in districts covered by this Department and some credit for this, we feel, is due to the complete inspections and the compliance with orders issued from this Department. The Industrial Commission has formally adopted the American Standards Association Safety Codes and the National Safety Council Safe Practice Pamphlets and Manual and these standards are applied to all inspections.

The question of providing adequate facilities for the prevention of accidents is not one which we may arbitrarily dismiss on account of cost. The answer seems definitely forecast when we consider its involvement of human life and suffering and the accompanying economic losses. It has been proved in many instances that the money and effort expended in accident prevention are surprisingly small compared with the savings they produce.

It is recommended:

1. That the state be divided into Inspection Districts, one inspector for each such district. This would considerably reduce the cost of travel expenses.
2. That adequate funds be provided for complying with section 56 "Code Bill" Chapter 3, Section 10, Chapter 97-1933.
3. That a follow-up program by inspectors be used to secure compliance with previous orders.
4. That individual responsibility be given inspectors for conditions within their respective districts.

It has been the experience of other states and large industrial firms that an adequate accident prevention program together with sufficient properly-trained inspectors can reduce accidents and their related cost at least 20%. We know that for the year 1949 the net losses paid by all insurance companies for direct cost of accidents in Colorado was $2,641,870.00. It is estimated that an investment of $35,000.00 in additional equipment and an adequate staff of inspectors would save at least $500,000.00 a year for the people of Colorado.

The above suggestion is not new. Other states have such programs. Should this be accepted, Colorado would not have to go through the experimental stage; but could use the selected features from programs of other states.

REPORT ON DEPARTMENTS AND DIVISIONS

LABOR RELATIONS

The increase in work of labor relations reflects the activity in industrial production. However, 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 540 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 1594 notices of intent to strike received affecting approximately 275,000 workers. In spite of the mediation efforts of the Commission and other agencies, 51 strikes resulted. These involved 22,495 workers who were out 567,487 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 23 elections to determine which Union should be named the bargaining unit, if any. Collective bargaining units were established in 18 of these cases. Twelve Union Shop referendums were conducted, the Unions winning four. In 10 cases pre-election conferences resulted in agreements that made the election unnecessary. There were 61 hearings held on unfair labor practice charges and various other complaints and jurisdictional questions. Formal mediation sessions were conducted in 30 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.

THE SAFETY DEVICE AND METHODS DIVISION

Under the provisions of Sections 154-161 of the Workmen's Compensation Act, Session Laws of Colorado 1941, the Safety Device and Methods Division of the Industrial Commission can report a constantly increasing interest and usage of the facilities furnished to Industry by this division of the Industrial Commission.

Through the use of motion picture equipment and films on safety subjects, this service has been taken into all types of factories and plants and has proved so successful that many organizations have purchased their own equipment and call on the Industrial Commission for safety films for use at their safety meetings. This has made it necessary for an ever expanding film library of the latest safety films, which the Commission is building up as rapidly as possible. Furthermore a library of safety books and literature for research reference and study is being acquired which in time will consist of all important safety books and publications including a complete and current set of the American Standards Association Codes.

The Safety Division has held meetings, advised on safety matters, assisted in the formation of safety committees, made safety talks, shown moving pictures on safety subjects in various towns and cities in Colorado, before audiences both large and small. These meetings were sponsored by all types of Industrial plants, military installations, clubs, unions, public utilities, schools, insurance companies, service clubs, federal safety organizations, universities, cattlemen's associations, professional engineering societies, local safety councils, employers councils, hotels, nurses associations, civilian defense (state and local), Colorado State Department of Health, railroads, etc., and these contacts are increasing.

We have worked very closely with the Colorado Society of Safety Engineers and the American Society of Safety Engineers and without the help of these two outstanding organizations much of what has been accomplished would have been impossible.

At this time we feel that the Safety Device and Methods Division of the Industrial Commission has shown a phenomenal growth, and greater growth can be expected. It should be made a central headquarters for all matters pertaining to industrial safety and the necessary employees and equipment should be furnished, to the end that the Safety Division can increase it's efforts both locally, and to a much greater extent throughout the entire State of Colorado, which has not been true heretofore because of a lack of personnel and finances.

BOILER INSPECTION DIVISION

Boiler Inspections—July 1, 1950 to July 1, 1952

	Ed. G. Griswold		Geo. J. Heber		C. E. Messenger		Total for Biennium
July, 1950	149		135		135		419
August, 1950	154		93		144		391
September, 1950	142		78		100		320
October, 1950	69*		112		91		272
November, 1950	67*		80		76		223
December, 1950	87		170		61		318
January, 1951	94		105		70*		269
February, 1951	75		115		88*		278
March, 1951	92		151		109		352
April, 1951	136		103		123		362
May, 1951	154		104		69*		327
June, 1951	167	1,386	98	1,344	110*	1,176	375 3,906
July, 1951	141		156		128		425
August, 1951	158		118		160		436
September, 1951	75*		48*		80*		203
October, 1951	135		114		101		350
November, 1951	99		102		121		322
December, 1951	78		131		57		266
January, 1952	69*		57*		47*		173
February, 1952	74		120*		70*		264
March, 1952	103		119*		55*		277
April, 1952	138		105		115		358
May, 1952	77*		116		113		306
June, 1952	207	1,354	146	1,322	89*	1,136	442 3,822
Total for Biennium		2,740		2,676		2,312	7,728

* Indicates lost time due to illness, vacation, attendance at Safety and Health Conferences, injury, etc.

Boiler Inspection Division

RECEIPTS

July, 1950	$ 1,655.11	July, 1951	$ 1,527.50
August, 1950	1,350.00	August, 1951	1,382.50
September, 1950	1,362.68	September, 1951	1,237.50
October, 1950	1,295.00	October, 1951	1,255.00
November, 1950	987.50	November, 1951	1,027.50
December, 1950	830.00	December, 1951	507.50
January, 1951	1,052.58	January, 1952	822.50
February, 1951	990.00	February, 1952	1,580.04
March, 1951	1,225.00	March, 1952	1,107.50
April, 1951	1,232.80	April, 1952	1,240.00
May, 1951	1,342.50	May, 1952	1,370.00
June, 1951	1,117.50	June, 1952	1,082.50
	$14,440.67		$14,140.04
Total receipts for Biennium			$28,580.71
2 Boilers @ $10.00			$ 20.00
3,869 Boilers @ 5.00			19,345.00
3,686 Boilers @ 2.50			9,215.00
Interest on registered warrants			.71
			$28,580.71
Registered school and county warrants being held in payment of fees			$ 10.00
Inspections made—fees not yet collected:			
172 inspections @ $5.00			860.00
141 inspections @ $2.50			355.00
			$ 1,225.00

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

July, 1950	28	July, 1951	14
August, 1950	17	August, 1951	15
September, 1950	9	September, 1951	18
October, 1950	6	October, 1951	6
November, 1950	22	November, 1951	..
December, 1950	..	December, 1951	5
January, 1951	6	January, 1952	21
February, 1951	1	February, 1952	..
March, 1951	10	March, 1952	23
April, 1951	20	April, 1952	5
May, 1951	9	May, 1952	21
June, 1951	1	June, 1952	9
	129		137

Total Free Inspections 266

In processing the inspectors' reports, a typewritten copy of each report is mailed to the owner or user of the boiler which has been inspected, together with a statement showing the amount of the inspection fee due. During the biennium, 7,728 typewritten reports and statements were sent to boiler operators.

Upon payment of the inspection fee a Certificate of Inspection is issued, showing payment of the fee, the pressure allowed, expiration date, etc., which the law requires must be posted on or near the boiler. The law also provides that boilers must be inspected annually, and the certificates expire one year from the date of the inspection. During the period from July 1, 1950 to July 1, 1951, 3,551 Certificates of Inspection were issued, and from July 1, 1951 to July 1, 1952, 3,442 certificates of inspection were issued, or a total of 6,993 for the biennium.

FACTORY INSPECTION DEPARTMENT

Inspections Made—July 1, 1951 to July 1, 1952

Business Classification	Number of Inspections	Number of Male Employes	Number of Female Employes	Total Employes
Auto Industry	281	2,394	312	2,706
State and County Shops	7	248	3	251
Food:				
Bakeries	14	73	43	116
Beverages	27	252	21	273
Canning, Preserving, Processing	16	293	157	450
Confectionery	2	10	11	21
Creameries, Dairy Products	15	213	73	286
Milling and Cereal	....	....	....	....
Sugar Refining	....	....	....	....
Foundries and Iron Works	6	50	1	51
Furniture Repair	....	....	....	....
Hotels	23	190	308	498
Ice and Cold Storage	10	63	8	71
Laundries, Cleaning and Pressing	96	286	714	1,000
Lumber:				
Lumber and Building Material	48	332	28	360
Logging and Saw Mills	18	274	11	285
Machine Shops	27	189	27	216
Manufacturing:				
Machinery Mfg.	10	76	10	86
Miscellaneous Mfg.	57	4,236	1,235	5,471
Steel and Metal Prod.	6	237	26	263
Meat Packing and Processing	15	304	72	376
Metal Plating	....	....	....	....
Mills and Elevators	141	924	106	1,030
Monument Works	....	....	....	....
Moving and Storage	2	33	2	35
Oil Industry	8	90	3	93
Oxygen, etc.	1	10	1	11
Printing and Publishing	39	343	281	624
Public Buildings	65	838	280	1,103
Public Utilities:				
Communications	29	225	667	892
Elec. Lt., Gas and Power	22	363	45	408
Railroads (Shops)	21	1,564	22	1,586
Trucking	14	191	21	212
Water Works	5	104	4	108
Sanitoria	6	12	126	138
Schools	633	1,682	3,069	4,751
State Institutions	....	....	....	....
Stores—all retail	197	1,321	929	2,250
Theatres and Amusements	61	249	211	460
Totals	1,922	17,669	8,806	26,481

Enrollment in Schools Inspected 86,145

FACTORY INSPECTION DEPARTMENT

Inspections Made—July 1, 1950 to July 1, 1951

Business Classification	Number of Inspections	Number of Male Employes	Number of Female Employes	Total Employes
Auto Industry	314	2,284	153	2,437
State and County Shops	....	....	....	....
Food:				
Bakeries	22	204	66	270
Beverages	35	489	24	513
Canning, Preserving, Processing	9	565	653	1,218
Confectionery	....	....	....	....
Creameries, Dairy Products	14	136	37	173
Milling and Cereal	1	47	1	48
Sugar Refining	15	4,050	130	4,180
Foundries and Iron Works	6	21	....	21
Furniture Repair	....	....	....	....
Hotels	146	245	398	643
Ice and Cold Storage	12	35	12	47
Laundries, Cleaning and Pressing	56	140	317	457
Lumber:				
Lumber and Building Material	68	854	69	923
Logging and Saw Mills	16	287	3	290
Machine Shops	17	323	94	417
Manufacturing:				
Machinery Mfg.	7	1,164	127	1,291
Miscellaneous Mfg.	19	5,044	298	5,342
Steel and Metal Prod.	13	2,010	234	2,244
Meat Packing and Processing	7	80	31	111
Metal Plating	....	....	....	....
Mills and Elevators	143	550	43	593
Monument Works	....	....	....	....
Moving and Storage	....	....	....	....
Oil Industry	6	14	3	17
Oxygen, etc.	....	....	....	....
Printing and Publishing	41	570	503	1,073
Public Buildings	36	229	249	478
Public Utilities:				
Communications	39	302	780	1,082
Elec. Lt., Gas and Power	26	245	32	277
Railroads (Shops)	18	1,785	65	1,850
Trucking	1	11	....	11
Water Works	1	1	....	1
Sanitoria	8	50	392	442
Schools	837	2,524	4,717	7,241
State Institutions	10	2,610	529	3,139
Stores—all retail	257	1,547	1,124	2,671
Theatres and Amusements	104	355	290	645
Totals	2,304	28,771	11,374	40,145

Enrollment in Schools Inspected 159,634
Enrollment in State Institutions Inspected 9,384

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:

7/1/50-7/1/51—7 Theatrical Agency Licenses @ $100.00 each	$ 700.00
1 Theatrical Agent's License @ $50.00	50.00
	$ 750.00
7/1/51-7/1/52—5 Theatrical Agency Licenses @ $100.00 each	$ 500.00
Total for Biennium	$1,250.00

PRIVATE EMPLOYMENT AGENCY DIVISION

The following shows the number of Private Employment Agency licenses issued and the amount of license fees collected, which were deposited with the State Revenue Department for credit to the General Revenue Fund:

7/1/50-7/1/51—47 Private Employment Agency Licenses	$2,275.00
7/1/51-7/1/52—47 Private Employment Agency Licenses	2,210.00
Total for Biennium	$4,485.00

The legislature has never given the Commission any appropriation for the enforcement of this law. We feel that some appropriation should be given to this Department for better enforcement of the law, as it is now handled from the offices of the Commission through correspondence and telephone calls. This licensing and enforcement is presently being handled by the Boiler Inspection personnel. Complaints against the agencies are also taken care of and handled through correspondence and telephone calls, or calls at the agencies in Denver where necessary.

MINIMUM WAGE, HOUR, AND CHILD LABOR DIVISION

July 1, 1950 to July 1, 1952

As the number of employed women and minors increases, the work of this Division becomes greater and more complicated. The civilian female labor force in Colorado, according to the 1950 census report, is 135,929. Of this number 130,748 are gainfully employed, which is almost twice as many as were gainfully employed at the time the 1940 census was taken. The increase in the number of employed children is shown by the increase in the number of employment certificates issued, given later in this report.

The principal work of the Division is to investigate places of business employing women and minors to determine compliance with Minimum Wage Orders, the Woman's Eight Hour Law, and the Colorado Child Labor Law. During this biennium, due to the lack of sufficient appropriation, the Division has been handicapped in performing this work because of a need for more investigators. The staff, which included only two investigators at the beginning of the biennium, was reduced to only one investigator May 1, 1951. Despite this handicap, 5,052 routine calls have been made in 53 cities (or towns), including much of Denver. Of the establishments called on, 2880 were employing women or minors or both. According to the investigator's reports, a total of 13,702 women and 972 minors were employed in these establishments.

There were 325 complaints registered with the office during this period. In handling these complaints, 222 were investigated at the place of business, 79 were settled in the office or through correspondence, 23 were withdrawn, and one was settled in the Small Claims Court. The number of complaints classified according to industry and according to type of complaint, is shown below:

Industry		Type of Complaint	
Laundry	6	Overtime	170
Retail Trades	64	Minimum Wage	42
Public Housekeeping	212	Hours	15
Beauty Service	5	Child Labor	46
Mfg. & Wholesale	18	Misc.	52
Misc. (Child Labor)	20		
Total	325	Total	325

When violations are found, voluntary adjustment to comply with the law usually occurs. Re-inspection is made whenever possible, to make certain that the adjustment has been made. When violations of the overtime pay provision of the Wage Order or the Woman's Eight Hour Law are found, back wages due employees are collected. A comparison of the amount paid in make-up pay the past two years with the amount paid during the biennium ending June 30, 1950, is shown below:

	July 1, 1948 to July 1, 1950	July 1, 1950 to July 1, 1952
Laundry	$ 634.68	$ 479.55
Retail Trades	1,178.55	2,148.18
Public Housekeeping	3,018.59	7,717.14
Beauty Service	16.35	.....
Mfg. & Wholesale	197.88	1,210.72
Total	$5,046.05	$11,555.59

Whenever investigations are made with respect to Wage Order regulations, the report includes a check on compliance with the provisions of the Woman's Eight Hour Law and the Child Labor Law, and in establishments where there are four or more persons employed, inquiry is made as to whether or not Workmen's

Compensation Insurance is carried. During this biennium, the names of 111 employers who did not have the insurance were reported to the Insurance Division.

A report summarizing work accomplished in administering each law follows:

MINIMUM WAGE LAW

During the biennium Minimum Wage Orders 2, 3, 4 and 5, all of which were effective to World War II, were reconsidered and new orders issued. The new Orders issued and the effective date of each are as follows:

Minimum Wage Order	Industry	Effective Date
No. 6	Laundry	February 11, 1951
No. 7	Retail Trades	February 18, 1951
No. 8	Public Housekeeping	March 10, 1951
No. 9	Beauty Service	March 4, 1951

The table below shows the number of visits and the number of investigations made at establishments of four industries, and the number of women and minor employees covered by the investigations:

Industry	Visits	Investigations	Employees	
			Women	Minors
Retail Trades	2,760	1,334	4,261	556
Beauty Service	229	96	189	0
Public Housekeeping	1,677	1,222	5,987	96
Laundry	122	96	937	12
Total	4,788	2,748	11,374	664

Reports disclosed compliance with Wage Order regulations as shown below:

Posting	34%
Hours	94%
Wages	95%
Age Certificates	91%
Records	50%

The benefit that has been afforded working women and children because of an increase in the minimum wage rates is indicated by the fact that during this biennium the amount collected in back pay due these workers because of non-compliance with the new minimum rates or overtime pay regulations, has been more than twice as great as the amount collected during the biennium ending June 30, 1950.

WOMAN'S EIGHT HOUR LAW

The Woman's Eight Hour Law applies to manufacturing, mechanical, mercantile establishments, hotels, restaurants, and laundries. No woman employed in these places is permitted to work in excess of eight hours in a calendar day, except in cases of emergencies and then only if an emergency relaxation permit has been secured from the Industrial Commission and provided time and one-half the regular rate of pay is paid for any overtime worked.

In addition to the investigations made of establishments covered by minimum wage orders, which have included a check on provisions of the Woman's Eight Hour Law, there were 140 routine and 15 complaint investigations made in manufacturing, mechanical, and wholesale establishments. A total of 2318 women were employed in the places investigated. Failure to secure the relaxation permit before allowing overtime in emergencies and permitting employees classed as executives to work overtime are the violations most frequently found.

The number of emergency relaxation permits issued during this biennium as compared with those issued during the last biennium is shown below:

	July 1, 1948 to July 1, 1950	July 1, 1950 to July 1, 1952
Manufacturing	155	238
Mechanical	30	30
Mercantile	369	344
Hotels	41	36
Restaurants	495	235
Laundries	75	70
Total	1,165	966

CHILD LABOR LAW

The Colorado Child Labor Law governs the employment of children until they are 16 years of age and it is unlawful for any child under that age to be employed (in most industries) unless there is first placed on file in the establishment an age and school certificate. The certificate is obtained by the prospective employee from the Superintendent of Schools or by a person authorized by him.

According to the number of duplicate certificates received, as shown in the table below, there have been more children legally employed during this biennium than in any previous biennium. Factors which may have contributed to this increased employment are—a greater demand for child labor, the result of increased effort to enforce the law, and a sincere effort on the part of interested persons and agencies to become familiar with the provisions of the law.

Period	NUMBER OF CERTIFICATES ISSUED			
	Under 14 yrs.	14 & 15 yrs.	16 yrs. & over	Total
July 1, 1948 to July 1, 1950	349	2,585	3,364	6,298
July 1, 1950 to July 1, 1952	395	4,774	7,437	12,606

There have been 25 routine investigations, 26 complaint investigations and 34 re-inspections made with respect to child labor at establishments not covered by Minimum Wage Orders.

Non-compliance with the age and school certificate provisions and the employment of children after 8 p.m. are the most frequent violations found. In most cases the re-inspection report indicates complete compliance with the regulations. Employers who are slow to comply are required to report to the Division office or directly to the Industrial Commission.

DEPARTMENT OF WAGE CLAIMS

During the period July 1, 1933—July 1, 1952, a total of $630,562.25 has been collected for employees through the services offered by this department.

Collections during each biennial period:

July 1, 1933 to October 31, 1934	$ 16,175.17
December 1, 1934 to December 1, 1936	59,167.44
December 1, 1936 to December 1, 1938	49,518.82
December 1, 1938 to November 1, 1939	35,045.59
December 1, 1940 to December 1, 1942	33,328.35
December 1, 1942 to November 1, 1944	27,780.05
December 1, 1944 to June 31, 1946	39,863.96
July 1, 1946 to July 1, 1948	190,841.72*
July 1, 1948 to July 1, 1950	72,731.96
July 1, 1950 to July 1, 1952	106,109.19
Grand Total	$630,562.25

Collections, by month, during the period July 1, 1950 to June 30, 1952:

Month	Total Claims	Total Claims Collected	Amount of Money Collected
July 1950	46	35	$ 2,867.63
August 1950	77	30	877.84
September 1950	67	14	785.67
October 1950	67	28	674.88
November 1950	60	22	1,096.33
December 1950	51	24	3,615.81
January 1951	53	21	3,882.01
February 1951	47	18	1,944.11
March 1951	67	26	1,370.72
April 1951	62	60	2,670.64
May 1951	58	61	3,185.14
June 1951	66	41	3,047.85
July 1951	42	57	4,006.34
August 1951	69	52	4,088.51
September 1951	36	58	4,854.05
October 1951	43	30	3,832.31
November 1951	50	60	2,763.92
December 1951	31	40	3,127.85
January 1952	55	43	4,133.82
February 1952	46	43	2,854.08
March 1952	29	26	2,214.79
April 1952	31	37	2,373.92
May 1952	48	30	34,001.23
June 1952	35	29	11,839.74
Total			$106,109.19

* It was the practice of the Wage Claim Manager, during this biennial period to take credit for claims settled through the efforts of the Wage Claim Department and also for cases settled in court, after the efforts of the Deparment had failed. This practice is no longer in effect.

DEPARTMENT OF EMPLOYMENT SECURITY

REPORT TO THE

COLORADO INDUSTRIAL COMMISSION

July, 1950—June, 1952

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

In the two year period from July 1950 through June 1952, the economy of the State functioned at a very high level, and the unemployment insurance claims load was correspondingly low. Because jobs were plentiful, the Department of Employment Security made strict application of the disqualification and penalty provisions of the Act. The Industrial Commission received one hundred and ten appeals from Department decisions, more than twice as many as were filed in the preceding biennium. Seventy-four of the appeals were initiated by claimants, and thirty-six by employers. The Commission modified or reversed Department decisions in fourteen cases filed by employers and twenty in which the claimant was appellant, but upheld the decision of the Department in the other seventy-six cases.

The following regulations were adopted or revised by the Commission:

Regulation No. 4—Reports (Revised March 30, 1951).

Regulation No. 7A—Registration and Filing of Claims Except in Cases of Partial Employment (Revised March 30, 1951).

Regulation No. 7C—Filing of Claims by Mail (Revised March 30, 1951).

Regulation No. 10—Wage and Separation Reports (Revised March 30, 1951).

Regulation No.14—Week of Total and Part Total Employment (Revised May 16, 1951).

Regulation No. 17—Payment of Benefits to Interstate Claimants (Revised March 6, 1951).

Regulation No. 19—Partial Benefits (Revised May 16, 1951).

Regulation No. 25—Experience Rating (Revised May 16, 1951). Dissolution and Joinder of Accounts

Regulation No. 26—Experience Rating (Revised May 16, 1951).

Regulation No. 31—Interstate Claims, based on Combined Wages (Revised May 16, 1951).

In addition, Rule No. 1, "Renumeration Payable in Any Medium Other Than Cash," was revised on May 16, 1951.

Under Section 5(c) of the Act, the Industrial Commission is required to determine whether any work stoppage is due to a strike, and what categories of workers are involved. The Department then determines the Claimant's 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 thirty-three work stoppages. Thirty-two were held to be strikes, and in one case, it was decided that the work stoppage was due to the existence of a strike in another craft which made it impossible for the employees of a construction company to perform their tasks. Two amendments to decisions on work stoppages were issued by the Commission upon the receipt of additional information submitted by unions.

There were three requests for review of decisions affirming the existence of a strike; all three filed by unions. In one case, the Commission reversed its original decision; in the other two cases the Commission reaffirmed its original decision.

The start of the biennium covered in this report, July 1950, coincided almost exactly with an upturn in economic conditions which has persisted in Colorado for two years. An indication of the growth that has occurred is furnished by comparison of the numbers of workers covered by the Employment Security Act. In the first six months of 1950, 195,516 persons were working in covered employment; in the first six months of 1951, there were 215,146 such workers; in the first six months of 1952, it is estimated that 222,300 persons were employed. Non-agricultural placements accomplished by the Department of Employment Security have kept pace with this trend, with 43,494 placements made in the first six months of 1951, and 62,607 placements in the first six months of 1952. Unemployment compensation claims have declined steadily throughout the period, and are thought to be near the minimum that can be expected in any normal period. The average number of workers who drew benefits in the first six months of 1951 was 1694 per week, and in the comparable period of 1952, 1468 per week. Money paid in unemployment compensation benefits amounted to $3,698,473.00 in the full year of 1950, and about one-third as much $1,247,425.00 in 1951. In June of 1952, it appears that if present trends continue, benefit payments in 1952 will be even lower.

STATE COMPENSATION INSURANCE FUND

Sept. 18, 1952

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 January 1, 1950 and ending June 30, 1952. This statement, as you will note, reflects the fact that the Fund continues to maintain its eminent position in the field of Workmen's Compensation Insurance in Colorado.

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

HCW:ms

STATE COMPENSATION INSURANCE FUND
INCOME AND DISBURSEMENTS

	Jan. 1, 1950 to Dec. 31, 1950	Jan. 1, 1951 to Dec. 31, 1951	Jan. 1, 1952 to June 30, 1952
INCOME			
Premiums written	$2,842,613.18	$3,752,990.17	$1,930,346.47
Interest received	188,564.20	191,343.40	96,682.64
Sale and redemption of bonds	615,500.00	393,500.00	244,362.16
Registered warrants	406.00	219.00	261.00
Miscellaneous	9,569.82	17,263.04	9,048.05
	$3,656,653.20	$4,355,315.61	$2,280,700.32
Cash on hand Beginning	785,671.87	653,198.13	482,195.01
Premiums outstanding Beginning	20,127.00	46,810.44*	16,610.78
	$4,462,452.07	$4,961,703.30	$2,779,506.11
DISBURSEMENTS			
Compensation and medical benefits paid	$1,979,220.87	$2,339,126.27	$1,368,370.07
Premiums written off	48.00*	19,081.63	.....
Dividends to policyholders	1,038,940.59	1,084,518.00	176,687.00
Operating expenses	234,331.13	285,481.77	140,162.10
Investments			
Bonds	603,244.79	734,343.84	68,753.72
Warrants	375.00	346.00	253.00
	$3,856,064.38	$4,462,897.51	$1,754,225.89
Cash on hand Ending	653,198.13	482,195.01	796,237.04
Premiums outstanding Ending	46,810.44*	16,610.78	229,043.18
	$4,462,452.07	$4,961,703.30	$2,779,506.11

* Minus

ANTI-DISCRIMINATION DIVISION

July 1, 1951 to June 30, 1952

The Anti-Discrimination Division of the Industrial Commission of Colorado was created by an Act of the General Assembly, Ch. 217, S. L. of Colorado, 1951, to eliminate discriminatory and unfair employment practices as defined in Section 5 thereof.

The work of the Division is divided into three parts:

I. Research—Sec. 3, paragraph (d)

A. To investigate and study the extent, character, and causes of discrimination in employment

B. To formulate plans for the elimination thereof

Because data on employment practices in Colorado are inadequate for the formulation of a comprehensive program, the Bureau of Social and Business Research of Denver University was engaged to analyze and evaluate existing data on employment practices and to compile an annotated bibliography of selected literature and audio-visual material relevant to the work of the Division. When this project has been completed, the Division will then know in what areas further studies are necessary. That approach to an understanding of the problem was decided upon after months of work by the Governor's Human Relations Commission and a volunteer committee comprising twenty-five educators, industrialists, labor leaders, personnel men, minority persons, and heads of intergroup, interracial, and human relations organizations whose work supplements that of the Division.

II. Education—Sections 4 and 6

A. To formulate and conduct educational programs looking forward to the elimination of prejudices among the various racial, religious, and national groups of Colorado

B. To formulate and conduct educational programs for the enlargement of employment opportunities for minority persons in accordance with their individual qualifications.

The Director of F. E. P. has engaged in the following activities:

1. Speaking engagements 19
2. Participation in discussion groups 7
3. Radio speeches and interviews 5
4. Radio stations using F. E. P. spot announcements 14
5. Radio stations using 15-minute transcribed human relations dramatizations—13 programs 1
6. Newspaper articles and news items—incomplete number 46
7. Leaflets explaining the provisions and purpose of the Act—distributed by thirty-eight trade, service, civic, labor, personnel, education, management, social, and political organizations 12,000
8. Miscellaneous pamphlets distributed 300
9. Copies of the Act supplied on request to employers, libraries, and schools 175
10. F. E. P. councils now in process of organization 4

III. Regulatory—Sec. 7

A. To settle complaints by methods of conferences, conciliation, and persuasion—Sub-section A

B. If a respondent is a public employer, recourse for the settlement of complaints may be had to a public hearing, or to a district court—Sub-section B.

The following complaints have been handled by the department with the results indicated:

1. A Negro alleged in a sworn complaint that a labor union had denied him the opportunity of taking a job as a heavy equipment operator on a State highway project by refusing to issue him a work permit because of his color. Although an investigation established not only the truth of the allegation but also the relator's ability to perform the work required, the Union refused to comply with the law.

2. A Negro woman alleged in a sworn complaint that a public employer had refused to hire her because of her color. Although an investigation revealed probable discrimination, the evidence presented at a public hearing failed to establish that the relator was the best qualified applicant.

3. A woman alleged informally that a private employment agency when answering her telephone inquiry about an advertised job had implied prejudice against Jews. A conference between the Director of F. E. P. and the owners of the agency and also an inspection of the agency's records disclosed no evidence to substantiate the allegation.

4. A Negro alleged informally that a labor union was blocking his transfer to a better job because of his color. Since he was employed on a Federal defense project where union membership is not recognized as a condition for employment, he was referred to the NLRB for help. The relator thereupon filed complaints with the NLRB against both the contractor and the union. Soon thereafter, the respondents arranged the transfer; and the complaints were withdrawn.

5. A young man alleged informally that he and others of Spanish ancestry were being refused employment by a private employer because of their ancestry. An informal investigation of the Company's employment practices revealed no evidence to substantiate the allegation.

6. A Negro woman alleged informally that a public employer had refused to hire her because of her color. An informal conference between the Director of F. E. P. and the public employer revealed the truth of the allegation. Subsequent conferences resulted in the employment of the relator.

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
1950	1,781,438.00	768,018.00	2,842,613.00	5,392,069.00
* Totals	$35,249,203.92	$15,926,685.29	$41,590,466.34	$92,766,355.55

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
1950	826,115.00	310,020.00	1,979,221.00	3,115,356.00
Totals	$16,585,897.55	$ 6,253,464.75	$24,704,073.05	$47,543,435.35

* 1951 figures not available.

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, 1952, there were 315 trust accounts totaling $294,773.28.

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 $49,500.00 has been paid into the Subsequent Injury Fund to June 30, 1952. $6,228.72 has been paid to claimants leaving a balance of $43,271.28. Considering the life expectancy of the claimants the reserve necessary to carry these cases to conclusion will be $42,077.17.

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, particularly since compensation payments to claimants have been doubled since the subsequent injury fund was established.

WORKMEN'S COMPENSATION CLAIM DEPARTMENT

During the two-year period covered by this report, this Department received 104,240 reports of accidental injuries suffered within the course of employment and supervised payment of compensation in 12,227 cases where liability was admitted. During this period the Commission entered 950 awards and orders, of which 370 were lump sum settlement orders, and the Referees of the Commission entered 2,686 awards and orders. The Referees conducted 182 sessions of hearings in 45 towns and cities other than Denver, at which 1,290 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 1,504 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 conducted hearings in all cases in which Unfair Labor Practices were charged. They conducted numerous pre-election conferences, and most of the elections to determine Collective Bargaining Units and all Union Shop questions.

SUMMARY OF ORDERS AND AWARDS

July 1, 1950 to June 30, 1952

	Commission	Referees
Compensation:		
Fatal—Granted	1	42
—Denied	2	13
Non-Fatal—Granted	8	563
—Denied	2	481
Hospital or Medical Expenses—Granted	..	65
—Denied	..	6
Facial Disfigurement—Granted	..	60
—Denied	..	15
Re-hearings:		
Fatal—Granted	5	..
—Denied	3	..
Non-Fatal—Granted	112	3
—Denied	26	..
Lump Sums:		
Fatal—Granted	42	..
—Denied	18	1
Non-Fatal—Granted	328	..
—Denied	14	..
Medical only	1	79
Orders determining dependency	..	41
Miscellaneous orders	15	96
Show Cause orders	..	173
Continuance orders	1	106
Orders vacated	7	10
Orders to pay to subsequent injury fund	..	29
Cases dismissed	1	71
Orders directing claimant to accept surgery or treatment	1	6
Orders determining extent of permanent disability	3	301
Orders reversed	7	1
Compensation reduced due to change in condition	1	5
Compensation increased	1	20
Orders closing cases	1	11
Orders suspended or cancelled	1	1
Orders affirmed	162	6
Orders corrected	9	27
Orders amended	3	12
Third party settlement approved by order	..	2
Hearings cancelled by order	..	23
Orders approving compensation or medical paid	..	32
Orders approving admissions	..	113
Orders creating trust funds	3	21
Orders granting trust fund withdrawals	143	2
Orders denying trust fund withdrawals	2	..
Orders ruling fatal cases non-compensable	..	5
Orders assessing penalty against insurance company	..	8
Orders terminating compensation	..	8
Orders fixing termination of disability	1	122
Transcripts issued	11	..
Orders directing payment from subsequent injury fund	1	..
Orders approving compromise	9	2
Orders directing carrier to offer surgery or treatment	..	16
Orders granting penalty for safety rule violation	..	3
Orders denying penalty for safety rule violation	0	4
Orders allowing attorneys' fees	5	22
Orders denying attorneys' fees	..	2
Orders finding no permanent disability due to accident	..	51
Granted penalty failure to report	..	4
Denied penalty failure to report	..	2
	950	2,686

ANNUAL AVERAGE NUMBER OF ORDERS AND AWARDS

	Commission	Referees
Aug. 1, 1915 to Nov. 30, 1930	479	1,296
Dec. 1, 1930 to June 30, 1950	745	1,711
July 1, 1950 to June 30, 1952	475	1,343

ANNUAL AVERAGE OF ACCIDENTS REPORTED

Aug. 1, 1915 to Nov. 30, 1930	16,539
Dec. 1, 1930 to June 30, 1950	33,933
July 1, 1950 to June 30, 1952	52,120
AVERAGE WEEKLY WAGE	$67.01

SUMMARY OF ORDERS AND AWARDS

From August 1, 1915 to June 30, 1952

	Aug. 1, 1915 to June 30, 1950		July 1, 1950 to June 30, 1952		TOTAL Aug. 1, 1915 to June 30, 1952	
	Commission	Referees	Commission	Referees	Commission	Referees
Compensation:						
Fatal—Granted	1,061	3,547	1	42	1,062	3,589
—Denied	267	741	2	13	269	754
Non-Fatal—Granted	3,291	27,231	8	563	3,299	27,794
—Denied	937	7,365	2	481	939	7,846
Re-hearings:						
Fatal—Granted	131	104	5	..	136	104
—Denied	331	53	3	..	334	53
Non-Fatal—Granted	1,855	2,480	112	3	1,967	2,483
—Denied	2,058	695	26	..	2,084	695
Lump Sums:						
Fatal—Granted	969	..	42	..	1,011	..
—Denied	801	..	18	1	819	1
Non-Fatal—Granted	4,010	..	328	..	4,338	..
—Denied	1,513	..	14	..	1,527	..
Facial Disfigurement:						
Granted	117	1,004	..	60	117	1,064
Denied	14	122	..	15	14	137
All other orders and awards	4,574	9,991	389	1,508	4,963	11,499
	21,929	53,333	950	2,686	22,879	56,019

ANALYSIS OF INDUSTRIAL ACCIDENTS

July 1, 1950 to June 30, 1952

ANALYSIS OF ACCIDENTS BY AGE GROUPS
(All Accidents)

Under 20	6,470
20-29	28,716
30-39	26,203
40-49	18,026
50-59	10,297
60-69	4,146
70-79	431
80-89	12
Not given	9,939
	104,240

ACCIDENTS BY SEX AND MARITAL STATUS
(All Accidents)

Male, single	17,312
Male, married	67,455
Male, divorced	1,327
Male, widowed	587
Male, marital status unknown	8,017
Female, single	2,423
Female, married	4,658
Female, divorced	702
Female, widowed	792
Female, marital status unknown	967
	104,240

BY CARRIER	Number of Accidents
Stock Companies	29,144
Mutual Companies	7,903
Reciprocal Companies	55
State Fund	59,447
Self Insurers	7,593
Non-insurers	98
	104,240

ANALYSIS OF ACCIDENTS BY INDUSTRY

Agriculture and livestock	1,316
Agricultural services	388
Forestry and fishing	7
Metal mining	5,008
Coal mining	1,557
Petroleum production	921
Quarrying	583
General construction	8,799
Heavy construction roads, dams, etc.	4,232
Special const. trades (plumbing, painting, etc.)	6,446
Food and beverage processing and manufacturing	5,864
Packing house	2,621
Grain and feed mills	1,056
Apparel and textile manufacturing	327
Lumber production, timber products	387
Furniture and finished wood products, mill work	993
Paper and paper products	376
Printing and publishing	812
Chemical and allied products	1,807
Petroleum refining	220
Rubber products	2,099
Leather products	431
Stone, glass, clay and allied products	1,952
Iron and steel and their products	6,970
Transportation equipment	470
Non-ferrous metal products	1,403
Electrical machinery manufacturing	306
Other machinery manufacturing	3,177
Motor vehicles and equipment (trailers)	1,327
Miscellaneous manufacturing industries	660
Street car and bus transportation	92
Trucking and warehousing	3,346
Taxi and truck transportation	407
Transportation services	272
Communications	228
Utilities (electric and gas)	1,404
Air transportation	388
Pipeline transportation	17
Water, sanitary and irrigation systems	187
Wholesale trade	4,276
Lumber and building materials dealers	1,537
Retail general merchandise	1,749
Retail food and liquor stores	2,426
Retail automotive	341
Retail apparel	247
Retail miscellaneous (drugs, hardware, etc.)	2,327
Eating and drinking places	2,124
Retail filling stations	404
Banks, real estate, insurance, etc.	648
Hotels, camps, rooming houses	1,212
Personal services, laundries, cleaning and dyeing, barber and beauty shops, etc.	796
Business services — advertising, auditing, radio broadcasting, cleaning and other office and building services	246
Employment services, vocational schools	36
Automotive repair service, parking lots, etc.	4,674
Miscellaneous repair and hand trades	809
Motion picture productions and shows	214
Amusements	819
Medical and health services	1,189
Education, including libraries and museums	1,539
Professional, religious and charitable services	428
Labor, fraternal, political and trade associations	169
Private households	29
Public agencies, including police and fire, highway and sanitation, military, correctional, judicial and legislative departments	3,708
Public agencies, including administrative engineering, health, taxing, municipal utilities and recreational	2,371
Non-classified	66
	104,240

COMPENSABLE ACCIDENTS CLASSIFIED BY EXTENT OF INJURY

Temporary total	12,079
Temporary partial	332
Permanent partial (amputation)	612
Permanent partial (loss of use of)	1,194
Permanent partial (working unit)	484
Permanent total	34
Facial	73
Fatal	243

COMPENSABLE ACCIDENTS CLASSIFIED BY TYPE OF ACCIDENT

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

Burns, shock, poisoning, etc.	729
Occupational	35
Fall on same level	878
Fall on different level	1,378
Slip	494
Struck by	3,008
Caught in, under or between	2,187
Struck against	1,404
Strain by pushing, pulling, lifting	2,654
Other or not specified	97
	12,864

COMPENSABLE ACCIDENTS CLASSIFIED BY CAUSE— UNSAFE ACT

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

Improperly guarded agencies	545
Defective or broken equipment or material	529
Hazardous procedure by employee	714
Unsafe personal factor, including lack of skill or physical defects such as sight, etc.	91
Improper illumination or ventilation	27
Failure to use protective devices or unsafe apparel	88
Unsafe physical or mechanical conditions or arrangements chargeable to employer	1,015
Insufficient data or unclassified	229
Act of another person	440
Ordinary accident, no unusual conditions classed as unpreventable	9,186
	12,864

COMPENSABLE ACCIDENTS CLASSIFIED BY CAUSATIVE AGENCY

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

Machines (Total 1,952)	
Concrete mixers	36
Mixers NEC	9
Buffers, grinders, polishers	49
Press, metal	12
Press, drill	7
Press, punch	58
Oxyacetylene torch	10
Crushers, rock, etc.	15
Meat grinders	22
Lathe	12
Well drill	44
Rock or coal drill	54
Wrappers	10
Printing press	28
Laundry—clothes press	29

Machines (Continued)	
Joiners and jointers	81
Planers	29
Washing machines	26
Power saws	265
Coal cutter	36
Cutters except rock and coal	39
Slicer	25
Sewing machine	3
Farm machinery NEC	46
Road graders, rollers, etc.	14
Fans	28
Office machines	5
Tire and tube makers	5
Pumps	27
Compressor	13

Machines (Continued)	
Boilers and pressure vessels	23
Passenger elevators	7
Freight elevators	28
Cranes, other large hoisting machines	112
Dredges, steam shovels, etc.	21
Conveyors	105
Cranks and levers	22
Jacks, other small hoisting machines	48
Rollers	24
Gears, pulleys, belts, etc.	161
Motors, not electrical	22
Motors, electrical	12
Electric switches, live wires, etc.	68
Miscellaneous machines	262
Hand tools	643
Electrical welding torch	9
Electrical powered hand tools NEC	17
Pneumatic tools	49
Explosives	51
Gases, vapors	45
Acids	11
Lime, caustic soda, etc.	30
Alcohol and petroleum	11
Poisonous vegetation	9
Occupational disease—compensable agencies	16
Miscellaneous substances causing poison	5
Chemicals NEC	20
Hot substances,	
Chemicals causing burns	17
Fire and flame	30
Gasoline, oils, etc.	50
Hot liquids and steam	55
Hot or molten metal	46
Gases where explosion occurs	38
Tar, asphalt, petroleum products	34
Grease	19
Hot substances NEC	18
Smoke	9
Dusts	22
Silicates	7
Working Surfaces (Total 1,774)	
Floors	405
Stairs and steps	284
Roofs and ceilings	81
Ice as part of working surface	197
Scaffolds, etc.	194
Ramp—platforms	115
Streets—roads, sidewalks	69
Bridges	10
Working surfaces NEC	419
Vehicles (Total 1,185)	
Animal drawn	6
Passenger automobiles	205
Trucks and trailers	353
Tractors and heavy powered vehicles	92
Motorcycles	11
Railroad cars or engines	46
Mine cars or motors	189
Vehicles (Continued)	
Airplanes	16
Motor vehicles NEC	12
Hand powered vehicles	216
Street cars and buses	13
Trailers	26
Animals, etc.	
Horses	122
Cattle, hogs, sheep, etc.	54
Dogs	4
Other domestic animals	1
Wild animals	1
Insects	18
Snakes and reptiles	1
Acts, not material objects as agencies	
Injured persons physical condition	21
Working in cramped, stooped position	126
Improper method of lifting	15
Sprain, no agency responsible	69
Strain, no agency responsible	103
Difference in elevations	202
Over exertion	15
Exposure	4
Working conditions	8
Miscellaneous agencies	
Bales, rolls, etc.	272
Barrels, kegs, cylinders	170
Metal bars—rods	97
Beams, girders	55
Tables, benches, chairs, etc.	161
Boards, sticks (lumber)	217
Bottles, dishes, etc.	66
Boxes, crates, etc.	330
Falling coal or rock	236
Rocks, coal, bricks, stones, etc.	306
Ropes, cables, etc.	97
Pipes	207
Ditches, trenches	108
Doors, windows, lids, etc.	210
Dust particles (foreign objects)	52
Falling objects	220
Cans, pots—lids	104
Drawers—files	30
Building forms	37
Glass, NEC	25
Miscellaneous machine parts	49
Trays, pans, racks	67
Rails and switches	48
Tanks and vats	25
Piles or stacks of materials	64
Firearms	11
Stoves, furnaces, etc.	50
Hooks (not hand tools)	21
Hose	58
Ice (not as a working surface)	20
Ladders	289
Nails, screws, etc.	61
Persons other than the injured	91
Splinters—wood, metal, glass	107
Tires, rims	79
Trees, limbs, etc.	103
Wheels, not as parts of machinery	30
Wires, not electrical	55
Logs, timbers, poles, etc.	296
Other miscellaneous agencies	1,303
Agencies unknown	90
No agency responsible	11
	12,864

COMPENSABLE ACCIDENTS CLASSIFIED BY OCCUPATION

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

Agricultural workers	230
Livestock, poultry workers, apiarist	114
Florist, gardener, greenhouse workers	79
Trappers, hunters, fish hatchery employees	6
Metal miners (including trainmen, motormen, timbermen, etc.)	543
Coal miners (including trainmen, motormen, timbermen, etc.)	435
Assayers, smelter and ore mill employees	70
Oil production workers	214
Quarry workers	60
Carpenters	984
Construction workers (including road, dam, heavy construction)	321
Plumbers, plasterers, electricians, painters, all special construction trades	748
Surveyors, civil engineers	19
Bakery, grain milling, beverage, dairy, creamery, sugar and all food manufacturing workers	521
Packing house employees	270
Milliners, seamstresses, tailors	20
Tractor and large power machine operators	153
Loggers, saw mill workers	359
Cabinet makers, box factory, lumber yard, furniture and other wood product workers	129
Printers, typesetters, book binders, engravers, reporters	70
Chemical workers, explosive manufacturing employees	26
Oil refinery workers	13
Tire makers, repairmen, and all other rubber products manufacturing workers	169
Shoemaker and repairmen and other leather workers	7
Brick maker, glass blowers, lens grinders, kiln workers	57
Steel workers, boiler makers, blacksmith, machinists, foundry workers and iron and steel product manufacturing machine operators	804
Butchers, meat cutters (not in packing houses)	86
Assemblers, all others listed as "factory workers"	291
Warehousemen, packers, graders	218
Salespersons, floorwalkers, newsboys, tradespeople	223
Traveling salesmen, canvassers, solicitors, buyers	83
Wholesale, retail dealers, NEC, office managers	62
Managers, NEC	7
Officers of corporations, unions, fraternal, trade and professional organizations	31
Inspectors	24
Installers, appliances and machinery	37
Irrigation workers	45
Laborers	988
Machine operators, NEC	169
Welders	95
Ice house workers, including manufacturing and storing	25
Service station attendants	97
Stock room and parts men	71
Cooks, waiters, dishwashers, all kitchen help, soda dispensers	477
Druggists	8
Weighmasters	3
Bartenders	19
Office clerks, cashiers, auditors, messenger boys, stenographers	110
Shipping and receiving clerks	72
Hotel employees NEC	52
Road and highway maintenance men	90
Sewing machine operators	4
Laundry, cleaning and dyeing plant employees	95
Station agents, baggage men, traffic supervisors, transportation workers	37
Steam shovel and crane operators	85
Firemen (not fire department), stokers and stationary engineers	55
Chauffeurs, taxi drivers	743
Dock workers, loaders, route salesmen, driving laundry, bakery, etc. trucks	501
Airplane pilots, air stewardesses, airport attendants	37
Fruit and vegetable packers, graders and other produce workers	44
Linemen	80
Telephone and other electrical equipment installers, power plant workers	105
Teachers, librarians, coaches	63
Janitors, guards, building maintenance men, watchmen, yardmen	344

Barbers, beauty shop operators, undertakers	6
Servants and private home employees	15
Agents, insurance, advertising, etc.	7
Garage mechanics, car greasers, and washers	337
Upholsterers, photographers, jewelers and miscellaneous hand trades	20
Motion picture machine operators, actors, dancers	13
Recreational workers, NEC, athletes, life guards, pin setters	69
Dentists, doctors, nurses	116
Chemical engineers, civil and other technical engineers	13
Police and firemen, municipal and state employees NEC	217
Teamsters	4
Unknown or unclassified	70
	12,864

COMPENSABLE ACCIDENTS CLASSIFIED BY NATURE OF INJURY

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

Unclassified	401	Crushing	252
Amputation and enucleation	525	Dislocation	275
Asphyxiation, including drowning	37	Foreign object	175
Shock, electrical	20	Fractures	2,987
Shock, other than electrical	8	Hemorrhage	10
Loss of consciousness from heat	1	Infection	47
Loss of consciousness from blow	6	Poisoning	23
Loss of consciousness from heart attack	18	Laceration	1,537
Burns	517	Puncture	143
Frozen	18	Rupture (not hernia)	68
Irritation	72	Sprain	1,431
Contusion	2,063	Strain	2,080
Exposure	2	Occupational	34
Exhaustion	1	Internal	34
Concussion	79		12,864

COMPENSABLE ACCIDENTS CLASSIFIED BY LOCATION OF INJURY

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

Not given	54	Wrist	334
Eye	279	Hand	708
Ear	23	Thumb	324
Skull	80	Fingers	1,458
Scalp	34	Thumb and fingers	33
Brain	74	Hand and arm	46
Head	143	Upper leg	230
Forehead	37	Knee	658
Eyelids	11	Lower leg	569
Nose	32	Ankle	630
Cheek or jaw	42	Foot	852
Teeth	10	Toes	446
Tongue	3	Arm and leg	58
Throat	17	Hands and feet	18
Lips and chin	25	Coccyx	45
Neck	82	Pelvis	87
Face	140	Heart	55
Vertebrae	293	Lungs	83
Spine	80	Other internal organs	79
Back	1,522	Abdomen, external	49
Ribs or side	457	Anus, rectum	23
Sacrum	25	External generative organs	37
Hip	270	Hernia	835
Chest	127	Trunk, body, general	125
Sternum	5	Blood	17
Shoulder	444	Arteries and veins	27
Collar bone	51	Skin	14
Elbow	173	Groin (not hernia)	39
Arm	452		12,864

FATAL ACCIDENTS

During the period July 1, 1950 to June 30, 1952, 243 fatal accidents were reported as against 205 fatal accidents for the previous biennium. This is an increase of 18.5% as compared with the increase of 20.5% for all accidents reported. In four of these cases claimants made third party settlements. 11 of the reported cases were determined to be non-accidental deaths, mostly heart failure cases. 4 cases were caused by occupational disease and one occupational disease fatality was denied. In 26 cases there were no dependents and payment of $500.00 in each case was made to the Subsequent Injury Fund. In 12 of the accidental death cases, compensation was denied, 16 other cases were still pending decision.

Fatalities by industries with the comparable figure for the 1948-50 period shown in parentheses are as follows: Agriculture, including tree trimming, nurseries, stock raising and allied services 7 (4), metal mining 26 (13), coal mining 15 (15), petroleum production 8 (6), general construction 8 (10), heavy construction, dams, roads, etc., 26 (16), special construction trades, plumbing, painting, etc., 14 (10), manufacture of iron and steel and their products 11 (11), lumber production 5 (3), transportation 13 (15), communications 2 (2), electric and gas utilities 4 (7), wholesale and retail trade 23 (19). The remainder are charged to other industries such as personal and business services, garages, food, other manufacturing, public employees, education and printing.

As causative agencies causing these fatal accidents, machines are listed 31 times, explosives 15, gases, acids and chemicals 9, burns by hot liquids, molten metal, gas explosions, fire, grease, gasoline and fuel oil, tar and chemicals 12, working surfaces 10 and vehicles 64, the remainder being charged to miscellaneous agencies such as logs, cables, ditches, wires and trees.

OCCUPATIONAL DISEASE DISABILITY CASES

306 cases were reported under the Occupational Disease Disability Act. Of these 152 were due to dermatitis, 39 to silicosis, 30 to lead poisoning and 85 to miscellaneous agencies including carbon monoxide, irritation from fumes and various poisons. 3 fatal cases resulted from silicosis. 5 occupational disease cases were found to be permanent disability cases. In 37 cases compensation benefits for temporary or permanent disability were paid in addition to medical benefits. Less than one-fourth of the cases reported are compensable under the existing law.

Industries producing the largest number of occupational disease disability cases are mining, iron and brass foundries, battery manufacturing, printing and painting. Common agencies causing disability are dust, lead, gases, oils, soaps and cleaning chemicals.

Of the cases denied, most were denied due to the fact that the agency causing disability was not recognized by the Colorado Act. A number of cases were denied because of failure to file a claim within the time allowed by law.

By occupation, agricultural workers were 1.79% of the total cases in which compensation was paid, metal miners, 4.2%, coal miners, 3.4%, general construction workers, 7.6%, heavy construction workers, 2.5%, special construction trades, 5.8%, packing house workers, 2.1%, sawmill and logging workers, 2.8%, iron and steel workers, 3.2%, common laborers, 7.7%, and auto mechanics and airplane mechanics, etc., 2.6%.

COLORADO SUPREME COURT DECISIONS

TABLE OF CASES

CONTINENTAL OIL COMPANY vs. JOHN L. SIRHALL

122 Colo. 332
222 P. (2nd) 612

I. C. No. 877087 — Index No. 410

Judgment Affirmed

En Banc

Opinion by Stone, J.

The Continental Oil Company is the owner of a filling station which, with equipment, it leased to Miller for a period of one year at an agreed monthly rental. Claimant who was employed by Miller was injured while performing services within the scope of his employment at the filling station and was awarded compensation against the lessor company. This award was affirmed by the district court.

HELD: "The fact that the Continental Oil Company was the lessor of claimant's employer would not, by itself, create liability on its part as we said in Index Mines vs. Industrial Commission, 82 Colo. 272 'not every lessor by virtue of said Section 4423 (Section 328, Chapter 97, '35 C.S.A.) is liable for compensation to the employees of his lessees. To make the lessor so liable there must be facts showing that he is operating, engaged in, or conducting his business by leasing, not merely that he is a lessor.'

"We have repeatedly held that this section is valid and that thereby an obligation may, in proper case, be imposed against an owner where the common-law relationship of employer and employee does not exist, in that one may be an employee by virtue of the statute, for the purpose of workmen's compensation, when in fact he is not an employee by common-law definition * * *.

"We have, then, a situation where a company, engaged in the refining and sale of gasoline and oils, owns many parcels of real property; that they are equipped with buildings, pumps and other facilities adapted only for sale of such products as it manufactures and distributes; that these properties are all of similar appearance and all bear conspicuously the company's peculiar trade name and sign; that they are leased for terms of one year only; that while the tenants are theoretically free to sell the products of competing companies, in fact none has ever done so; but all are engaged in and the leased proper devoted to, the sale of the company's products; and that any other sales made or services performed at these properties are merely incidental to the sale of the company's products.

"Under such situation the Industrial Commission has made award predicated on findings that the company was operating its business by leasing part of the work of its business to a lessee. The evidence amply supports such finding, * * *."

BAEZA vs. REMINGTON ARMS COMPANY

122 Colo. 510
224 P. (2nd) 223

I. C. No. 725453 — Index No. 411

Judgment Affirmed

En Banc

Opinion by Jackson, J.

Claimant suffered a trivial injury to his left foot on August 28, 1945, which did not cause him to leave work and for which medical benefits were awarded. Three years later he filed a petition to reopen, which was denied, and three months later a second petition, which was granted. Claimant testified he had had continual pain in the left ankle since his injury; that pain finally developed in his back whereupon he underwent surgical fusion at Fitzsimons Hospital which resulted in a permanent partial disability equal to 50% loss of use of left leg measured at the ankle. Claimant's medical evidence (Dr. Rosen of Fitzsimons) was to the effect that there was a possibility that an accident or injury to the ankle in 1945 could have resulted in the condition of the ankle found in 1948. Respondent's medical evidence (Drs. Good and Barnard) was definitely to the contrary. An award to claimant was reversed by the District Court. In affirming the District Court, the Supreme Court

HELD: "We have applied the rule that evidence of a mere possibility of a fact having occurred or a condition having existed, is not sufficient to support a judgment,

"We are of the opinion that claimant's medical evidence, standing alone, without considering the testimony of the physicians called by the employer and the carrier, was not sufficient to justify an award of compensation.

"It will have been noted that after the Industrial Commission had dismissed the claim in 1946, the employer and insurance carrier had no further notice of claimant's intention to assert

any liability against them until October 18, 1948. But this was after the ankylosing operation which had produced the disability which claimant then sought to charge against his former employer. There immediately arises the question whether the employee should not have given notice to his former employer before the disabling operation was performed of the former's intention both to submit to such an operation and also to hold his former employer liable for the resulting disability. Certainly there is nothing in the Colorado Workmen's Compensation law that expressly permits such a procedure as was followed here, and the basic theory of Workmen's Compensation Acts in the various states would seem to bar such a procedure.

"From an examination of this record we cannot escape the impression that had claimant followed the procedure of giving notice of his intended operation to his employer and the commission, that the ankylosing operation might never have been performed and the resulting disability would thus have been avoided.

"Unfortunately claimant proceeded on a private arrangement of his own and attempts now to charge industry with the not too happy results. There appears to be no legal basis to support this attempt."

COLE PRODUCE COMPANY vs. GARCIA

123 Colo. 278
228 P. (2nd) 808

I. C. No. 840159 **Index No. 412**

Judgment Affirmed in Part and Cause Remanded

En Banc

Opinion by Moore, J.

Ateado Fred LaCome was employed by the above-named respondent employer as a truck driver and roustabout. He was one of four persons employed by respondent, who carried no compensation insurance as required by law. LaCome was killed on April 26, 1948, in a highway accident en route to Albuquerque, New Mexico, while driving a truck load of eggs. The accident arose out of and within the course of decedent's employment. LaCome and his helper had left Alamosa some time during the preceding evening, which the employer contends was strictly against his orders. The Referee, however, finds in the evidence that claimant (decedent) was not directed to commence his journey at a time certain or, more particularly, that he was not prohibited to begin said journey at any time after the truck was loaded. The Commission further found that claimant was totally dependent upon her deceased son within a reasonable time prior to his death and awarded compensation in the sum of $8,341.25, which included a 50% penalty for failure to carry Workmen's Compensation insurance, and $125.00 funeral expense. In an appropriate action in the district court of Alamosa County, the award of the Commission was affirmed and judgment entered in favor of claimant. Reversal by writ of error was sought on the following grounds:

1. The deceased LaCome was not injured in an accident arising out of and in the course of his employment.
2. Total dependency of claimant upon deceased was not established as required by law.
3. If claimant is entitled to an award, it should be reduced by fifty per cent for the reason that deceased was guilty of a wilful violation of a reasonable safety rule.
4. The trial court was without authority to enter a money judgment against plaintiff in error.

HELD: "The contention here made by the employer, that the death was not caused by an accident arising out of and in the course of the employment of deceased, is based upon the assumption that there is no evidence contrary to that of the employer. He testified that LaCome was under instructions not to drive the truck at night; that he was not to start the trip from Alamosa to Albuquerque until about seven o'clock in the morning on the day he was killed; and that, in violation of these instructions, he started the trip at night and arrived in Santa Fe, New Mexico, where he was killed, before the hour when he was supposed to begin his work as an employee of plaintiff in error. The employer called one other witness in corroboration of these statements; however, other persuasive evidence, circumstantial in nature, was presented, which tends to contradict the truth of these assertions. * * * We have read and re-read the record before us and conclude that the findings of the commission, upon the question whether death resulted from an accident arising out of and in the course of employment and upon the question of dependency, are substantially supported by competent evidence." * * *

"It is argued, in connection with the question as to whether claimant was a dependent, that no evidence was offered showing that deceased left no wife or children. * * * The commission found claimant to be wholly dependent. We find no provision in the statute, nor has any decision of this court been called to our attention, which gives a prior and exclusive right to persons who are presumed wholly dependent, under the terms of the statute itself, as against those who are shown to be in fact wholly dependent without regard to any presumption.

"The only safety rule for which the employer contends, was that the truck was not to be driven at night. The record supports the commission's finding that no such rule was in force.

"The effect of the award of the commission was to provide monthly payments to claimant, in the amount of $114.11, until $8,216.25 had been paid. These payments would not continue beyond the lifetime of claimant. The effect of the judgment of the district court was to award a judgment as of the date of the entry thereof, for the full maximum sum, which, under the commission's award, could only be collected by claimant in monthly installments, if she should live for a sufficient length of time to collect the full amount. Upon review of proceedings before the Industrial Commission the district court, 'may affirm or set aside such order or award.' Chapter 97, section 382, '35 C.S.A. In the instant case, the district court having affirmed the award of the commission, was without jurisdiction to enter judgment for the claimant for the maximum sum which might thereafter accrue under the award.

"The award of compensation is affirmed; but the cause is remanded for revision of the judgment to accord with the provisions of the statute and the views expressed in this opinion."

SAFEWAY STORES vs. NEWMAN

123 Colo. 362
230 Pac. (2d) 168

I. C. No. 778410 **Index No. 413**

Judgment Affirmed

En Banc

Opinion by Holland, J.

Claimant received an injury on April 15, 1947 in the course of his employment as a receiving clerk for respondent employer. On May 5, 1947 a General Admission of liability was filed. At a hearing before a Referee of the Industrial Commission on July 18, 1947 the Referee found that claimant had sustained an injury while moving skids on the premises of

his employer which slipped and struck him in his left side, thereby bruising the groin and the inguinal region and that he was temporarily disabled from the date of injury until May 16, 1947; that he sustained no permanent partial disability or hernia. On September 8, 1947, less than five months from the date of accident, claimant filed petition to reopen the case alleging that his physical condition had changed in that it had become worse and attached thereto the report of Dr. Maul. Without a hearing the Industrial Commission denied the petition. Again on February 1, 1949 claimant filed a petition to reopen, which was granted. After several partial hearings, at all of which claim was made for additional compensation due to an injury to his back, the testimony of the attending physicians and surgeons sustained the claim of an injury to the back and nearly all of them said the injury was traumatic and related to the original injury of April 15, 1947. The Commission's supplemental order awarded permanent partial disability of 10% as a working unit due to the back injury.

The employer and insurance carrier seek reversal of the judgment on the ground that the claim for the back injury was barred by the statute of limitations in that the notice of claim for back injury was not filed within six months after the injury as provided by Section 84 W.C.A.

In affirming the Commission's award the Supreme Court held:

"The original claim was not made by the claimant, but by the employer, by which claimant is not bound. It is undisputed that the commission had clear statutory authority to reopen the case on its own motion on the grounds of error, mistake, or change in condition, at any time within six years from the date of the accident. The evidence before the commission was sufficient for it to determine that the back injury resulted from the original accident. Compensation is allowed for disability resulting from an injury, which cannot always be known at the outset. The claimant is not to be precluded by his failure to know the full effect and final results that may attend from an injury. To hold that he must know within the six-months' period of an additional injury traceable to the accident would be tantamount to saying that he is bound to know that which, according to nature in some instances, cannot be known within that period. The commission had full jurisdiction to deal with the disability apparent and provable at the first hearing, and it surely retains jurisdiction to deal with any further disability that may appear that can be directly traced to the original injury if such appears for consideration by the commission within the six-year period of limitations provided by statute. It makes no difference if the disability manifests itself at first or at a later time. Compensation is to be allowed for a further disability, within the limitation period, even though it was not contemplated in the first award.

"Under the facts peculiar to this case, counsel's contention that the claim was barred by the six-months' statute of limitations is not well taken. The commission acted well within its powers, and the judgment of the district court affirming the award was correct and is affirmed."

NEELY-TOWNER MOTOR COMPANY vs. COMMISSION and FONTANA

123 Colo. 472

230 P. (2nd) 993

I. C. No. 906592 **Index No. 414**

Judgment Affirmed

En Banc

Opinion by Hays, J.

Respondent employer is engaged in the operation of a used-car lot. Feeling the need of an office from which to transact its business the

company caused plans to be drawn for a two-room building. It then contacted claimant, whom it was advised was a suitable person to undertake such a task, and submitted its building plans. The company elected to and did employ claimant on an hourly basis, rather than to enter into a contract for a definite amount, to perform part of the work of the proposed structure. Other parts were to be done by others under contract. The employer was to furnish all materials and pay claimant for his services at the rate of $1.75 an hour. Claimant was to keep track of the number of hours he worked. He was also to furnish a helper whom the company paid at the rate of $1.25 an hour. As the work progressed the plans were deviated from by employer's representative in charge.

On May 16, 1950 claimant fell from the roof of said structure suffering injury to his back which prevented him from continuing with the structure. After claimant's injury respondents employed another individual at $1.75 an hour to complete the work which claimant was unable to do because of his injury.

Compensation was awarded by the Industrial Commission and sustained by the district court. Plaintiff in error contends that the judgment should be reversed for two reasons: (1) That claimant is an independent contractor and not an employee of the Motor Company; and (2) even though he is an employee he is a "casual" employee and not within the provisions of the Act.

In affirming the Commission the district court and the supreme court

HELD: "A review of the evidence convinces us that the above findings were substantially supported by credible evidence; that under the following authorities claimant is an employee within the purview of Section 288 (b); and that he was employed in the usual course of business of his employer.

"We conclude and hold that claimant is an employee, and that he is neither a contractor nor a casual employee within the meaning of the Workmen's Compensation Act.

"The judgment is affirmed."

EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN vs. INDUSTRIAL COMMISSION OF COLORADO and FERNANDEZ

124 Colo. 68

234 P. (2nd) 901

I. C. No. 922926 **Index No. 415**

Judgment Reversed and Remanded

En Banc

Opinion by Jackson, C. J.

Antonio F. Fernandez, alleged husband of the claimant, died as the result of an accident while performing services arising out of and in the course of his employment. The Referee found that decedent left surviving him and totally dependent upon him his common-law widow, Tillie Fernandez, who lived with him openly and notoriously as his wife from January, 1947 to the date of his death, July 31, 1950, and awarded compensation accordingly.

The Industrial Commission and District Court approved the award.

In her notice and claim for compensation claimant alleges that she and decedent were married January 15, 1947 at Denver; that she had been previously married and was divorced from her prior husband and that she was the widow of the deceased. Claimant's evidence showed that she was married to one Louie Marques April 17, 1944 and lived with him for about two years; that thereafter she instituted divorce proceedings and introduced as an exhibit an unauthenticated copy of an interlocutory

decree of divorce dated August 6, 1946. It was stipulated by counsel that under Colorado law an interlocutory decree of divorce becomes final six months from the date it is so entered. It thus is apparent that claimant could not have received a final decree of divorce earlier than February 5, 1947. Respondents contend that the award of the Industrial Commission should be set aside on the ground that the latter acted in excess of its powers in finding that a common-law marriage existed for the reasons (1) the record is utterly void of evidence of a contract or agreement between claimant and decedent to marry and (2) a common-law marriage has not been established by substantial evidence of either cohabitation as man and wife or general repute of marriage. In its reversal the Supreme Court

HELD: "As to the first point, we agree with counsel for the insurer that the record discloses no evidence of a contract or agreement between claimant and decedent to marry.

"From an examination of the entire record, we are of the opinion that the evidence is insufficient to bring what apparently began as a casual relationship into the more substantial one of a common-law marriage. * * *

"In the instant case, for all that appears in the record, claimant, although living with decedent, was, at the same time, a wage earner. There is scant evidence of dependency. * * *

"It was held in *Peery v. Peery*, 27 Colo. App. 533, 150 Pac. 329, that evidence concerning a common-law marriage should be clear, consistent and convincing; and in *The Estate of Klipfel, deceased, et al. v. Klipfel*, 41 Colo. 40, 92 Pac. 26, we ruled that presumption of marriage by cohabitation and repute of marriage contract must be established by convincing and positive evidence. We cannot say that the evidence in this case satisfies the foregoing requirements. In our judgment it is too scanty, dubious and even contradictory. At the same time it discloses many places and persons where and from whom more convincing evidence might be obtained, followed by a failure to present such evidence."

Reversed, with leave to claimant to present further evidence in support of her claim should she so desire.

INDUSTRIAL COMMISSION OF COLORADO and ARMSTEAD vs. ROYAL INDEMNITY COMPANY

124 Colo. 210
236 P. (2nd) 293

I. C. No. 856850 — Index No. 416

District Court Reversed

En Banc

Opinion by Moore, J.

"The claimant while shoveling coal into a furnace got a small piece of coal or other substance in his right eye. He rubbed the eye and 'worked' it in an endeavor to dislodge the object. There was discomfort for about twenty minutes, but he continued working. He noticed impaired vision, and on the fourth day following the incident above related, he consulted eye specialists who operated on the eye two days later, in an effort to correct an extensive detachment of the retina which was apparent upon the examination.

"The doctor testified that the interior of the claimant's eye disclosed evidence of an 'old-standing deteriorative condition that was certainly the primary predisposing factor to the development of the detachment, and it would seem probable that in the absence of any injury that ultimately he may have developed a detachment.' "

In answer to the Referee's question as to whether rubbing the eye would be more apt to cause the detachment than the presence of the foreign body the operating surgeon replied: "Very much more so. I don't think the foreign body, per se, would produce the detachment."

The Industrial Commission award in favor of the claimant was reversed by the District Court.

In reversing the District Court and reinstating the order of the Commission the Supreme Court

HELD: "All that is necessary to warrant the finding of casual connection between the accident and the disability, is to show facts and circumstances which would indicate with reasonable probability that the detached retina resulted from, or was precipitated by, the accident.

* * * "If the evidence, and the logical inferences therefrom, can be said to warrant a conclusion that the accident, within a reasonable probability, resulted in the disability, the claimant is entitled to compensation, since he was successful before the commission. If, however, the evidence, as a matter of law, is insufficient to remove the question of causation from the realm of conjecture and mere possibilities, the award of the commission cannot be upheld. * * *

"We think the evidence in the case at bar relating to the cause of injury is stronger in support of the commission's finding than that which was held to be sufficient" in the case of *Royal Indemnity Co. vs. Industrial Commission*, 88 Colo. 113, 293 Pac. 342.

The case remanded with directions to reinstate the award of the Commission.

PETER KIEWIT SONS' COMPANY and EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN vs. INDUSTRIAL COMMISSION OF COLORADO and HYMAN

124 Colo. 217
236 P. (2nd) 296

I. C. 910509 — Index No. 417

Judgment Affirmed

En Banc

Opinion by Knauss, J.

On April 24, 1950, Hyman, from about 8:15 a.m. to 11:55 a.m. moved heavy iron rods of varying sizes and shapes, and weighing approximately 150 pounds per bundle, from stockpiles a distance of from 100 to 200 feet over a rough, stony and hilly terrain, to an excavation, and having deposited the rods he climbed from the ditch and returned for additional rods. This work continued without interruption for more than 3½ hours. According to the testimony of co-workers they made about seventy round trips during this period and carried upwards of five tons of material. They were urged by their foreman to complete the job as rapidly as possible in order to go to another assignment the following day. At about 11:55 a.m. on April 24, 1950 Hyman was at one end of a bundle of rods and another worker was at the other end. As Hyman bent over, apparently to lift his end of the rods, he collapsed and shortly thereafter died.

The Industrial Commission determined the immediate cause of death was an occlusion of the coronary artery with myocardial infarction due to over-exertion, which constituted an accidental injury.

In its affirmance the Supreme Court

HELD: "Compensation is not dependent on the state of employee's health or his freedom from constitutional weakness or latent tendency. * * *

"In *Ellerman v. Industrial Commission*, 73 Colo. 20, 213 Pac. 120, we held that if death was due to over-exertion arising out of the employment, then the over-exertion was an accident.

"We think the evidence in the case at bar relating to the cause of Hyman's death was substantial and credible, which the Industrial Commission believed and that it supports the findings of the Commission. This being so, we would not be justified in disturbing the findings or resulting judgment."

CONTINENTAL CASUALTY CO. and FRUEHAUF vs. INDUSTRIAL COMMISSION OF COLORADO and CALLEN

124 Colo. 295

238 P. (2nd) 196

I. C. No. 792312 **Index No. 418**

Judgment Affirmed

En Banc

Opinion by Alter, J.

Callen suffered an injury in an accident arising out of and in the course of his employment by the Fruehauf Company on August 2, 1947. The employer's report to the Industrial Commission, as well as that of the attending physician, indicated that the major injury consisted of a fractured skull for which he was hospitalized for about ten days. Insurance carrier admitted liability and paid compensation to claimant until August 25, 1947, upon which date he was able to return to work with apparently no permanent partial disability. On June 30, 1950 claimant filed a petition to reopen and reconsider his claim, accompanied by the report of two physicians, in which petition he complained of injury to his sinuses. Claimant's petition was granted and the Commission found that claimant had suffered a permanent partial disability equivalent to 25% as a working unit by reason of the head injury.

The District Court affirmed the award of the Commission. In affirming, the Supreme Court

HELD: "We have read the entire record for the purpose of ascertaining whether there was competent evidence before the commission from which it might reasonably find, as it did, that the disabilities of which Callen complained at the hearing on August 23, 1950, were caused by, and resulted from, injuries sustained by him in the accident occurring on August 2, 1947. * * *

"There is sufficient competent evidence in the record, in addition to that herein stated, to support the commission's supplemental award; consequently, it was the duty of the district court to affirm such award; and it is our duty to affirm the judgment of the district court. We deem the citation of authorities to support disposition of the case wholly unnecessary.

"The judgment is affirmed."

INDUSTRIAL COMMISSION OF COLORADO v. ALSPAUGH

124 Colo. 321

236 P. (2nd) 1081

I. C. No. 774903 **Index No. 419**

District Court Reversed

En Banc

Opinion by Jackson, J.

Claimant was employed from July, 1923 to June 9, 1947 by the respondent-employer. During that period he was exposed to harmful concentration of silicon dioxide. This exposure was in the usual course of his employment and continued during the entire period of his employment. His disability began January 9, 1947 and he was permanently and totally disabled. His average weekly wage was $46.40. The maximum benefits to which he was entitled under the Occupational Disease Disability Act was $1,100.00. The award was paid in full by June, 1948. Thereafter Alspaugh received no further payments. He died on January 17, 1951 and his widow, in due time, filed claim for compensation as a dependent. Her claim was denied for other than funeral benefits for the reason that her husband had received during his lifetime the statutory maximum. The District Court reversed the Industrial Commission and ordered the Commission to award the widow $3,275.00 with interest. In reversing the District Court the Supreme Court

HELD: "The trial court's figures were apparently reached by taking the sum of $4,375, the maximum recovery allowed under both sections 14 and 15 of the act, and deducting the $1,100 disability benefits paid to deceased during his lifetime. * * *

"We are of the opinion that the trial court erred in ignoring the provisions of section 16 and in basing its award on the above-mentioned sections of the act. Section 10 of the act, upon which counsel for claimant relies, does not provide any schedule of payments, but sets up limitations as to time within which only is the act applicable. * * *

"It would appear that deceased received disability benefits during his lifetime under section 16, which is the only paragraph expressly dealing with total disability resulting from silicosis. In that section there is shown a clear intent to initiate payments for total disability caused by silicosis at a lower rate than for other occupational diseases. As time moves on from the effective date of the act, these payments increase at the rate of $50.00 per month during what is described in section 16 as the 'transitory period,' which terminates when the payments reach the maximum allowed for other occupational diseases as provided in sections 14 and 15 of the act. Claimant's husband suffered total disability within the 'transitory period.' The date when disability first became total would seem to be determinative in computing the benefits. Only if death had occurred without any prior payments for total disability would the date of death become the effective date in computing the amount of benefit to be paid. * * *

"If it had been the intention of the legislature to make the same provision for cases of total disability and death caused by silicosis as those caused by other occupational diseases, there would have been no need for it to have written a separate paragraph relating solely to compensation in silicosis and asbestosis cases. Section 16 must be given some meaning. If it does not relate to such a case as the instant one, it is difficult to see to what situation it could apply—and the brief of counsel for claimant does not provide an answer.

"An interpretation which gives effect to all of the provisions of the statute, including section 16, appears to be the one adopted by the Industrial Commission.

"The judgment of the trial court is reversed and the cause remanded with directions to reinstate the award of the Industrial Commission."

INDUSTRIAL COMMISSION OF COLORADO v. DANIELS

124 Colo. 329
236 P. (2nd) 291

I. C. No. 901959 — Index No. 420

District Court Reversed

En Banc

Opinion by Knauss, J.

"Respondent employer operates a livestock feeding lot. Jim Daniels for the past eight or nine years was employed by the respondent as an overseer and livestock feeder. His duties included the loading of feed on a truck, driving the truck to the particular pens assigned to him and unloading the feed for the cattle therein. This work is more difficult during certain periods, than others for the reason that new cattle, those of recent arrival, are fed a different diet for the first two or three weeks than they receive thereafter, and the special diet requires hand loading, whereas the regular diet is loaded direct from the grinder.

"On February 6, 1950 Daniels was seen from a distance by Jack Boxer, one of his employers, to keel over on the material which he was unloading. Upon coming up to him, Boxer thought Daniels did not look well and suggested that he go home, which Daniels did some thirty minutes later. Daniels called on a local doctor who hospitalized him immediately. Eight days later he was released but was rehospitalized in May. He died on July 6, 1950, as the result of a cardio-vascular condition, which the surviving widow alleges to be the result of his employment.

"The Referee is of the opinion and so finds that no incident in claimant's employment can be considered as an accidental injury within the meaning of the Workmen's Compensation Act. That if decedent's death can in any way be associated with his employment it would be that hard work over an indefinite period of time had hastened his collapse. Such a situation is not compensable under the Colorado Occupational Disease Disability Act."

The Commission's action was reversed by the District Court.

In reversing the District Court and ordering reinstatement of the Commission's award the Supreme Court

HELD: "It is elementary in compensation cases, as in other actions, that the burden of proof is upon the party asserting the claim. It was the duty of claimant to show that the death of her husband was the proximate result of an accident arising out of and in the course of his employment. * * *

"In the instant case there was no evidence before the Commission of an accidental injury in the course of decedent's employment."

Judgment is reversed.

HECKMAN v. WARREN

124 Colo. 497
238 P. (2nd) 854

Index No. 421

Judgment Affirmed

En Banc

Opinion by Alter, J.

On the morning of November 24, 1948, Heckman, an employee of the Company, was instructed to drive one of its motor trucks from Sterling to Denver, the truck having theretofore been loaded by other Company employees. Before starting to Denver Heckman inspected the truck and the load thereon and determined therefrom that they were in proper condition for transportation. When a short distance from Atwood, Heckman first noticed smoke rising between the cab and the bed of the truck. He stopped the truck and emptied his fire extinguisher on a tarpaulin which was on fire and wedged between the cab and the bed of the truck, and which he discovered was resting on the manifold and within three to six inches of the gas tank on the truck. After an unsuccessful attempt to extinguish the fire and remove the tarpaulin, he drove the truck into plaintiff's filling station and stopped within a short distance of the gasoline pumps and the buildings thereon and asked plaintiff for a bucket of water, which, having been obtained and thrown on the tarpaulin, did not extinguish the fire. Then Heckman moved the truck within three or four feet of the pumps on said premises in order that it might be reached by a hose which plaintiff provided, and with water therefrom the fire was brought under control. Plaintiff and Heckman then attempted to remove the tarpaulin, and, while plaintiff was pulling on a rope that had been inserted through a hole in the tarpaulin, it ripped, causing plaintiff to slip and fall from the bed of the truck and his leg was broken.

It is the position of counsel for defendants, first, that Warren, under the evidence here, became a volunteer at the time of rendering assistance in extinguishing the fire, and, second, that he was an emergency employee under the provisions of the Workmen's Compensation Act, and in neither event was entitled to maintain this action.

In its affirmance the Supreme Court

HELD: "One who voluntarily assumes to act as the servant of another cannot recover for personal injuries as a servant, although requested to act by a servant of the master, but the rule is otherwise where the volunteer has an interest in the work.

"If the Cudahy Company charged Heckman with the duty of delivering the truck and the load in Denver, and if it appears that an emergency existed which required assistance for Heckman to perform the duties with which he was charged, he then had implied authority to call on plaintiff to assist him, and the latter thereby became an emergency employee to the Company, which then assumed toward him the same obligation as it owed to any other of its employees in the same category; that is, to any employee whose employment was casual not in its usual course of business. Such emergency employee is by statute excluded from the provisions of our Workmen's Compensation Act."

GATES RUBBER CO. v. TICE

124 Colo. 595
239 P. (2nd) 611

I. C. No. 886863 — Index No. 422

En Banc

Opinion by Holland, J.

For twenty-three years claimant had been employed in respondent employer's "Reclaim Department." Old rubber is processed by being placed in a "digester" where it is very finely ground and blown to a bin where it is held until diverted to a "pressure cooker" and thence to a tank of water for washing.

Claimant's duties were confined to the operation of these two machines.

The company doctor first informed claimant that the cause of his complaints was silicosis and that he should file a claim for compensation benefits which claimant did on October 1, 1949 after having left work

on April 12, 1949. Respondent employer denied liability on October 18, 1949.

Thereafter when the company doctor changed his diagnosis claimant was granted leave nunc pro tunc to amend his claim to show the cause of his disability as being due to irritation of the lung resulting from the inhalation of sulphur and its compounds, chlorine and its compounds and toxic hydrocarbons.

The Commission's award in favor of claimant for permanent total disability was sustained in the District Court. In the Supreme Court respondent objected that in the amendment claimant alleged a new cause of action which was not filed within the time required by the statute but sixty days from the date of disablement; also that claimant's condition was not presumed to be the result of exposure connected with his employment as there is no evidence of atmospheric conditions in the place of employment.

In affirming, the Supreme Court

HELD: "Although now objected to as being filed too late, without further discussion, we say that the objection is not well taken because the original filing was made within the sixty-day statutory requirement; and since the employer requested and obtained a continuance at the time the amendment was made and proceeded to trial without raising the objection, that the objection was waived; and in addition thereto, the undisputed facts show that the claimant was misled in the filing of the original claim on the basis of silicosis because of reliance upon information given him by the employer's physician which now acts as an estoppel against the employer.

"Contrary to the statement of counsel for employer, the findings of the Commission on sufficient evidence are conclusive on this court with the exception of subsection (g) of section 4 of the Act entitled 'Injurious Exposure.' The Act specifically states that the determination of the Commission under this section shall not be conclusive on either the district court or the supreme court. It is clear that the condition from which claimant is suffering was caused by exposure to the poisonous elements in his employment. It is further established by the testimony of Dr. Princi, the only expert in his field testifying, that 'the type of fibrosis from which claimant is suffering is not uncommon in the rubber reclaim industry, and it is an occupational hazard of that industry.' The weight to be accorded such testimony, * * * is a matter exclusively for the determination of the Commission.' Fox Ranch v. Garrett, 110 Colo. 323, 134 P. (2d) 1008."

STATE COMPENSATION INSURANCE FUND v. ALISHIO AND CITY OF TRINIDAD

125 Colo.....

..... P. (2nd) .....

I. C. No. 943596 — Index No. 423

Judgment Reversed

En Banc

Opinion by Jackson, C. J.

By vote of the people the City of Trinidad was authorized to construct and operate a Municipal Light and Power Plant. Pursuant thereto the City purchased the existing system and thereafter the City decided to replace certain street lights and entered into a contract with the Huggins Electric Company to do the work on "de-energized lines." Alishio, an employee of the Huggins Company, was electrocuted in the course of that work. The Huggins Company did not carry Workmen's Compensation Insurance at the time of this injury. The City carried its Compensation Insurance with the Plaintiff in Error.

The question presented is whether the State Compensation Insurance Fund was liable under Section 49 of the Workmen's Compensation Act (par. 328, Ch. 97, C. S. A. 1935). The Commission and the District Court, for separate reasons, held that the City and its Insurance Carrier were liable under Section 49 for compensation to Alishio's widow.

In reversing the Supreme Court

HELD: "Our reason for reversing the judgment of the trial court is that we can find no intent in the Legislature through the pertinent provisions of the Workmen's Compensation law to make any distinction in the classification of public employeees between those who are engaged in governmental functions and those who are engaged in the proprietary branch of a political sub-division. * * *

"As we have noted, the Workmen's Compensation law, in its opening paragraphs, defines public employees and private employees. It does not divide them into any subclassifications or divisions. * * *

"In this connection it should be noted that a municipal corporation, exercising the function of a private corporation, does not lose its distinctive municipal character * * *.

" 'It therefore follows that before the claimant here can even hope to fix liability on a public employer, as he has attempted here, he must first be in such employment as a public employee. We do not so find him. He is, by this record, in the employment and on the payroll of a private firm or corporation as a private employee.' "

Reversed and remanded with directions to dismiss.

DEINES BROTHERS, INC. vs. INDUSTRIAL COMMISSION AND HANCOCK

125 Colo. .....

..... P. (2nd) .....

I. C. No. 878411 — Index No. 424

Judgment Reversed

En Banc

Opinion by Jackson, C. J.

Claimant was employed by respondent employer as a truck driver. He alleged that on Saturday, July 2, 1949 he first noticed his eye was bothering him while eating lunch at his home. Upon his return to work he made a delivery and spent the balance of the afternoon "putting up the end of a building, putting two by fours for nailing boards on and the wind was blowing from the south and it must have blown a sliver off the board into my eye." His eye began watering and hurting and claimant repaired to his home before quitting time. Shortly thereafter he sought the attention of a doctor. He was temporarily and totally disabled until August 15, 1949.

After hearing, the Commission Referee denied the claim for the reason that claimant failed to establish that his injury resulted from an accident arising out of and in the course of his employment.

Claimant then filed a petition for review and the Industrial Commission granted a further hearing "to permit the parties to introduce further testimony." There was practically no evidence introduced at the second which had not been produced at the first hearing except that the attending physician testified that claimant had a foreign body lodged in the cornea of the right eye which he removed under local anesthesia; that said foreign body had pierced the outer three layers of the cornea which includes the very sensitive and thin epithelial layer; that he believed the foreign body to have been wood but that he was not sure and to have penetrated the eye in the way it did would have necessitated its having been driven with force.

The District Court affirmed the Commission's award for compensation benefits. In its reversal the Supreme Court

HELD: "There was no evidence to support this finding that was not before the Referee at the first hearing, when the claim was disallowed. A review of the evidence still leaves as a matter of speculation the nature of the particle in the eye, and the time, place and manner in which it goes into the eye. No incident described in the testimony fulfills Dr. Tretheway's diagnosis that the particle must have entered the eyeball with great force. This action would almost seem to illustrate the case of a presumption based upon a presumption; the first being that the particle in the eye was wood, the second that the small particle of wood must have gotten into the eye during the period of employment. In other workmen's compensation cases in this jurisdiction both the time and place of the accident have been established, or at least one or the other of those factors has been fixed, so that there has been evidence to show that the accident arose out of and in the course of the employment wherever an award has been granted. Here, there can be only inference; but where the burden of proof is on the claimant, as required by our statute, * * * mere inference will not suffice."

Reversed and remanded with directions to dismiss.

CONOVER and MEFFLEY vs. INDUSTRIAL COMMISSION AND PUDLIN

125 Colo. .....

..... P. (2nd) .....

I. C. No. 926856 Index No. 425

Judgment Affirmed

En Banc

Opinion by Moore, J.

Claimant was employed by the "Conover and Meffley Stable at Centennial Park as an exercise boy or 'hot walker'." His duties were to lead horses by means of a halter around the track after a race in order that the horses might cool down gradually. While thus engaged on August 31, 1950, with a horse named Star Villain, the horse reared and broke away. In attempting to restrain the horse claimant suffered a fractured left arm at the shoulder which temporarily and totally disabled him until January 1, 1951, upon which date he attained his maximum degree of improvement with a residual permanent partial disability of 10% loss of use of the left arm measured at the shoulder.

"We have carefully read the evidence introduced before the Referee and the findings of fact thereon, and have no hesitancy in holding that there is ample testimony to support these findings. There is but one suggestion in the argument of counsel for plaintiffs in error which justifies further comment: Plaintiff in error Meffley was the registered owner of the horse Star Villain. It is contended that there is no showing that he employed four or more persons, and since no 'partnership' was shown as between Conover and Meffley, no right to recover against either respondent was established in the absence of the existence of such a partnership."

"QUESTION TO BE DETERMINED"

"Where two or more persons are engaged in the business of training and racing horses; where they jointly operate a stable wherein are kept the horses which they separately own; and where a trainer, grooms, exercise boys and other attendants are hired to train and care for all the horses at a fixed compensation per month per employee without regard to the time spent with

any particular animal; is there established 'an association of persons' having four or more employees within the meaning of the Workmen's Compensation Act?"

"We answer the question in the affirmative. * * * It is undisputed that more than four persons were employed at the 'joint stable' either as trainer, groom, exercise boy or 'hot walker'. Under this admitted state of the record it is clear that the operation in which Conover and Meffley were engaged was sufficient to create an 'association of persons' within the statutory definition of an 'employer' under the Workmen's Compensation Act. * * * "

No. 16778

INDUSTRIAL COMMISSION & RAUSCH vs. LA FORET CAMPS

125 Colo. .....

..... P. (2nd) .....

I. C. No. 927063 Index No. 426

District Court Reversal

Commission Affirmed

En Banc

Opinion by Moore, J.

"Claimant was employed by respondent employer as a cook. On August 11, 1950 she had 300 steaks to tenderize, which is done by pounding with a special hammer-like instrument. The entire operation took about two and one-half hours. After one hour claimant's right arm began aching and the pain continued to increase until she had finished. She kept on with her work, however, despite her discomfort until August 17, 1950, when the condition of her right arm had become such that she was obliged to leave work. * * *

"Respondents contend that claimant's condition is not the result of an accidental injury because the pain developed gradually over a period of 1½ hrs. The Referee, however, is of the opinion that the condition of claimant's shoulder is the result of an accidental injury within the meaning of the Workmen's Compensation Act. It cannot be considered in the nature of an occupational disease, and it is clearly the result of an instance arising out of and within the course of her employment."

The commission adopted the findings of the referee and made an award of compensation to claimant. The employer and insurance carrier brought an action in the district court where the findings and award of the commission were vacated and set aside upon the ground that, under the undisputed evidence, claimant had not sustained an accident or an accidental injury within the meaning of the Workmen's Compensation Act.

In its reversal the Supreme Court

HELD:

"Question to be Determined

Does the undisputed evidence support the findings of the commission that the physical condition, of which claimant complained, was the result of an accidental injury within the meaning of the Workmen's Compensation Act?"

"The question is answered in the affirmative. The term 'accident' has a particular meaning when used in connection with injuries for which compensation is sought under workmen's compensation acts. Appellate courts throughout the nation are in substantial agreement in holding

that it is not necessary that there should be anything extraordinary occurring in or about the work itself, such as slipping or falling, in order to make an injury the result of an accident."

"We think the facts in the instant case were sufficient to warrant the findings and award of the Industrial Commission, and the trial court erred in setting them aside.

"The judgment accordingly is reversed and cause remanded."

MR. JUSTICE ALTER dissents.

MR. JUSTICE HOLLAND not participating.

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