TWENTY-THIRD REPORT

OF THE

Industrial Commission of Colorado

For the Period
July 1, 1952
TO
June 30, 1954

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
- Private Employment Agencies
- Safety Department
- Colorado Antidiscrimination Act

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Publication Approved by James A. Noonan, State Controller

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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 July 1, 1952 to June 30, 1954.

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

SUBSEQUENT INJURY FUND

In 1945 Section 76 of the Workmen's Compensation Act was amended to provide that where an employee had previously suffered the loss or total loss of use of a hand, arm, foot or leg or total loss of vision in one eye and as a result of a compensable accident suffered the loss or total loss of use of another hand, arm, foot or leg or vision of an eye, the second loss shall prima facie constitute permanent total disability.

The employer or insurer in such case is liable only for the scheduled payments provided for the loss of the second member and after completion of the scheduled loss the Section provides "The employee shall continue to receive compensation at his established rate until death" from the Subsequent Injury Fund.

The Subsequent Injury Fund was established by requiring the payment of $500.00 to the Fund for each compensable injury resulting in death where the deceased left no dependents.

At that time the maximum compensation rate was $14.00 per week.

To maintain a sound Subsequent Injury Fund reserves accumulated should be sufficient at any given time to pay all beneficiaries through the life expectancy of the beneficiary.

The $500.00 payment would have been adequate to build such a reserve had the rate of payment from the Subsequent Injury Fund remained at $14.00 per week, which was then the maximum weekly payment.

Subsequently the maximum payment has been increased and of the five claimants now entitled to participate in the Subsequent Injury Fund, but one is being paid at the $14.00 rate. One receives $15.60 per week; one $17.50 per week; one $21.00 per week and the fifth will be paid $22.75 per week when his scheduled payments for amputation are completed. (See initial report on the Subsequent Injury Fund elsewhere in this volume.)

Future claimants against this Fund may receive as much as $29.75 per week under the present law as against the possible $15.00 maximum when payments to the Fund were established at $500.00 for each fatal case concerned.

During the past biennium but 21 fatal cases were liable for payment into the Fund, a total of $10,500.00.

Based upon the statutory expectation of life for the cases now chargeable to the Fund $63,328.48 will be required to carry them to completion. On July 1, 1954, the balance in the Subsequent Injury Fund was $47,181.68, leaving a potential shortage of $16,146.80.

As new cases become eligible for payment from this Fund it appears that the deficit may increase more rapidly until the time may well arrive when it will be necessary to supplement this Fund by appropriation from the General Fund in order to keep faith with these injured men.

In 1953 this Commission advised the Legislature that based upon our present experience the payment for each fatal case should have been increased from $500.00 to $1,000.00 when the maximum compensation rate was increased to $28.00 per week in 1951 and that in event of an increase to a maximum of $29.75 per week the payment should be increased to $1,175.00 to insure a continuing solvent Fund.

The Commission now recommends that Section 76 be amended to provide payment to the Subsequent Injury Fund in an amount not less than $1,000.00 for each compensable fatal case in which there are no dependents.

LABOR RELATIONS

The period covered by this report saw an increase in the number of strikes but a definite decrease in the number of work days lost due to industrial disputes. Except for the carpenters and super market strikes in 1952, stoppages causing the greatest loss of work days were national in character. Colorado strikes were of relatively short duration.

There is no sure formula for avoiding work stoppages even if that condition were desirable. However, the legal requirement of a cooling-off period tends to make an interruption of employment the last resort instead of the first. The Act in effect in Colorado since 1915 has been adopted in nearly all states now.

The number of thirty-day notices of intent to change wages or working conditions received from employers and employes in this biennium is 640, or 100 more than in the previous two years. Many changes in working conditions are proposed and agreed to by labor and management on the spot.

Notices of Intent to Strike were filed in 377 of these 640 cases. These strike notices affected 5,696 employers and 89,770 employes. Sixty work stoppages occurred involving 20,492 workers and resulted in the loss of 199,994 work days. This figure is about 15 hundredths of 1% of the normal total employment.

The mediation services of the Commission are offered in all cases. Fortunately, most industrial disputes are settled by the parties involved without interruption of employment. In most of the remaining cases experienced mediators from the State or Federal government offices help to resolve the issues. In the sixty cases where this procedure was not successful, the controversy resulted in strikes.

Mediation services do not lend themselves readily to statistical analysis. No two industrial disputes are exactly alike. It is seldom that the wants of either party can be fully satisfied. The product of successful negotiation is a signed contract that is designed to more nearly fit the needs of each party, with the least sacrifice of the wants of the other. A mediator familiar with many different labor contracts makes a positive contribution to peaceful industrial relations. The services of a mediator can consist of an informative phone conversation, or the holding of several sessions of formal negotiations. Like a fire prevention bureau, its usefulness must be measured negatively. A low loss of work days indicates a considerable achievement.

Certain unfair labor practices by either management or labor are prohibited. Many such practices are discontinued by directing the attention of the participants to the laws. When, however, there is a contention as to fact or application of the law, the case is docketed for formal hearing before a Referee. Twenty-eight cases were heard and judgment rendered. One key case was appealed and a decision is now pending in District Court. Ten other complaints were withdrawn when docketed for hearing. This procedure contributes to a lower number of industrial interruptions.

Another provision of Colorado laws tending to industrial peace is the machinery for holding elections. When a difference of opinion arises as to the authority a union has to speak for a group of employes, the Commission settles the question by asking the employes themselves by secret ballot. Allegiance of a group to one union, or to another, or to none, is determined in this way with a minimum of friction.

During the biennium we have had 34 elections which established Collective Bargaining Units in 22 instances and rejected the union as Bargaining Agent in 12. Five petitions were dismissed and 5 others were withdrawn at the conferences conducted to arrange the elections. We conducted 25 referendums on the question of a union shop, 19 of which were won by the union and 6 were lost.

A study of this biennium shows that although the number of labor disputes is increasing with increased industrial activity labor-management relationship has been better than in any similar postwar period.

Each biennium is bound to show an increase of labor disputes in a growing State, expanding organization, new work processes and materials, increased fringe benefit demands, and fluctuating prices. A third party, the public, has a vital interest in the best and earliest settlement of these controversies. That party can be represented only by a government agency. In Colorado, the Industrial Commission has that important function. The fact that over 99% of the normal work days were not lost

indicates a degree of success. It must always be recognized, however, that such a procedure could not be made without the awareness of the responsibility in labor relations by both management and labor. Without their high level of good faith and common sense and their realization of the rights and duties of each other, no government agency could prevent constant industrial warfare in a free society.

THE SAFETY DEVICE AND METHODS DIVISION

The Safety Device and Methods Division of the Industrial Commission of Colorado has greatly increased its scope in the last two years.

It is slowly being accepted as a central clearing house for safety information and material, and much time goes into research and the gathering of material for all types of industry, trade organizations, insurance companies and very often for professional people.

The division is still working with motion picture equipment for use in the safety field, but not as extensively as heretofore because most organizations have purchased their own motion picture equipment, and now secure their safety films from this division. This necessitates the procurement and maintenance of a large and increasing safety Film Library.

Many safety talks have been made before organizations of all sorts, and in various parts of the State. The division has worked very closely with local Safety Councils and has taken a very active part in the formation and operation of the new Arapahoe County Safety Council.

Two Safety and Accident Prevention Conferences have been held during the biennium, the 15th and 16th annual conferences, and each year these become larger and more successful, with greater representation from industry taking a very active part.

Safety Questionnaires have been sent to Colorado industries each year and awards have been issued to all answering companies who had better frequency and severity safety records than the over-all safety figures nationwide.

Some industries have called on this department to check their plants, to point out hazards and make recommendations as to safety equipment necessary, so that their operations reflect less hazardous conditions, which in turn lends itself to better morale and considerable savings financially.

This division has been limited in its efforts because of lack of funds and it is strongly recommended that an increase in its budget be considered that it may continue a gradual expansion. Colorado is growing and we feel that it would be to the benefit of the State that the Safety Division should grow proportionately.

ANALYSIS OF INDUSTRIAL ACCIDENTS
July 1, 1952 to June 30, 1954

ANALYSIS OF ACCIDENTS BY AGE GROUPS
(All Accidents)

Under 20	6,832	— 6.37%
20-29	27,447	— 25.58%
30-39	27,860	— 25.96%
40-49	19,797	18.45%
50-59	11,103	10.35%
60-69	4,651	4.33%
70-79	540	.50%
80-89	16	.01%
Not given	9,063	8.45%
	107,309	100.00%

ACCIDENTS BY SEX AND MARITAL STATUS
(All Accidents)

Male, single	15.71%
Male, married	65.00%
Male, divorced	1.42%
Male, widowed	.62%
Male, marital status unknown	6.83%
Female, single	2.43%
Female, married	5.44%
Female, divorced	.76%
Female, widowed	.91%
Female, marital status unknown	.88%

BY CARRIER	Number of Accidents
Stock Companies	30,678
Mutual Companies	6,910
Reciprocal Companies	90
State Fund	62,473
Self Insurers	6,919
Non-insurers	239
	107,309

ANALYSIS OF ACCIDENTS BY INDUSTRY

Agriculture and livestock	1,279
Agricultural services	414
Forestry and fishing	8
Metal mining	5,702
Coal mining	1,129
Petroleum production	1,675
Quarrying	679
General construction	7,861
Heavy construction roads, dams, etc.	3,241
Special const. trades (plumbing, painting, etc.)	7,456
Food and beverage processing and manufacturing	5,616
Packing house	2,622
Grain and feed mills	779
Apparel and textile manufacturing	343
Lumber production, timber products	1,523
Furniture and finished wood products, mill work	968
Paper and paper products	421
Printing and publishing	897
Chemical and allied products	1,486
Petroleum refining	355
Rubber products	1,685
Leather products	380
Stone, glass, clay and allied products	1,860
Iron and steel and their products	7,197
Transportation equipment	417
Non-ferrous metal products	1,634
Electrical machinery manufacturing	515
Other machinery manufacturing	2,701
Motor vehicles and equipment (trailers)	889
Miscellaneous manufacturing industries	721
Street car, bus and railroad transportation	122
Trucking and warehousing	3,816
Taxi and truck transportation	163
Transportation services	325
Communications	325
Utilities (electric and gas)	1,482
Air transportation	518
Pipeline transportation	10
Water, sanitary and irrigation systems	193
Wholesale trade	4,694
Lumber and building materials dealers	1,503
Retail general merchandise	1,770
Retail food and liquor stores	2,837
Retail automotive	383
Retail apparel	282
Retail miscellaneous (drugs, hardware, etc.)	2,290
Eating and drinking places	2,158
Retail filling stations	405
Banks, real estate, insurance, etc.	705
Hotels, camps, rooming houses	1,522
Personal services, laundries, cleaning and dyeing, barber and beauty shops, etc.	800
Business services — advertising, auditing, radio broadcasting, cleaning and other office and building services	329
Employment services, vocational schools	19

Automotive repair service, parking lots, etc.	4,656
Miscellaneous repair and hand trades	974
Motion picture productions and shows	244
Amusements	627
Medical and health services	1,608
Education, including libraries and museums	2,016
Professional, religious and charitable services	449
Labor, fraternal, political and trade associations	212
Private households	37
Public agencies, including police and fire, highway and sanitation, military, correctional, judicial and legislative departments	4,256
Public agencies, including administrative engineering, health, taxing, municipal utilities and recreational	3,118
Non-classified	5
	107,309

COMPENSABLE ACCIDENTS CLASSIFIED BY TYPE OF ACCIDENT

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

Burns, shock, poisoning, etc.	741
Occupational	63
Fall on same level	915
Fall on different level	1,418
Slip	695
Struck by	2,845
Caught in, under or between	2,297
Struck against	1,338
Strain by pushing, pulling, lifting	2,787
Other or not specified	79
	13,178

COMPENSABLE ACCIDENTS CLASSIFIED BY CAUSE—UNSAFE ACT

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

Improperly guarded agencies	540
Defective or broken equipment or material	528
Hazardous procedure by employee	1,251
Unsafe personal factor, including lack of skill or physical defects such as sight, etc.	119
Improper illumination or ventilation	22
Failure to use protective devices or unsafe apparel	122
Unsafe physical or mechanical conditions or arrangements chargeable to employer	1,326
Insufficient data or unclassified	262
Act of another person	522
Ordinary accident, no unusual conditions classed as unpreventable	8,486
	13,178

COMPENSABLE ACCIDENTS CLASSIFIED BY CAUSATIVE AGENCY

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

Machines	1,958
Hand tools	622
Acids, gases, chemicals and poisoning substances	177
Gases, chemicals, molten and hot metal and other substances causing burns	338
Dusts	22
Lead poison	12
Working surfaces	1,911
Vehicles	1,079
Animals, insects, etc.	207
Conditions—not material objects	537
Electric torch	9
Electric hand tools	11
Pneumatic tools	51
Agencies unknown	70
All other agencies	6,174
	13,178

COMPENSABLE ACCIDENTS CLASSIFIED BY OCCUPATION

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

Agricultural workers	224
Livestock, poultry workers, apiarist	93
Florist, gardener, greenhouse workers	67
Trappers, hunters, fish hatchery employees	15
Metal miners (including trainmen, motormen, timbermen, etc.)	633
Coal miners (including trainmen, motormen, timbermen, etc.)	284
Assayers, smelter and ore mill employees	54
Oil production workers	376
Quarry Workers	41
Carpenters and general construction	1,049
Construction workers (including road, dam, heavy construction)	267
Plumbers, plasterers, electricians, painters, all special construction trades	701
Surveyors, civil engineers	19
Bakery, grain milling, beverage, dairy, creamery, sugar and all food manufacturing workers	515
Packing house employees	294
Milliners, seamstresses, tailors	13
Tractor and large power machine operators	110
Loggers, saw mill workers	374
Cabinet makers, box factory, lumber yard, furniture and other wood product workers	111
Printers, typesetters, book binders, engravers, reporters	74
Chemical workers, explosive manufacturing employees	27
Oil refinery workers	14
Tire makers, repairmen, and all other rubber products manufacturing workers	91
Shoemaker and repairmen and other leather workers	8
Brick maker, glass blowers, lens grinders, kiln workers	59
Steel workers, boiler makers, blacksmith, machinists, foundry workers and iron and steel product manufacturing machine operators	874
Butchers, meat cutters (not in packing houses)	91
Assemblers, all others listed as "factory workers"	339
Warehousemen, packers, graders	213
Salespersons, floorwalkers, newsboys, tradespeople	227
Traveling salesmen, canvassers, solicitors, buyers	87
Wholesale, retail dealers, NEC, office managers	77
Managers, NEC	11
Officers of corporations, unions, fraternal, trade and professional organizations	35
Inspectors	36
Installers, appliances and machinery	47
Irrigation workers	29
Laborers	912
Machine operators, NEC	177
Welders	120
Ice house workers, including manufacturing and storing	30
Service station attendants	100
Stock room and parts men	65
Cooks, waiters, dishwashers, all kitchen help, soda dispensers	489
Druggists	4
Weighmasters	5
Bartenders	29
Office clerks, cashiers, auditors, messenger boys, stenographers	150
Shipping and receiving clerks	60
Hotel employees NEC	69
Road and highway maintenance men	167
Sewing machine operators	1
Laundry, cleaning and dyeing plant employees	70
Station agents, baggage men, traffic supervisors, transportation workers	21
Steam shovel and crane operators	74
Firemen (not fire department), stokers and stationary engineers	57
Chauffeurs, taxi drivers	792
Dock workers, loaders, route salesmen, driving laundry, bakery, etc., trucks	426
Airplane pilots, air stewardesses, airport attendants	30
Fruit and vegetable packers, graders and other produce workers	42
Linemen	87
Telephone and other electrical equipment installers, power plant workers	82
Teachers, librarians, coaches	77
Janitors, guards, building maintenance men, watchmen, yardmen	340
Solicitors and welfare workers	9
Telephone and telegraph operators	9
Barbers, beauty shop operators, undertakers	6
Servants and private home employees	9
Agents, insurance, advertising, collectors, adjusters, etc.	16
Garage mechanics, car greasers, and washers	408

Upholsterers, photographers, jewelers and miscellaneous hand trades	19
Motion picture machine operators, actors, dancers	26
Recreational workers, NEC, athletes, life guards, pin setters	48
Dentists, doctors, nurses	167
Chemical engineers, civil and other technical engineers	16
Police and firemen, municipal and state employees NEC	316
Teamsters	7
Unknown or unclassified	67
	13,178

BOILER INSPECTION DIVISION

This Division administers, under the supervision of the Industrial Commission, the Boiler Inspection Law, which provides for the regular and systematic inspection of all steam pressure boilers now installed or under construction, in Colorado, except those located in private residences.

The amended law, H. B. No. 34, provides a new basis of determining fees and for an increase in inspection fees for steel boilers, as follows: $2.50 for cast iron heating boilers; $5.00 for inspection of all steam boilers not exceeding 50 sq. ft. of heating surface, $10.00 for boilers exceeding 50 sq. ft. of heating surface up to 1,000 sq. ft. and $20.00 for boiler exceeding 1,000 sq. ft. of heating surface.

It also provides authority to the Commission to commission as special inspectors, boiler inspectors in the employ of qualified insurance companies. Such inspectors receive no salary from the State. They are required to inspect all boilers insured by their respective companies and to report to the Boiler Inspection Division on the condition of boilers inspected within 30 days following each internal boiler inspection. A certificate of inspection is issued by the Division to the owner or user at a flat fee of $2.00.

A plan has been initiated to mark all boilers in the State for permanent identification with a State Serial Number, preceded by the letters "COLO," such numbers to be assigned by the Division. Between April 15, 1954 and June 30, 1954, 990 boilers were so marked on internal inspection and recorded by the Division.

BOILER INSPECTION DIVISION

Boiler Inspections—July 1, 1952 to July 1, 1954

	Ed. G. Griswold	Geo. J. Heber	A. H. Lance	
July, 1952	134	109	74	317
August, 1952	138	155	153	446
September, 1952	134	58*	27*	219
October, 1952	168	71*	105	344
November, 1952	79	41*	56	176
December, 1952	43*	20*	62	125
January, 1953	93	60*	135	288
February, 1953	96	94	23*	213
March, 1953	102*	81*	63	246
April, 1953	147	104	128	379
May, 1953	164	111	90	365
June, 1953	161	119	84	364
	1,459	1,023	1,000	3,482

July, 1953	179	75*	97	351
August, 1953	159	139	94	392
September, 1953	150	123	118	391
October, 1953	52*	105	122	279
November, 1953	67	69*	147	283
December, 1953	79	138	78	295
January, 1954	105	89*	65	259
February, 1954	19*	5*	51*	75
March, 1954	5*	2*	13*	20
April, 1954	64*	55*	72*	191
May, 1954	60	63	70	193
June, 1954	102	41*	59	202
	1,041	904	986	2,931
Total for Biennium	2,500	1,927	1,986	6,413
Insurance Co. Inspections, April 15, 1954 - June 30, 1954				446
Grand Total, State and Insurance Company Inspections				6,859

* Indicates lost time due to illness, vacation, training new inspectors, etc.

Boiler Inspection Division

RECEIPTS

July, 1952	$ 1,592.50	July, 1953	$ 1,199.00
August, 1952	1,317.50	August, 1953	1,335.00
September, 1952	1,022.50	September, 1953	1,097.50
October, 1952	1,157.50	October, 1953	1,092.50
November, 1952	697.50	November, 1953	1,400.00
December, 1952	540.05	December, 1953	905.00
January, 1953	1,037.55	January, 1954	400.00
February, 1953	902.50	February, 1954	1,622.50
March, 1953	680.29	March, 1954	510.00
April, 1953	1,470.15	April, 1954	423.00
May, 1953	757.50	May, 1954	957.00
June, 1953	1,802.50	June, 1954	1,142.50
	$12,978.04		$12,084.00
Total Receipts for Biennium			$25,062.04

8 Boilers @ $20.00	$ 160.00	
119 Boilers @ 10.00	1,190.00	
3095 Boilers @ 5.00	15,475.00	
3158 Boilers @ 2.50	7,895.00	
170 Boilers @ 2.00	340.00	
1 Boiler @ 1.50*	1.50	
	$25,061.50	
Interest on Registered Warrants	.54	
		$25,062.04

* Fee pro-rated under bankruptcy.

Registered school and county warrants held in payment of fees .....

Inspections made—fees not yet collected:

14 inspections @ $20.00	$280.00
20 inspections @ 10.00	200.00
31 inspections @ 5.00	155.00
63 inspections @ 2.50	157.50
45 inspections @ 2.00	90.00
	$882.50

For 253 inspections at State institutions no fees were collected.

6,413 reports on conditions of boilers were mailed to owner or user of boilers, and 6,413 invoices were mailed to boiler operators. 6,413 Certificates of Inspection were issued during the biennium, upon payment of proper fees.

DIVISION OF FACTORY INSPECTION

During the past biennium this Division has conducted inspections to the full extent permitted by its limited staff of one chief inspector, two field inspectors and one clerk.

In 1938 we reported that Colorado had 1,454 industrial plants. 1953 reports indicate that Colorado has more than 27,000 such plants and there has been a large increase in the number of hotels, places of public assemblage, and public school buildings, all of which are required by law to be inspected annually.

Under these circumstances this Division makes no apology for its failure to maintain the inspection schedule contemplated by law nor can it accept responsibility for any disaster which may occur as a result of non-inspection of any premises.

With the limited staff provided it will continue to render to the State of Colorado the maximum service possible.

A breakdown of inspections made during the past two years with the number of persons affected follows:

ANNUAL REPORT OF INSPECTIONS
July, 1952 through June, 1953

	Number of Inspections	Number of Male Employes	Number of Female Employes	Total No. Pupils
Auto Industry:				
Service and Sales	247	2,575	182	
Food:				
Bakeries	22	198	101	
Beverages	14	621	30	
Canning, Preserving, Processing	8	254	394	
Creameries, Dairy Products	38	421	137	
Sugar Refining	1	235	4	
Foundries and Iron Works	7	136	9	
Hotels	195	1,044	1,364	
Ice and Cold Storage	5	19	9	
Laundries, Cleaning and Pressing	75	212	559	
Lumber:				
Lumber and Building Material	76	850	64	
Logging and Saw Mills	16	186	1	
Machine Shops	14	239	63	
Manufacturing:				
Machinery Mfg.	5	522	45	
Miscellaneous Mfg.	79	1,098	529	
Steel and Metal Products	19	806	341	
Meat Packing and Processing	9	129	73	
Mills and Elevators	68	497	70	
Oil Industry	....	....	....	
Printing and Publishing	41	499	186	
Public Buildings	29	367	342	
Public Utilities:				
Communications	44	494	1,364	
Electric Light, Gas and Power	25	293	27	
Railroads (Shops)	40	1,094	32	
Trucking	7	133	10	
Water Works	4	32	2	
Sanitoria	8	34	148	
Schools	490	1,479	2,787	67,403
State and County Shops	6	105	2	
State Institutions	....	....	....	
Stores—All Retail	204	1,939	1,257	
Theatres and Amusements	68	362	206	
Totals	1,864	16,873	10,338	67,403

ANNUAL REPORT OF INSPECTIONS
July, 1953 through June, 1954

	Number of Inspections	Number of Male Employes	Number of Female Employes	Total No. Pupils
Auto Industry:				
Service and Sales	373	2,952	252	
Food:				
Bakeries	28	94	66	
Beverages	16	90	6	
Canning, Preserving, Processing	32	611	474	
Creameries, Dairy Products	25	226	67	
Sugar Refining	2	375	4	
Foundries and Iron Works	4	138	....	
Hotels	166	266	477	
Ice and Cold Storage	5	29	6	
Laundries, Cleaning and Pressing	89	182	467	
Lumber:				
Lumber and Building Material	114	736	55	
Logging and Saw Mills	22	486	2	
Machine Shops	30	207	14	
Manufacturing:				
Machinery Mfg.	4	48	6	
Miscellaneous Mfg.	20	238	180	
Steel and Metal Products	16	1,317	421	
Meat Packing and Processing	8	41	4	
Mills and Elevators	216	844	60	
Oil Industry	5	128	6	
Printing and Publishing	56	495	186	
Public Buildings	41	1,081	553	
Public Utilities:				
Communications	44	172	753	
Electric Light, Gas and Power	41	471	72	
Railroads (Shops)	27	501	2	
Trucking	4	54	9	
Water Works	....	....	....	
Sanitoria	5	22	130	
Schools	829	1,937	3,883	106,602
State and County Shops	24	430	63	
State Institutions	....	....	....	
Stores—All Retail	212	1,281	985	
Theatres and Amusements	69	204	267	
Totals	2,527	15,656	9,470	106,602

EMPLOYMENT AGENCY DIVISION

PRIVATE EMPLOYMENT AGENCIES

A marked expansion in the private employment agency business in Colorado is indicated in the number of new agencies established during the biennial period covered by this report and the general activity of the industry. Statistics relating to this subject and collection of fees are contained elsewhere in this report.

Agencies reported a total of 62,329 registrations with their agencies during the last fiscal year, and placement of 29,754 unemployed persons in temporary and permanent positions. These figures include placement of agricultural workers.

With the increase in agencies, enforcement problems have increased. A total of 406 complaints against agencies were handled by this division by office conferences, through correspondence, or by telephone. Adjustments are usually made by the agencies along the lines suggested by the Commission through this division, even when the complaint may involve a matter not clearly covered by law as a violation.

The Rocky Mountain Association of Private Employment Services, an association of fee-charging employment agencies, adopted a code of ethics during the period, setting standards of practice relating to relations with employers and applicants. Its members have been cooperative with the Commission in working out a fair basis for adjustment of complaints, against its members.

Some of the complaints involved such matters as "sending applicants to non-existent jobs and making no reimbursement for expenses entailed by applicants; charging excessive fees for placement of laborers, artisans and domestics, and retaining under an assignment of wages, more than the amount assigned by the employee.

A substantial increase in the number of licenses issued private employment agencies and the amount of fees collected is shown in the tabulation below for this biennial period. Fees collected were deposited with the State Revenue Department for credit to the General Fund.

	Licenses Issued	Fees Collected
July 1, 1952 to July 1, 1953	66	$2,850.00
July 1, 1953 to July 1, 1954	75	3,160.00
Totals	141	$6,010.00
Comparative fees, last biennium		4,485.00
Increase in collections over previous biennial period		$1,525.00

In our last report, we reported issuance of 47 licenses for each fiscal year, indicating the stable status of the industry. At the close of that period, 45 agencies remained in active operation. Forty-seven more licenses were issued during this biennial period above the total of 94 issued during the last biennial period.

Activity in the employment agency business included a great deal of buying and selling of agencies, and the establishment of new agencies at Brush, Greeley, Pueblo, Denver, Arvada, Aurora, Lakewood and Englewood. The following break-down in totals, shows number of renewals, changes in ownership, and new agencies:

July 1, 1952 to July 1, 1953		July 1, 1953 to July 1, 1954	
No. Active Agencies	45	No. Active Agencies	58
Licenses Renewed	41	Licenses Renewed	43
New Ownership	4	New Ownership	15
Total Renewals	45	Total Renewals	58
New Agencies	21	New Agencies	17
Total	66*	Total	75

* Eight agencies went out of business during the year July 1, 1952 to July 1, 1953—seven due to business failure; one was abandoned by owner because of ill health.

THEATRICAL EMPLOYMENT AGENCIES

The following Theatrical Employment Agency licenses were issued and 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:

July 1, 1952 to July 1, 1953—5	Theatrical Agency Licenses @ $100.00 each	$ 500.00
July 1, 1953 to July 1, 1954—5	Theatrical Agency Licenses @ $100.00 each	$ 500.00
	Total for Biennium	$1,000.00

MINIMUM WAGE, HOUR AND CHILD LABOR DIVISION

This Division investigates establishments employing women and children for the purpose of checking compliance with the regulations of Minimum Wage Orders, the Women's Eight Hour Law, and the State Child Labor Law, and to assist employers in the interpretation of the regulations. Investigations have been confined to those areas and those industries where there appeared to be the greatest need. A total of 5,095 calls has been made in 27 different cities (or towns) including Denver, on routine, on complaint, and for the purpose of reinspection, as follows:

Industry	Total Calls	Investigations	Employees Women	Employees Minors
Retail Trades	3,005	1,509	5,202	708
Beauty Service	258	116	241	....
Public Housekeeping	1,430	1,096	5,626	106
Laundry	149	120	1,908	3
Mfg. and Wholesale	66	62	461	....
Miscellaneous (Child Labor)	187	175	....	295
Total	5,095	3,078	13,438	1,112

350 complaints were registered with the office during this period. 228 of them were investigated at the place of business, 84

were settled or disposed of through the office either by conferences or by corespondence, 34 were dropped or withdrawn, 2 were referred to the Wage Claim Division, and 2 are pending. The number of complaints classified according to industry and type, is shown below:

Industry		Type of Complaint	
Retail Trades	67	Overtime	214
Beauty Service	9	Minimum Wage	66
Public Housekeeping	239	Hours	10
Laundry	11	Child Labor	34
Mfg. & Wholesale	12	Miscellaneous	26
Misc. (Child Labor)	12		
Total	350	Total	350

The regulations most frequently violated are the posting and record regulations of the Wage Orders. Only 58% of the establishments investigated were found to have the Wage Order posted, and 73% of them were keeping records as required.

Where violations of the minimum wage or overtime pay provision of the Wage Order or the Women's Eight Hour Law are found, back wages due employees are collected. A comparison of the amount paid in make-up pay during this biennium with the amount paid during two previous biennia is shown below:

	July 1, 1948 to July 1, 1950	July 1, 1950 to July 1, 1952	July 1, 1952 to July 1, 1954
Retail Trades	$1,178.55	$ 2,148.18	$1,417.03
Beauty Service	16.35	.....	221.30
Public Housekeeping	3,018.59	7,717.14	6,835.28
Laundry	634.68	479.55	615.61
Mfg. and Wholesale	197.88	1,210.72	131.34
Total	$5,046.05	$11,555.59	$9,220.56

The Women's Eight Hour Law prohibits employment of women for more than 8 hours during any 24 hours of any one calendar day in manufacturing, mechanical, mercantile establishments, hotels, restaurants and laundries. However, a 1947 amendment to the law permits overtime in case of emergencies or in case of processing seasonal agricultural products, provided time and one-half the employee's regular hourly rate is paid for all time worked in excess of eight hours in a calendar day, and provided the employer has first secured a relaxation permit from the Industrial Commission.

The number of relaxation permits that have been issued for employers of the various industries covered by the law for the past three biennial periods is given below:

	July 1, 1948 to July 1, 1950	July 1, 1950 to July 1, 1952	July 1, 1952 to July 1, 1954
Manufacturing	155	238	199
Mechanical	30	30	5
Mercantile	369	344	327
Hotels	41	36	34
Restaurants	495	235	236
Laundries	75	70	79
Total	1,165	953	880

Failure to secure the relaxation permit before allowing the overtime in emergencies and permitting employees classed as executives to work overtime, are the violations most frequently found.

The 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 has first been placed on file in the establishment an age and school certificate.

There have been fewer children legally employed in industry than during the last biennium, the differential being 2,407 for minors 16 years of age and over, and only 60 for children 14 and 15 years of age.

Each year the Industrial Commission agrees to cooperate with the U. S. Department of Labor in making employment and age certificates available for those minors who wish to be employed by establishments that are subject to the Fair Labor Standards Act and to report monthly to the Bureau of Labor Standards data from all duplicate certificates received from issuing officers.

The table below gives the number of certificates issued to minors for the various age groups, including those for minors 16 years of age and over who are not covered by the state law. The figures are based on the number of duplicate certificates received from issuing officers.

Period	Under 14 yrs.	14 & 15 years	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
July 1, 1952 to July 1, 1954	560	4,714	5,030	10,304

Failure to have children secure the employment certificate and permitting children under 16 years of age to work after 8 p. m., are the violations most frequently found.

WAGE CLAIM DIVISION

The Wage Claim Division is an agency for collecting unpaid wages due employees, and, in cases of disputed facts, acts as a Mediator between the parties. The Division has been successful during the past biennium in collecting $61,844.99 in back wages without the expense of litigation or other expense to either party.

Procedure is informal and may be conducted by telephone contact, correspondence or informal conference. During the period July 1, 1933 - July 1, 1954 the department has been instrumental in collecting a total of $692,407.24.

The following tables give a concise resume of the results secured by this Division:

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
July 1, 1952 to July 1, 1954	61,844.99
Total	$692,407.24

Collections, by month, during the period of July 1, 1952 to July 1, 1954:

Month	Total Claims Filed	Total Claims Collected	Amount of Money Collected
July 1952	44	38	$ 2,766.67
August 1952	75	39	2,097.18
September 1952	35	37	3,251.05
October 1952	41	48	3,011.79
November 1952	32	34	3,352.76
December 1952	47	34	2,539.32
January 1953	48	33	1,807.41
February 1953	37	33	2,382.20
March 1953	38	33	2,042.19
April 1953	54	43	2,445.92
May 1953	37	32	2,369.82
June 1953	37	31	2,034.88
July 1953	44	34	1,446.50
August 1953	53	29	2,672.63
September 1953	46	39	2,661.52
October 1953	52	37	2,869.10
November 1953	32	31	3,332.78
December 1953	31	28	1,731.66
January 1954	33	33	2,757.11
February 1954	48	21	3,147.03
March, 1954	42	24	3,880.20
April 1954	45	31	2,088.05
May 1954	32	23	1,301.29
June 1954	61	35	3,855.93
Total			$61,844.99

ANTI-DISCRIMINATION DIVISION

The Anti-Discrimination Division of the Industrial Commission of Colorado was created by the Colorado Anti-Discrimination Act of 1951 for the purpose of eliminating racial and religious prejudices among the various groups of Colorado by education and to make real to all of the citizens of the State the American guarantee of equal employment opportunities regardless of race, creed, color, national origin, or ancestry.

Very briefly, the law says that no person, otherwise qualified, shall be denied employment, membership in a labor organization, or the services of an employment agency solely because of his membership in any group. Persons who feel that they have been discriminated against may file a complaint with the Industrial Commission. After a complaint has been filed, the Director of F.E.P. makes an investigation to determine whether or not the relator is qualified and also whether or not there is probable grounds for complaint. If the complaint seems to be well-grounded, an effort is made to settle it by persuasion and conciliation. If the complaint is not well-grounded, it is dismissed All proceedings are strictly confidential.

The major part of the work of the Division is the carrying out of educational programs aimed at the elimination of discrimination in employment. The Governor's Human Relations Commission, a seven-member advisory commission, prepare and plan such programs which are then presented to the Industrial Commission by the Director of F.E.P. for approval.

During the period July 1, 1952 to June 30, 1954, this office has received and processed twenty-three complaints of alleged discriminatory and unfair employment practices. Fourteen complaints were against private employers, six against public employers, two against labor unions, and one against an employment agency.

After consultation with both the Relators and the Respondents, nine complaints were withdrawn by the Relators; and after investigation, eleven complaints were dismissed because probable cause for complaint did not exist. One complaint resulted in the employment of the Relator. Two complaints are pending.

In addition to processing the foregoing complaints, this office has engaged in the following educational activities:

1. One hundred forty-seven speeches were delivered in eighty-two Colorado communities to a total of 14,691 persons. The audiences comprised high school and college students, service and civic clubs, church groups, and minority group organizations.
2. Participated in forty-eight conferences of local, state, and national organizations whose principal objectives are to improve the relationship between the various racial, religious, and ethnic groups of the State; and whose work aid in improving employment opportunities for minority persons.
3. Thirty-one radio programs were produced and broadcast from various radio stations throughout the State to inform the public of the provisions of the Anti-Discrimination Act of 1951.
4. All Colorado radio stations have been continuously supplied with spot announcements on the subject of fair employment practices, and twenty-one radio stations have used them more or less regularly.
5. Six television stations are using spot slides with voice-over announcements.

6. Five radio stations have broadcast a series of thirteen weekly 15-minute transcribed human relations programs.

7. Three hundred seventeen copies of a report of the activities of this office from August 1, 1951 to December 31, 1952 were distributed to public officials, legislators, libraries, private organizations, and individuals.

8. Bus cards have been displayed continuously in all Denver, Colorado Springs, and Pueblo busses.

9. **A Guide and Index to Better Human Relations with Emphasis on Fair Employment Practices** was compiled and published in September, 1952. The Classification System used in the **Guide and Index** is so designed that anyone can locate a great deal of good reference material upon almost any phase of human relations. A Master Copy of the **Guide and Index** is kept up to date in this office. Eight hundred forty-five copies of the **Guide and Index** have been distributed to high school, college, and public libraries; and supplied to individuals upon request.

10. Five hundred copies of the Anti-Discrimination Act of 1951 were distributed to business firms, labor unions, libraries, and individuals upon request.

11. 14,040 four page leaflets, "Colorado's F.E.P. Law," were distributed throughout the State by forty-eight trade, labor, civic, and professional associations.

12. 15,310 copies of "Employment on Merit in Colorado," a pamphlet illustrated with actual photographs of minority persons engaged in non-traditional occupations in Colorado, an interpretation of the Anti-Discrimination Act in 16 questions and answers, and information about the services and resources of the F. E. P. Office were published and distributed by mail to all private employers, public employers, labor unions, employment agencies, newspapers, high school and college libraries.

13. Two thousand miscellaneous pamphlets dealing with human relations and fair employment practices were placed in high school, college, and public libraries.

14. Four motion picture films were shown sixty-four times to a total of 3,631 persons. Prints of these films are owned by the Anti-Discrimination Division and are lent to schools and organizations without charge.

15. Authorization has been granted for the production of a 16 mm. color sound motion picture for use in telling the story of F. E. P. in Colorado. At this writing the scenario, set designs, and selection of the principal actors have been approved. The film is aimed primarily at senior high school and college student audiences and has already been scheduled for showing in fifty-two schools throughout the State. The film will be ready for showing early in September and may be borrowed by any Colorado organizations.

16. The Auti-Discrimination Division of the Industrial Commission of Colorado, the Commission itself, and the Governor's Human Relations Commission are grateful to the Colorado newspapers, radio stations, and television stations for the generous amount of space and time devoted to the improvement of the relationships between the various racial, religious, and nationality groups in Colorado. They are also grateful to the Transit companies for displaying our cards in their busses without charge.

WORKMEN'S COMPENSATION CLAIM DIVISION

During the two-year period covered by this report, this Division received 107,309 reports of accidental injuries and supervised payment of compensation in 12,556 cases in which liability was admitted without hearing. During the period the Commission entered 1,116 awards and orders of which 430 orders were for lump sum settlement and denied 47 applications for lump sum settlement. The Referees of the Commission entered 2,794 awards and orders and conducted 194 hearing sessions in 57 towns and cities outside Denver at which 1,493 compensation claims 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. 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 docket accommodations and traveling appropriations will permit. In addition, the Referees conducted hearings on all cases in which Complaints or Unfair Labor Practices were filed under the Labor Peace Act. Under this Act they also conducted numerous pre-election conferences and many of the elections to determine Collective Bargaining Unit and All-Union Shop questions.

SUMMARY OF ORDERS AND AWARDS

From August 1, 1915 to June 30, 1954

	Aug. 1, 1915 to June 30, 1952		July 1, 1952 to June 30, 1954		TOTAL Aug. 1, 1915 to June 30, 1954	
	Commission	Referees	Commission	Referees	Commission	Referees
Compensation:						
Fatal—Granted	1,062	3,589	3	32	1,065	3,621
—Denied	269	754	..	20	269	774
Non-Fatal—Granted	3,299	27,794	1	576	3,300	28,370
—Denied	939	7,846	5	596	944	8,442
Re-hearings:						
Fatal—Granted	136	104	2	1	138	105
—Denied	334	53	..	..	334	53
Non-Fatal—Granted	1,967	2,483	154	2	2,121	2,485
—Denied	2,084	695	37	1	2,121	696
Lump Sums:						
Fatal—Granted	1,011	..	42	..	1,053	..
—Denied	819	1	20	..	839	1
Non-Fatal—Granted	4,338	..	398	..	4,736	..
—Denied	1,527	..	27	..	1,554	..
Facial Disfigurement:						
Granted	117	1,064	..	61	117	1,125
Denied	14	137	..	10	14	147
All other orders and awards	4,963	11,499	427	1,495	5,390	12,994
	22,879	56,019	1,116	2,794	23,995	58,813

SUMMARY OF ORDERS AND AWARDS

July 1, 1952 to June 30, 1954

	Commission	Referees
Compensation:		
Fatal—Granted	3	32
—Denied	..	20
Non-Fatal—Granted	1	576
—Denied	5	596
Hospital or Medical Expenses—Granted	..	96
—Denied	..	7
Facial Disfigurement—Granted	..	61
—Denied	..	10
Re-hearings:		
Fatal—Granted	2	1
—Denied	..	..
Non-Fatal—Granted	154	2
—Denied	37	1
Lump Sums:		
Fatal—Granted	42	..
—Denied	20	1
Non-Fatal—Granted	398	..
—Denied	27	..
Medical only	..	86
Orders determining dependency	..	36
Miscellaneous orders	16	79
Show Cause orders	1	77
Continuance orders	2	45
Orders vacated	7	11
Orders to pay to subsequent injury fund	..	23
Cases dismissed	4	51
Orders directing claimant to accept surgery or treatment	..	2
Orders determining extent of permanent disability	2	387
Orders reversed	4	2
Compensation reduced due to change in condition	2	3
Compensation increased	4	18
Orders closing cases	..	16
Orders suspended or cancelled	4	2
Orders affirmed	226	12
Orders corrected	7	21
Orders amended	4	18
Third party settlement approved by order	..	2
Hearings cancelled by order	..	8
Orders approving compensation or medical paid	1	20
Orders approving admissions	..	120
Orders creating trust funds	3	34
Orders granting trust fund withdrawals	101	..
Orders denying trust fund withdrawals	4	..
Orders ruling fatal cases non-compensable	..	4
Orders assessing penalty against insurance company	..	15
Orders terminating compensation	..	22
Orders fixing termination of disability	3	125
Transcripts issued	15	..
Orders directing payment from subsequent injury fund	2	1
Orders approving compromise	8	4
Orders directing carrier to offer surgery or treatment	..	14
Orders granting penalty for safety rule violation	1	2
Orders denying penalty for safety rule violation	..	10
Orders allowing attorneys' fees	6	39
Orders re-instated	..	3
Orders finding no permanent disability due to accident	..	68
Granted penalty failure to report	..	8
Orders determining wage rate	..	4
	1,116	2,794

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, 1954	517	1,370

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, 1954	52,888

COMPENSABLE ACCIDENTS CLASSIFIED BY EXTENT OF INJURY

Temporary total	12,350	Permanent partial (working unit)	665
Temporary partial	355	Permanent total	29
Permanent partial (amputation)	589	Facial	69
Permanent partial (loss of use of)	1,540	Fatal	210

COMPENSABLE ACCIDENTS CLASSIFIED BY NATURE OF INJURY

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

Unclassified	236	Dislocation	274
Amputation and enucleation	520	Foreign object	142
Asphyxiation, including drowning	23	Fractures	2,956
Shock, electrical	19	Hemorrhage	5
Shock, other than electrical	5	Infection	53
Loss of consciousness from heat	6	Poisoning	18
Loss of consciousness from blow	7	Laceration	1,475
Loss of consciousness from heart attack	18	Puncture	167
Burns	576	Rupture (not hernia)	141
Frozen	6	Sprain	1,657
Irritation	64	Strain	2,159
Contusion	2,219	Occupational	63
Exposure	7	Internal	39
Concussion	69		13,178
Crushing	254		

COMPENSABLE ACCIDENTS CLASSIFIED BY LOCATION OF INJURY

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

Not given	43	Thumb	337
Eye	247	Fingers	1,404
Ear	36	Thumb and fingers	42
Skull	69	Hand and arm	64
Scalp	39	Upper leg	251
Brain	62	Knee	641
Head	195	Lower leg	584
Forehead	46	Ankle	644
Eyelids	6	Foot	919
Nose	27	Toes	456
Cheek or jaw	50	Arm and leg	54
Teeth	8	Hands and feet	9
Throat	9	Foot and leg	13
Lips and chin	21	Hand and leg	4
Neck	79	Coccyx	44
Face	163	Pelvis	86
Vertebrae	300	Heart	49
Spine	72	Lungs	64
Back	1,709	Other internal organs	89
Ribs or side	426	Abdomen, external	37
Sacrum	43	Anus, rectum	11
Hip	226	External generative organs	64
Chest	144	Hernia	925
Sternum	11	Trunk, body, general	127
Shoulder	411	Blood	21
Collar bone	52	Arteries and veins	37
Elbow	180	Skin	11
Arm	487	Groin (not hernia)	25
Wrist	397		13,178
Hand	608		

FATAL ACCIDENTS

For this two-year period, fatal accidents totaled 210 or 33 less than the 1950-52 period. In 21 cases there were no dependents, a widow only in 54, and in 86 cases there was a widow and one or more children totally dependent upon the deceased. In 7 cases there were children only. 11 claims were determined upon a partial dependency basis and in two cases the dependents were non-residents of the United States and paid one-fourth the normal amount of compensation which would have been paid to U. S. residents. 12 cases were denied and no dependency considered. 17 cases are still pending and, therefore, dependency not determined.

Of the 210 fatal accidents, 127 are being paid on admissions, 28 compensation granted by Referee or Commission order and 12 denied; 21, having no dependents, the Insurance Carrier paid $500.00 each into the Subsequent Injury Fund.

One case was declared a California case and another a New Mexico case and one was a third party settlement.

The industry showing the worst record was Construction, with 37 fatal accidents, 24 were in metal mining, 6 coal mining, 11 agriculture, 10 saw milling, 13 oil production, 4 quarrying, 8 steel and steel products manufacturing, 9 food and beverage manufacturing and meat packing. 10 transportation, 6 communications and utilities, 14 wholesale and retail trade and 28 in public service, such as firemen, policemen, etc. The other 30 were in miscellaneous industries. The average age was 40.8 years.

TRUST FUND ACCOUNTS

The workmen's Compensation Act provides that upon remarriage of the dependent widow her right to compensation shall terminate and if there be other dependents shall survive to them.

This Commission has always believed that one of its most important functions is the protection of the rights of surviving minor dependents in such cases.

Customarily the Commission orders all or part of the money of the monthly payments deposited in trust for the benefit of the surviving minor dependents depending on the situation existing in the home.

Moneys so deposited in trust can be released only upon the written order of the Commission. These trust fund accounts are available to pay for medical or dental attention, school expenses or other contingencies in which it is to the best interest of the minor to provide funds to meet current emergencies or requirements.

Many children who might not have been able to secure higher education or special training had their rights not been so protected, have been able to do so through benefit of these trust funds.

No charge is made for handling these accounts and the funds so deposited draw interest.

On July 1, 1954 there were 361 trust accounts totaling $371,841.26, an increase of 46 accounts and $77,067.98 in the total trust fund account during the past biennium.

SUBSEQUENT INJURY FUND
February, 1949 to June, 1954

	1948-49	1949-50	1950-51	1951-52	1952-53
1st Award Feb. 1949	$243.04	$729.12	$729.12	$ 729.12	$ 729.12
2nd Award July 1950	.....	.....	.....	866.44	912.48	912.48
3rd Award April 1951	.....	.....	.....	135.20	811.20	811.20
4th Award July 1951	.....	.....	.....	.....	1,073.00	1,092.00
5th Award June 18, 1954 — No payments made to date					

RESERVE ACCOUNT, BASED ON EXPECTATION OF LIFE

	As of Date First Eligible	As of 7-1-54
1st Award	$14,188.72	$11,684.40
2nd Award	9,591.40	7,716.80
3rd Award	11,957.09	10,432.03
4th Award	10,352.16	* 1,023.00
5th Award	.....	32,472.25
		$63,328.48

* Claimant died 4-1-53—widow will receive compensation until January 4, 1955 so that reserve is reduced as shown.

Cash reserve as of July 1, 1954 was $47,181.68, making a potential shortage of $16,146.80.

121 cases paid in	$60,500.00
Total paid to claimants	13,318.32
Balance	$47,181.68

OCCUPATIONAL DISEASE DISABILITY CASES

From July 1, 1952 to June 30, 1954, 361 cases were reported under the Occupational Disease Disability Act. Of these, 259 were due to dermatitis, 27 to silicosis, 20 to lead poisoning and 55 to miscellaneous ailments including irritation of the lungs, mouth, nose and throat; infection of eyes, lungs, and nose; X-ray damage; heart ailment due to acid fumes and gases; abdominal pain due to fumes from molten brass; diabetes due to chrome plating; radial neuritis, and other toxic poisonings.

In 54 cases compensation was paid for temporary disability; two cases were fatal—one resulted from lead poisoning, the other from silicosis; there were seven permanent total cases of silicosis; many cases were granted medical expenses only since they continued to work; 33 cases were denied, either because of failure to file a claim within the time allowed by law, or because of failure

to file at all; a number of cases were denied because the disability was non-compensable under the Colorado Act. Some cases are still pending and will be disposed of during the next period.

By industry: Miscellaneous manufacturing industries produced approximately 38 per cent of all the cases; iron and steel foundries 8 per cent; metal mining and milling 8 per cent; restaurants 7 per cent; special construction work 5 per cent; printing 5 per cent; other industries affected were general and heavy construction, bakeries, coal mining, oil drilling and refining, brass foundries, meat packing, photography, sawmills and logging, pest control, sugar refining, and garages.

Common agencies causing disability were chemicals, 20 per cent, dust 19 per cent, oils, 19 per cent, soap and detergents 11 per cent, lead 7 per cent, gases 5 per cent, chrome, toxics, and miscellaneous agencies 19 per cent.

By occupation, the per cent of cases in which compensation was paid were as follows: 20 per cent were employed in miscellaneous manufacturing, 15 per cent were restaurant workers, 10.5 per cent foundry workers, 9 per cent metal miners, 7 per cent battery manufacturing employees, 4.5 per cent construction workers, 3.3 per cent printers, 3.3 per cent garage mechanics, and 3.3 per cent oil refinery workers.

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
1940-1949	13,877,680.59	6,583,964.59	20,596,380.74	41,058,025.92
1950	1,781,438.00	768,018.00	2,842,613.00	5,392,069.00
1951	2,390,698.00	675,264.00	3,752,990.00	6,818,952.00
1952	2,595,026.00	934,945.00	3,658,071.00	7,188,042.00
Totals	$40,234,927.92	$17,536,894.29	$49,001,527.34	$106,773,349.55

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
1940-1949	5,183,534.00	2,433,041.00	11,823,381.33	19,439,956.33
1950	826,115.00	310,020.00	1,979,221.00	3,115,356.00
1951	1,145,160.00	331,371.00	2,339,126.00	3,815,657.00
1952	1,357,959.00	438,992.00	2,845,778.00	4,642,729.00
Totals	$19,089,016.55	$ 7,023,827.75	$29,888,977.05	$ 56,001,821.35

STATE COMPENSATION INSURANCE FUND

The State Compensation Insurance Fund is Colorado's most unique and one of its most successful departments. The Fund began business with no appropriation and has continued business without one. The Fund has never called upon the State for financial assistance and in fact has been a financial asset to the State. Since the Fund operates entirely without tax support, it must gain policy holders by outstanding service. Its income is derived from policies sold to private industry, business, the State and its political sub-divisions. The Fund pays rent to the State. It also pays all operational expenses out of earned funds. It is a source of revenue rather than a burden to the State of Colorado. Total operating expenses are limited by statute to 10% of the previous year's premiums written.

The initial rate reduction amounting to 30% of manual rates and the dividends paid by the Fund during the past years represent a large amount of money which, because it was kept in Colorado has been put back into business operations of individual policy holders who are among the State's heaviest taxpayers.

The Fund hires no salesmen and the Manager and his staff must give service vastly superior to that of any other insurance company because only through this service are policies sold.

Applications for policies are processed rapidly, claims investigated and adjusted immediately, correspondence answered promptly, contacts with policy holders and physicians followed through with efficiency and accuracy in order that individuals suffering from accidents may receive immediate and adequate medical attention and to those eligible, compensation benefits. This service has been tremendously increased by the installation of a modern machine division equipped with an efficient and well trained staff.

The Manager, the field personnel, as well as the office staff must be in close contact constantly with the public and its policy holders to clear up possible misunderstandings and to serve its insured. The financial statement which follows proves how effectively this service has been performed.

STATE COMPENSATION INSURANCE FUND

Sept. 23, 1954

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, 1952 and

ending June 30, 1954. 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.

STATE COMPENSATION INSURANCE FUND

Income and Disbursements

	Jan. 1, 1952 to Dec. 31, 1952	Jan. 1, 1953 to Dec. 31, 1953	Jan. 1, 1954 to June 30, 1954
INCOME			
Premiums Written	$3,658,071.10	$4,086,366.87	$2,532,878.34
Interest Received	192,802.44	225,845.24	119,488.04
Sale and Redemption of Bonds	295,500.00	310,000.00	254,588.11
Registered Warrants	521.00	1.50	.....
Collection of Premiums Previously Written Off	9.00	615.58	.....
Unclaimed Warrants	.....	147.02	.....
Miscellaneous	15,826.96	19,605.70	8,177.96
	$4,162,730.50	$4,642,581.91	$2,915,132.45
Cash on Hand.....Beginning	482,195.01	260,433.27	382,239.63
Premiums Outstanding Beginning	16,610.78	174,134.30	81,781.50
	$4,661,536.29	$5,077,149.48	$3,379,153.58
DISBURSEMENTS			
Compensation and Medical Benefits Paid	$2,826,687.02	$3,205,472.95	$1,676,838.98
Premiums Written Off	.....	.....	10,328.26
Dividends to Policy Holders	472,440.00	559,785.00	242,682.00
Operating Expenses	323,639.19	356,018.98	195,974.81
Investments:			
Bonds	603,949.51	491,851.42	133,000.00
Warrants	253.00	.....	.....
	$4,226,968.72	$4,613,128.35	$2,258,824.05
Cash on Hand.....Ending	260,433.27	382,239.63	858,654.58
Premiums Outstanding.....Ending	174,134.30	81,781.50	261,674.95
	$4,661,536.29	$5,077,149.48	$3,379,153.58

COLORADO INDUSTRIAL COMMISSION
DEPARTMENT OF EMPLOYMENT SECURITY

REPORT TO THE
COLORADO INDUSTRIAL COMMISSION
July, 1952 - June, 1954

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 1952 through June 1954, the economy of the State suffered an abrupt fluctuation from a very high level of activity to a condition that certainly could not be called a recession, but which evidenced looser labor markets and more unemployment than in several years. In all phases of Unemployment Insurance work, the Department of Employment Security handled much larger work loads during the last year of the period than during the first year. In the biennium, the Industrial Commission received one hundred seventy-seven appeals from Department decisions, and disposed of one hundred seventy-one of these appeals, either by decision or by permitting withdrawal of the case. One hundred forty-six decisions were rendered, of which thirty-five were in favor of the appellant and one hundred four sustained the decision of the Department. Seven decisions modified the original decision of the Department, but not in such degree as to constitute a reversal of decision. These figures constitute a sixty percent increase of appeals over the number filed in the preceding biennium.

The following regulations were revised or rescinded by the Commission:

Regulation No. 17—Payment of Benefits to Interstate Claimants (Revised April 23, 1953).

Regulation No. 19—Partial Benefits (Revised April 6, 1953).

Regulation No. 33——Partial Allowances for Veterans (Rescinded April 6, 1953).

In addition, Rule No. 1, "Remuneration Payable In Any Medium Other Than Cash," was revised on May 11, 1953.

Under Section 5(b) of the Employment Security Act, the Industrial Commission is required to determine whether any work stoppage is due to a strike, and if so, what categories of workers are involved. The Department then determines the claimant's responsibility in connection with his employment. During the two year period covered by this report the Commission was called upon to determine the nature of nineteen work stoppages. In all nineteen cases, the work stoppages were held to be strikes.

There were two requests for review of decisions affirming the existence of strikes; both requests were filed by unions. In one case, the Commission reversed its original decision; in the other, it reaffirmed the original finding.

As was mentioned above, the level of economic activity in Colorado reached a peak in many respects during the biennium covered by this report, and slackened off noticeably during the last year. One of the most precise indicators of such activity is obtained by comparison of numbers of workers covered by the Employment Security Act. In the fiscal year 1951-1952, the average monthly figure of covered employment was 229,065; in the 1952-1953 fiscal year, the monthly average was 236,061

covered workers; in the 1953-1954 fiscal year, the monthly average reached only 232,077 workers. This decrease in covered employment during the last year is less than two percent, and would not be considered noteworthy except that it is the first decrease to have occurred in Colorado since the end of World War II. Even during the recession of 1949-1950, there was no reduction of covered employment in this State.

As might be expected, the record of non-agricultural placements made by the Department of Employment Security shows a decrease in the last year as dwindling job opportunities made placements more difficult. In fiscal year 1951-1952 the Department made 70,174 non-agricultural placements; fiscal year 1952-1953 showed a record of 80,857 such placements; fiscal year 1953-1954 reached a total of only 65,557 placements. This significant decrease in placements is not an indication of widespread unemployment as much as evidence of a reduction of turnover; workers who had steady jobs held on to them more tenaciously than for several years.

There was, however, more unemployment during the last half of the biennium than in the immediate past, and unemployment compensation claims received by the Department rose sharply. During the fiscal year 1951-1952, the average number of benefit payments to unemployment insurance claimants was 1,056 per week; in the 1952-1953 fiscal year the average number of payments was 1,298 per week; during fiscal year 1953-1954 the average was 3,418 payments per week. Although this level of unemployment is not considered an indication of serious difficulty in the State's economy, it is higher than at any time in the last four years. Money paid in unemployment compensation benefits shows an even more spectacular rise in the past year, as this figure is affected by statutory increases in maximum benefits and higher average wage rates, as well as increased unemployment. In fiscal 1951-1952, the Department paid $1,215,799.00 in benefits to unemployed workers; in the fiscal year 1952-1953 it paid $1,548,628.00 in benefits; in 1953-1954, a total of $4,926,524.00 was paid. The latter figure is the largest amount ever paid in one year to unemployment insurance claimants in Colorado since the inception of benefit payments in 1939.

COLORADO SUPREME COURT DECISIONS

TABLE OF CASES

BENNETT'S RESTAURANT, INCORPORATED, vs. INDUSTRIAL COMMISSION, et al

127 Colo. 271
256 P. 2d 891

File No. 5160

Opinion by Stone, C. J.

Index No. A

The Union filed its complaint before the Industrial Commission alleging that respondent restaurant violated Section 6 (1) (a) (c) of the Labor Peace Act in that it discharged eight named employees because of, and to discourage their activities in, the Union.

After hearing before a Referee complaint was ordered dismissed. On appeal the Commission was of the opinion that as to 4 of the 8 witnesses respondent was discriminatory and discharged them in violation of the Labor Peace Act (supra).

Accordingly, the Commission vacated the Referee's order and ordered that respondent forthwith offer re-employment to the said 4 employees and reimburse each of them for any financial loss suffered by the discharge.

The District Court affirmed the Commission.

In affirming, the Supreme Court then

HELD: "There was credible and competent evidence before the Commission of the following facts, inter alia: Some ten days before the discharge of the waitresses, a union organizer began an attempt to unionize respondent's restaurant. He gave a few of the girls cards to come down to union meetings, went to the restaurant every day, meeting the afternoon workers in the alley after they had finished work, and in the morning when they were not so busy, talking to the breakfast waiters over a cup of coffee inside. He also talked to the head waitress, Mrs. Glaub, who told him that Bennett would never be organized, and that the Union would never organize any place in the City of Denver. The waitresses most active in favor of organization were Harding, Sparks, Benson, Deem, Rhorback and McLaughlin. Rhorback was discharged on April 10 for reason not challenged by the Union. Sparks, Deem, Benson and Harding signed up for the Union; the other girls did not, although some of them on the afternoon shift belonged to unions in other cities. These four

waitresses were active in talking to other waitresses and with the head waitress, urging unionization of the restaurant.

"It appears from the record that immediately prior to April 12, 1951, the date of the discharge of the waitresses here challenged, Mr. Bennett, the owner of the respondent corporation, discontinued breakfast service and closed the restaurant at eight-thirty instead of nine o'clock in the evening. This change terminated his need for breakfast waitresses and resulted in the discharge of those in whose behalf this proceeding was brought.

"It is apparent that the discharge of the four waitresses was not on the basis of seniority for the reason that other junior employees were retained. It was not on the basis of their being on the breakfast shift, as one of them was on the afternoon shift, while at least two other waitresses, then on the breakfast shift, were retained, and the manager testified that in making up the list of 'outstanding' employees to be retained he included all the waitresses regardless of shift. The claim that the selection was made on the basis of waitresses who were 'outstanding' might well not have been believed by the Commission, since some of those retained had been employed for less than a week, and the manager himself admitted their capability could not be determined in that time. Further, the manager gave other reasons for their being discharged, based on asserted facts not consistent with his admission that none of them had been criticized or told of the asserted objections, and further inconsistent with the testimony of the waitresses which the Commission was at liberty to accept in place of the self-contradictory testimony of the manager. In the light of such a record, and the testimony that the waitresses discharged were those and only those who had signed up with the Union, we think by the elimination of all other reasonable grounds for discharge, the Commission could conclude with reasonable certainty that the true reason for discharging these waitresses was their union activities, and that the purpose of it was to discourage the unionization of the restaurant. It appears from the testimony that this purpose was accomplished.

"It appearing that there was credible and competent evidence to support the findings of the Commission, its award and the judgment of the trial court must be and is affirmed."
Justice Alter and Justice Clark dissent.
Justice Holland does not participate.

JOURNEYMAN BARBERS, HAIRDRESSERS, Etc. LOCAL UNION No. 205 vs. INDUSTRIAL COMMISSION

..... Colo. .....
..... P. (2d) .....

File No. 5183
Index B

Opinion by Moore, J.

Glen E. Volzke filed a verified complaint before the Commission in which he alleged, in substance, that for nineteen years he was owner and operator of a Union barber shop in Denver, and that on or about May 1, 1951, the Union submitted to him a new contract requiring him, as well as his employees, to become a member of the Union. He refused to sign the new contract so long as it contained this requirement, whereupon the Union withdrew approval of his shop by ordering the Union card withdrawn. Volzke further alleged that the withdrawal of the Union Shop card was in violation of the provisions of the Labor Peace Act, and would result in irreparable damage, and that his employees, as members of the Union, were obligated under the constitution of their organization to refuse to work if the Union Shop card were withdrawn.

Upon an ex parte hearing June 21, 1951, the Commission restrained the Union from removing the card pending final determination of the matter before the Commission.

The case was heard by a Referee on July 10, 1951, who held that the Union had a right to remove the Union Shop card from complainant's place of business if, by so doing, an illegal strike were not precipitated; further that to require the operator of the barber shop to become a limited or non-active member of his employees' Union, was discriminatory and in violation of the cardinal principles of collective bargaining, and that said requirement was in violation of Section 6 (1) (b) of the Labor Peace Act.

The Referee ordered that part of the proffered contract deleted and re-submitted, with which order the Union failed to comply and an action was instituted in the District Court for the purpose of compelling compliance.

Questions to be determined

FIRST: Under the facts hereinabove set forth, does the Union have the right, based on Volzke's contract to conform to any and all rules adopted by the Union, to withdraw the Shop Card upon his refusal to agree to a rule which is opposed to the public policy of the State of Colorado as declared by the Legislature?

This question is answered in the negative.

SECOND: Under the pertinent provision of the Colorado statutes governing labor relations, and the uncontradicted facts hereinabove set forth, does the act of the Union in withdrawing the Shop Card from Volzke's place of business violate the public policy of the State of Colorado in labor relations as declared by the legislature?

This question is answered in the affirmative for three reasons:

1. The statute provides that "no labor dispute shall arise from the refusal of an employer to join a Union or to cease work in his own business."
2. The statute provides that it is unfair labor practice for an employer to contribute financial support to a labor organization.
3. The membership offered him was sharply limited. Upon this phase of the case we can agree with the findings of the Commission that, to require the owner or operator to become a limited member of his employees' Union, is discriminatory and in violation of the cardinal principles of collective bargaining.

Judgment affirmed.

UNITED MINE WORKERS and COMMISSION vs. SUNLIGHT COAL COMPANY

..... Colo. .....
..... P. (2d) .....

File No. 5602
Index No. C

Opinion by Stone, C. J.

The United Mine Workers filed a complaint before the Commission alleging that the Sunlight Coal Company discharged certain of its employees because of, and to discourage their activity in the union, contrary to Section 6 (1) (c) of the Labor Peace Act.

The Commission found that during the month of January, 1953, the Union attempted to organize the miners employed by the respondents.

At a meeting on January 16, 1953, seven men were present and agreed to attend a union meeting two days later for the purpose of joining the local union. Although the men had agreed to join the union they did not actually do so until January 20. On that date the union representative was advised by telephone that all of the men who had promised to join the union, except one, had been fired. Thereafter the union's effort to have the discharged men rehired was fruitless.

At that time the Sunlight Coal Company was a partnership. It employed fourteen men upon an hourly or salary basis. On January 23 the State Coal Mine Inspection Department cancelled the papers of two of the partners and Cochrance and, since the middle of February, the mine has operated under the supervision of the third partner and but three men were employed. Prior to January 19 one of the partners had made the statement that the mine could not operate under the union restrictions and would have to shut down and the other two had indicated that they were not in favor of operating with a union contract. The Commission concluded that the Sunlight Coal Company attempted to change its method of operation in order to discharge certain of its employees because of their union activities. The Commission also found that no collective bargaining unit had been determined by election and that respondent was under no obligation to bargain with the United Mine Workers or any other organization for a contract. The employer had no right under the law to cause the discharge of the employees because of their union activities.

The Commission ordered the Sunlight Coal Company and its three partners to cease and desist at all future times in discriminating against their employees because of union affiliation or activity and to tender the discharged men reinstatement and pay a certain amount to certain individuals for lost wages.

On appeal, the District Court vacated the Commission's order on the grounds that:

1. The Sunlight Mine did not regularly engage the services of eight or more employees, as required by the Act; that the Commission had made no finding on the jurisdiction of this requirement except that at the time the dispute arose fourteen men were employed; and that there was no finding of the regular employment within the jurisdictional phase of the Act.
2. The employer has since the middle of February, 1953, reduced its operations to such an extent that only three men are employed at the mine and that the order of the Commission would compel the employer to operate in a manner that would be contrary to the business judgment of the operator with a totalitarian result of confiscation contrary to the fundamental law of the State of Colorado.
3. The record shows that in January, 1953, the State Coal Mine Inspection Department of Colorado cancelled the papers of two of the partners and one other. If the order for reinstatement of six men were enforced there would be a violation of our Colorado Mining Law. Courts will not require a person to obey one law which in so doing would constitute the violation of another.
4. The Industrial Commission was without jurisdiction and the findings of fact were an unwarranted assumption of jurisdiction and, therefore, null and void.
5. The copartnership has not been waived nor is it estopped from showing lack of jurisdiction for the first time on review.

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

HELD: "The phrase 'regularly employed' is not defined in the Act and 'regularly' as used in the statute, refers to the question whether the occurrence is or is not in an established mode or plan in the operation of business and has no reference to the constancy of the occurrence. The word 'regularly,' is not synonymous with constantly or continuously. The work may be intermittent and yet regular.

"In the instant case, we think a similar meaning must be given to the phrase 'regularly engages.' It is apparent that at the time with which we are here concerned, the employer was engaging the services of eight and more employees; that it had been so engaging that many employees for nearly two months; that the period for which more than eight employees would continue to be engaged was indefinite and depended upon business requirements; that the employment was not casual; that all these employees were regularly engaged in the operation of the business and that the business required that number of men in carrying on its operations during that period. We think the trial court erred in finding that the Commission did not have jurisdiction.

"The next finding of the court was that the requirement of the Commission for reinstatement of former employees, if confirmed, would compel the employer to operate in a manner that would be contrary to the business judgment of the operators, with a totalitarian result of confiscation. No such result appears from the record and the business judgment of operators must here, as always, be limited by the applicable requirements of the statutes. The very purpose of the Labor Peace Act is to restrict the business judgment of both operators and employees in the promotion of the welfare of the industry and of the public.

"The next finding is that the enforcement of the order for reinstatement of six men would result in a violation of the coal mining law, for the reason that at the time of the hearing only three men could be employed at the mine by virtue of the cancellation of the certifications of two of the partners. Such was not the situation at the time these men were discharged. Such will not be a necessary result of their being paid the amount ordered by the Commission for their wrongful discharge. The order for reinstatement does not necessarily require their continuance for any specified time in future employment. They will return to the same status which existed at the time of their discharge and subject to termination of their employment upon valid ground not contrary to the provisions of the Labor Peace Act at any time thereafter.

"Careful reading of the record is convincing that there was ample evidence to support the findings of the Commission and its order of payment and reinstatement to the employees wrongfully discharged.

"Accordingly, the judgment of the trial court is reversed and the cause remanded with instruction to enter judgment affirming the award of the Commission."

MR. JUSTICE CLARK did not participate.

INDUSTRIAL COMMISSION and MOFFIT vs. GOLDEN CYCLE CORPORATION

126 Colo. 68

246 P. (2d) 902

I. C. No. 932556 **Index No. 426**

En Banc **Commission Affirmed**

Opinion by Holland, J.

The Referee found that on October 5, 1950, claimant was employed by the respondent, Daniels Sand Company, as a truck driver. His duties

consisted solely of driving truck loads of sand from a power shovel working at the face of a sand bank to a screening and washing plant a short distance away. The entire operation was being performed on property owned and operated by respondent, Pikes Peak Fuel Company, with its own equipment augmented by two trucks with drivers, which the Daniels Sand Company agreed to furnish the Pikes Peak Fuel Company, and for which the latter agreed to pay 75c per hour for each yard of sand the vehicle was capable of handling. The contract was indefinite both as to time and amount.

On October 9, 1950, while claimant was eating his lunch in the shade of an overhanging bank, said overhang collapsed, injuring claimant to the extent that he is permanently and totally disabled. The overhang was formed by removal of sand below it by the power shovel whose arc only reached to within five feet of the top, thus leaving a projecting layer of material which dropped to the lower level at irregular intervals.

Claimant had been warned by his employer and by fellow employees of the dangerous nature of this overhang, but he deliberately and wilfully disregarded all warnings and even berated a fellow employee who refused to join him for lunch in this place of danger. Respondent contends that claimant's apparent contempt of the warnings to avoid the overhanging bank amounts to stepping aside from the course of his employment.

The Referee was of the opinion and found that claimant's conduct constitutes the violation of a safety rule rather than abandonment of employment, for the reason that warnings regarding the overhang were given while the shovel was in operation and were in all probability construed by claimant to be applicable only when the shovel was in operation; whereas this accident occurred some few minutes after the shovel had been shut down for the mid-day meal.

Maximum compensation reduced 50% for safety rule violation was awarded claimant for life.

Both the claimant and respondent appealed and the Commission affirmed the finding of the Referee. The District Court found that claimant's injury did not arise out of and within the course of his employment and ordered the Commission to vacate its award and dismiss the claim.

On appeal the Supreme Court

HELD: "The circumstances present two questions, namely, Did the injury arise out of and within the course of claimant's employment; and did claimant violate a safety rule?

"An accident arises out of the employment if it is connected with the nature, conditions, operations or incidents of the employment. * * * Doing what a man may reasonably do within a time during which he is employed and at a place where he may reasonably be at that time.

"Consequently no break in the employment is caused by the mere fact that the workman is ministering to his personal comforts or necessities, as by warming himself or seeking shelter or by leaving his work to relieve nature, or to procure a drink, refreshment, food, or fresh air, or to rest in the shade. * * * We need not discuss this point further than to say that the finding of the Referee, affirmed by the Commission, that the injury arose out of and in the course of the employment, was correct, and that defendant in error's contention that claimant had left his employment is without merit.

"The solution of the next question is more tedious. Did claimant violate a safety rule?

"With this undisputed testimony, it is clear that claimant had warning of the dangerous condition, if he needed warning at all after having observed the frequent cave-ins each day during his previous days of employment, and was made aware of the danger. There was no notice posted prohibiting workmen from going under the bank, and, indeed, such was not necessary because the danger was obvious and common sense rule of safety was in effect. While Workmen's Compensation Laws are construed liberally in favor of the workmen, they are not to be so narrowly construed as to fasten full liability upon an employer when the worker becomes careless or indifferent to his conduct while acting within his employment. The operator of a saw mill surely would not be held to liability for failure to post a notice reading, 'Keep your hands out of the buzz saw' * * *. When, as here, claimant did the thing frequently warned against for his safety, and assuming that as an ordinary prudent person, he knew the danger, then it must be said that he wilfully placed himself in danger because there was no occasion for his action to be without deliberation, and it was not the result of a sudden impulse. Claimant contends that there was no posted rule and he was not forbidden to go under the bank. The warnings, numerously given, coupled with the presumption of common sense on the part of the claimant, obviated the necessity of the posting of a safety rule concerning the existing condition.

"The judgment of the District Court reversing the award of the Commission and directing that the claim be dismissed was erroneous, and its judgment is reversed and the cause remanded with directions to sustain the award of the Commission."

INDUSTRIAL COMMISSION and CORNALI vs. CORWIN HOSPITAL
126 Colo. 358
250 P. (2d) 135

I. C. No. 908126 **Index No. 427**
En Banc **Commission Affirmed**
Opinion by Moore, J.

On October 25, 1949, claimant was stricken with poliomyelitis. At the time the disease appeared she was a nurse in the polio ward at Corwin Hospital. The polio ward was established as an isolation ward in August, 1949, and claimant was continuously on duty in that ward until she left work because of the disease. The ward was operating with insufficient nurses and those on duty were frequently required to put in extra hours and were materially overworked. During that time claimant made but infrequent trips to town and whenever she attended a moving picture show drove to a drive-in theatre rather than to expose patrons of a conventional type. Medical evidence was to the effect that, while the exact cause of polio is not known, it is conceded to be epidemic in nature. The means of transmission is likewise unknown. It is generally recognized by the profession that there is very much greater danger of polio among nurses treating the disease than average.

The Referee found that claimant's contracture of polio was the result of exposure while in the course of her duty and constituted an accidental injury arising out of and within the course of her employment. The Commission affirmed the Referee and the District Court reversed the Commission on the grounds that her condition was not the result of an accidental injury. In reversing the District Court, the Supreme Court

HELD: "It is strenuously argued by counsel for the employer and the insurance company that there was no competent evidence offered before the Industrial Commission tending to establish any disability resulting from an accident arising out of and in the course of claimant's employment. It is urged that the award of the Commission is based upon mere possibility and speculation. With these contentions we cannot agree. * * *

"Claimant was working in the ward of the hospital where polio cases were being treated; she was employed exclusively in that ward; she had been working there for two months before she contracted polio; she had extensive actual physical contact with the patients suffering from polio, administering hot packs, changing beds, bathing and feeding them; this contact was particularly close since most of the patients were helpless, paralyzed or partially paralyzed; the breath from the patients would be blown in her face; masks were worn but were of doubtful value against this type of virus infection, 'in fact no mask is made that can keep the virus out.' Nurses and doctors in contact with this disease are naturally more likely to become infected than people who are not so exposed. This fact is recognized by medical authorities as a factor and is demonstrated by the fact that complete isolation technique is required for the treatment of polio. Medical opinion is in general agreement that excessive fatigue and overwork are factors in the incidence of polio, making a person more susceptible to the disease. During the time when claimant was nursing these polio cases the hospital ward was short of help. Some of the nurses left and there was difficulty in securing others to come in and help. There was an increase in the number of patients. Claimant was working long hours, her work was strenuous, and she was very tired prior to the time she became ill. Of the four regular nurses who remained on duty in the polio ward three became ill, two, including claimant herein, definitely with polio. No specific determination ever was made as to whether the third nurse was afflicted with the disease.

"It is true that the medical evidence indicated that not too much is known, with absolute certainty, about the actual cause and transmission of polio. We think, however, that the foregoing statement of facts is amply established by the evidence, and that these facts, together with those set forth in the findings of the Referee, were sufficient to support the award of the Industrial Commission.

"Judgment of the trial court accordingly is reversed and the cause remanded with directions to reinstate the award of the Commission."

MR. CHIEF JUSTICE JACKSON and MR. JUSTICE ALTER dissent.

LLOYD NELSON vs. INDUSTRIAL COMMISSION and BURNS

I. C. No. 877407 — **Index No. 428**
En Banc — **Affirmed**

Without Written Opinion

BRANSALL vs. INDUSTRIAL COMMISSION and SWINERTON

126 Colo. 556
251 P. (2d) 935

I. C. No. 933702 — **Index No. 429**
En Banc — **Affirmed**

Opinion by Jackson, C. J.

The sole question involved is the extent of the compensable injury which resulted when claimant was struck in the mouth and on the neck by falling timbers while working in the new Denver Stockyards Stadium on October 16, 1950, at a time when workmen were changing concrete forms. He was on a scaffold when struck, and fell ten or fifteen feet. He was hospitalized with traction for a few days, then wore special neck braces or collars for some time thereafter. The insurer, under date of March 19, 1951, admitted temporary disability from October 17, 1950, to February 26, 1951, and 7½% as a working unit. At the hearing the

Referee found claimant to have permanent partial disability to the extent of 10% as a working unit. His award was affirmed by the Commission and the district court

HELD: "Two specifications of points of error are filed. 1. That the Industrial Commission and the District Court erred when both ignored the undisputed testimony of an expert witness, said testimony indicating that the claimant sustained a permanent psychoneurotic injury. (Dr. J. P. Hilton testified that claimant's permanent partial disability was 50% as a working unit.)

"2. A question of law is present where the evidence is, or the facts are, undisputed without substantial conflict.

"The first point urged appears never to have been raised either in the trial court or before the Industrial Commission. It therefore is not properly before us.

"Lest it might appear that but for this rule we would reverse the judgment, it should be added that the contention of plaintiff in error that the evidence is undisputed that claimant sustained a psychoneurological injury is not supported by the record. Reliance is placed upon the testimony of Dr. J. P. Hilton. The latter's report, Exhibit 4, based on first examinations of claimant, contained this statement: 'This man's disability is entirely orthopedic in nature and the degree of disability and length of partial disability can best be judged by Dr. Nelson.' The report of Dr. L. E. Daniels, Exhibit 2, introduced without objection, concludes with this sentence: 'There being no evidence of damage to any part of the nervous system, it is my opinion that Mr. Bransall has no disability of a neurologic character.'

"Even if the expert testimony of claimant's witness were undisputed, it would not necessarily be conclusive, on the fact-finding body.

"In addition to the injury to the face and mouth, the evidence disclosed that claimant suffered some injury to the third or fourth cervical vertebra. * * * A more comprehensive finding would have included reference to the cervical injury. Counsel acknowledged there is no duty on the Commission to make specific findings of fact after appeal from the Referee's decision. It has been so held in Prouse vs. Industrial Commission, 69 Colo. 382, 194 Pac. 625. Applying language in that case to the instant one, 'The evidence, however, in this case, is not conflicting (with respect to the injury to the cervical vertebra), the facts are disputed, and we think the Commission's decision was right, therefore the case is not remanded for more detailed finding, but we consider the evidence as if it were the findings of fact'." The judgment is affirmed.

INDUSTRIAL COMMISSION vs. DUNCAN

I. C. No. 912436 — **Index No. 430**
Per Curiam — **Affirmed**

Without Written Opinion

BILLINGS DITCH vs. COMMISSION and ALLEN

127 Colo. 69
253 P. (2d) 1058

I. C. No. 943984 — **Index No. 431**
En Banc — **Judgment Reversed**

Opinion by Clark, J.

In November, 1950, claimant, a farm laborer, was engaged with others for hire in the task of cleaning and repairing the Billings ditch. The work included the removal of certain deteriorated wooden structures

called "bulkheads," and the replacement thereof by new ones. While so engaged, on November 22, 1950, claimant suffered an injury to his back and was awarded compensation by the Commission. Respondents contended, however, that claimant was not entitled to compensation for the reason that at the time of his injury he was engaged in farm and ranch labor and, therefore, excluded from the benefits of the Workmen's Compensation Act. The Commission's Order was affirmed by the District Court. In its reversal the Supreme Court

HELD: " * * * Agriculture in general refers to any activity incident to the cultivation of land for the growing of crops, the harvesting thereof, and the care and feeding of livestock. In general, see Mushroom vs. Industrial Commission, 103 Colo., 39. It includes tillage, seeding, husbandry and all things incident to farming in the widest sense of that term. In Colorado, as in all arid Western states, irrigation of the soil for the growing of crops and pasturage is one of the important features of agriculture, and is as necessary to the growing of abundant crops as are the processes of tillage and cultivation.

"On behalf of the plaintiff it is contended that the Billings ditch is a strictly mutual ditch, owned exclusively by the individual ranchmen who derive water therefrom and who own all of the stock in the company; that it is a nonprofit organization limited in its field of operation to the use and benefit of the stockholders who own it. * * * This is not conceded on behalf of the Commission or the claimant, who contend that, under its articles of incorporation, plaintiff is set up to own and maintain the ditch, to supply water to lands adjacent thereto and to such lands as lie beyond the eastern terminus thereof, or adjacent to or near any of its branches or laterals, and particularly 'also for the purpose of furnishing water to all such persons as have or may hereafter desire to purchase the same from the owners of said ditch.'

"Under the undisputed facts of this case the conclusion is inescapable that the Billings ditch is a mutual irrigation ditch, and that the corporation is merely the vehicle by which its owners operate and manage its affairs. It was neither organized, nor is it operated for profit.

" * * * We conclude that claimant, at the time of his injury, was engaged in the performance of farm and ranch labor; that the award of the Commission should not have been made."

Judgment of the trial court is reversed, and the case remanded with directions to set aside the award of the Commission.

MR. JUSTICE ALTER and MR. JUSTICE MOORE dissent.

MR. JUSTICE HOLLAND not participating.

THE AETNA CASUALTY AND SURETY COMPANY vs. INDUSTRIAL COMMISSION and ROBERTS

127 Colo. 225

255 P. (2d) 961

I. C. No. 996959 **Index No. 432**

En Banc **Reversal Remanded**

Opinion by Holland, J.

Claimant is a resident of Denver and is employed as a paint salesman in Colorado and Wyoming, with the duties of promoting the sale of paints manufactured by his employer; to establish new dealers; and demonstrate newly developed techniques to painters. He was employed on salary and commission with an allowance for expenses for entertainment of dealers and painters to promote good will. On December 1, 1951, claimant went to Sterling, Colorado, and the pheasant hunting season being open,

he hunted alone on that day and again on Sunday with a friend. On the next day, Monday, December 3, he called on The Platte Valley Lumber Company at Sterling and made an inventory of the merchandise in its paint store in the forenoon; had a quick lunch, and in the afternoon went pheasant hunting about twenty-five miles from Sterling with a yard boss and a truck driver for the same company. About two o'clock in the afternoon, while hunting with the yard boss and the truck driver in a field, without permission of the owner, claimant was hit in the right eye by a shot from the gun of the truck driver while the latter was shooting at a pheasant. This injury terminated the hunting expedition and claimant returned to Denver, where, after medical attention, the eye was removed.

There seems to be no dispute about the facts, and the posed question is, does the evidence support the finding and award of the Commission, to the effect that at the time of the accident claimant was "performing service arising out of and in the course of his employment," and does the evidence support the award in that the injury was proximately caused by an accident within the course of his employment?

The first approach to the precise question is to determine whether the accident originated in a risk peculiar to the employment. The burden of proving this question was upon the claimant, not by attempting to establish what might have been a custom acquiesced in by his employer on other occasions, but by the facts of the present situation. The preponderance of the evidence must show that claimant was performing work connected with his job as hereinbefore outlined. It unquestionably appears that claimant was attracted to the area where he could engage in pheasant hunting for his own pleasure, because, when arriving in the area, he hunted one day alone; the next day, with a friend not at all connected with the activities of his business as a customer; and the third day, when the accident happened, he was not with the heads of the Lumber Company, but was with a yard boss and a truck driver. Even if it could be said that he was entertaining the parties with him on the hunt, it is undisputed that he provided nothing for their entertainment, no transportation, no guns, no ammunition, no hunting license, and did not provide a place to hunt, not even procuring the permission of the landowner where the accident happened, and made no expenditures whatever for the trip. He provided his own lunch and his hunting companions did likewise. There is nothing in the evidence to show that he was directed to provide a hunting trip for these particular individuals, or to participate in it, and in fact, his superiors knew nothing of his arrangement, which seemed to be one of his own selection and largely for his own pleasure. The circumstances indicate that claimant's interest in the hunting trip was to have companions, and not their entertainment. We do not believe that the elasticity of the Workmen's Compensation Act permits it to be stretched to cover the situation before us, where virtually the only supporting testimony on the question of whether claimant was injured while in the course of his employment, is his own statement to that effect. Any acquiescence in claimant's former activities of this sort by his employer, according to a letter introduced in evidence, was approval of claimant's entertainment of good customers or good prospects, and did not include the entertainment of subordinate employees such as was the case here.

Claimant exposed himself to a risk common to all who are hunting in a group, and when he knew of this hazard, as he testified, he unnecessarily increased the risk of injury and cannot recover therefor. He was exposed to this hazard on the day before and it was a hazard to which he would have been "equally exposed apart from the employment."

It is apparent that the Commission, in its attempt to find a basis for an award, was controlled largely by the fact that claimant had at other times entertained customers throughout his territory for which the employer had paid the expense; and further, found that for years claimant had hunted with the owners and employees of the Platte Valley

Lumber Company with the employer's knowedge and it had paid for such trips. This does not provide a basis for an award in the present case; because the award must be based upon the facts of the case under consideration, and not on what had happened on other occasions. To come within the classification of "course of conduct," it must be shown that such conduct is such a continuous practice as to constitute a regular course of conduct. An occasional instance, such as is the case before us, does not establish such a custom, because the proof of such a custom must be clear and convincing as to duration.

For the reasons herein indicated, the judgment is reversed and the cause remanded to the District Court with directions to return the case to the Industrial Commission with instructions that it vacate its award to claimant and dismiss the claim.

MR. CHIEF JUSTICE STONE and MR. JUSTICE MOORE dissent.

MR. JUSTICE MOORE dissenting.

There was an abundance of evidence before the Commission to support these findings. By reversal of the judgment in this cause we nullify the findings of fact made by the Commission, even though all the evidence tends directly to support those findings. We substitute our own appraisal concerning the weight of the evidence, and, from the cold printed page, overturn the conclusions of the Commission although not one word of evidence was offered by the employer or any other person in contradiction of the statements made by claimant. The refusal of our court to be governed by the findings of fact in this case is indicative of what appears to be a diminishing respect for the adjudication of facts by the trial courts and other fact finding bodies. Thus the majority opinion does violence to the elemental rule in proceeding on error, that findings of fact are to be accepted by appellate courts in the absence of a clear showing of error.

The record establishes conclusively that claimant's employer approved and encouraged the type of entertainment indulged in by claimant over a period of many years in promoting the good will of the company, and it further appears that the conduct of claimant in handling the account of the Platte Valley Lumber Company had greatly increased the business of his employer.

UNIVERSITY OF DENVER vs. NEMETH and INDUSTRIAL COMMISSION

127 Colo. 385
257 P. (2d) 423

I. C. No. 968383 **Index No. 433**
En Banc **Judgment Affirmed**

Opinion by Knauss, J.

Nemeth, alleging that he was an employee of the University of Denver, made claim for compensation benefits arising from an accidental injury, which the evidence shows was suffered while Nemeth was playing football on the University of Denver grounds. He was a student regularly enrolled in the College of Business Administration of the University. In April, 1950, while indulging in spring football practice, Nemeth suffered an injury to his back. At the time he was receiving $50.00 per month from the University for certain work in and about the tennis courts on its campus. There was deducted from this amount the sum of $10.00 per month for three meals per day, which Nemeth ate at the student cafeteria. In lieu of cash rental for housing accommodations which Nemeth occupied on the campus, he cared for the furnace and cleaned the sidewalks of these premises.

The record discloses that many other students at the University performed work in and about the stadium, field house and campus, for which they were compensated by the University. Most of these students

were paid for work on an hourly basis. Those students who qualified on account of athletic prowess were paid on a monthly basis.

The Industrial Commission held that claimant was an employee of the University and that his injury arose out of and within the course of that employment and awarded compensation accordingly. The District Court affirmed.

HELD: "In the instant case, Nemeth at the time of his injury was in the employ of the University, was upon the employer's premises, occupying himself consistently with his contract of hire in a manner pertaining to or incidental to his employment.

"If there is any evidence, whether direct or by reasonable inference, which will support the findings and award of the Commission, a reviewing court has no power to disturb it. The function of the court on review of the Commission's action is to determine whether the evidence, if believed by the Commission, is substantial, and supports the findings. * * *

"There is ample evidence in the record to sustain the findings of the Commission that the injuries sustained by Nemeth arose out of and in the course of his employment. This being so, an award of the Commission was properly affirmed by the District Court."

The judgment is affirmed.

MR. JUSTICE ALTER dissents.

PACIFIC EMPLOYER'S INSURANCE COMPANY vs. INDUSTRIAL COMMISSION and HARRIS

127 Colo. 400
257 P. (2d) 404

I. C. No. 970821 **Index No. 434**
En Banc **Judgment Reversed**

Opinion by Alter

Claimant sustained injuries in an accident arising out of and in the course of his employment on November 8, 1947 while in the employ of one of the respondent employers. The accident resulted in a ruptured intervertebral disc but no claim for compensation therefor was filed with the Industrial Commission. On January 25, 1952 claimant filed a petition to reopen his claim based on that accident. A hearing was had on February 15, 1952 and the Referee of the Commission on March 21, 1952 entered an order denying compensation because the claim was barred by the statute. The Commission held it was without jurisdiction to reopen the case or make any determination thereof. To this order or finding of the Referee no petition to review was filed by the claimant.

On June 11, 1952 claimant filed a claim for compensation alleging that he had sustained injuries from an accident occurring on May 15, 1951 which accident aggravated the injury sustained on November 8, 1947. As nearly 13 months had elapsed between the 1951 accident and the filing of the claim, Section 84 W.C.A. Par. 363, Ch. 97, C.S.A. '35 precludes recovery unless the employer paid compensation to the claimant for the disability arising out of the May 1951 accident.

Claimant was employed on an hourly basis and on previous occasions when he had been injured he was continued on the pay roll on the basis of a forty-hour week, although he habitually worked 48 or more hours per week, with overtime after 40 hours. Claimant testified that he was informed that he "would get 40 hours a week" and that he had nothing to worry about as he would receive compensation benefits. On the basis of former decisions, the Commission and District Court concluded that the payment made by respondent employer constituted the payment of compensation and was sufficient to toll the running of the statute.

HELD: "There is no evidence in the record justifying the Commission in finding and determining that the weekly wage paid claimant was compensation for any injury for which no claim had then been filed. For us to hold that claimant's testimony that when he was told by some undisclosed person that he would get his forty hours a week; or that when the Sister told him that his hospital bill would be taken care of by compensation; or that when some unknown person approached claimant at the hospital and told him not to worry, that he would be well taken care of, is competent evidence would be a travesty. It is not, in the least, strengthened by claimant's statement that he thought that it was compensation augmented by the benevolence of his employer. * * *

"In order that the payment of wages during the absence of an employee may be held to be payment of compensation under the Workmen's Compensation Act, it must be established by competent evidence or reasonable inferences to be drawn therefrom that in making these payments the employer was doing so conscious of the fact that he was making the same as compensation, and it must be received by the employee with the knowledge or reasonable grounds for assuming that the payments made to him were being made as compensation for his injuries. The payment of wages to an employee while disabled, and particularly before he has filed any claim for compensation, does not, *ipso facto* establish the payment of compensation tolling the statute of limitations provided in the Workmen's Compensation Act.

"We have read and carefully considered our opinions in *Comerford v. Carr*, 86 Colo. 590, 284 Pac. 121; *Morrow v. Industrial Commission*, 98 Colo. 348, 56 P. (2d) 35; and *Sommers v. Borgmann*, 111 Colo. 552, 144 P. (2d) 554, all of which involve the tolling of the statute of limitations in Workmen's Compensation cases and justify the assumption that the payment of wages to an employee whose injuries were incurred in an accident arising out of and in the course of his employment was sufficient in itself to establish the payment of compensation to an injured employee. We have concluded that the payment of wages under these circumstances does not of itself establish the payment of compensation and that in so holding we were in error. Insofar as these decisions of our court are in conflict with the decisions herein, they are expressly overruled.

"Considering the record, we are convinced that the Industrial Commission erred in holding that in the instant case the statute of limitations was tolled. We appreciate the fact that the Industrial Commission, as well as the District Court, followed decisions of this court which now have been expressly overruled.

INDUSTRIAL COMMISSION and KITZMILLER vs. PLAINS UTILITY CO.

127 Colo. 506
259 P. (2d) 282

I. C. No. 995404 **Index No. 435**
En Banc **Judgment Reversed**

Opinion by Justice Alter

Kitzmiller was employed by the United States Postal Service as a mail carrier on two Star Routes and received for these services the sum of $275.00 per month. In addition to his employment by the Postal Service he was employed by the Plains Company for some services at a compensation of $30.00 per month, and it was during this latter employment that he was accidently killed.

Respondents contend that claimant's widow should be compensated on the basis of her husband's $30.00 per month wage.

The Industrial Commission included the wages from both sources and compensated the widow accordingly. A Petition for Review was filed from the Referee's order in apt time. The Referee was affirmed by the Commission.

Respondents' petition for the Commission to review its own order of affirmance as required by Section 97, WCA, Paragraph 376, Chapter 97, CSA 35, was not filed with the Commission until twenty days after the Commission's first award.

On appeal, the District Court reversed the decision of the Industrial Commission.

In reversing the District Court, the Supreme Court

HELD: "It therefore follows that a compliance with the provisions of the act are essential prerequisites to the jurisdiction of the Industrial Commission and its powers, and any statutory limitations upon the exercise of the same cannot be waived, enlarged, diminished or destroyed by consent, and cannot be estopped."
* * *

"Jurisdiction of the Commission and trial court could not be waived and may be properly presented in this court for the first time, although that practice is not encouraged."
* * *

"The judgment is reversed and the cause remanded to the District Court with directions to set aside and vacate its judgment and return the file to the Industrial Commission."

RESURRECTION MINING COMPANY vs. ROBERTS

127 Colo. 559
259 P. (2d) 275

I. C. No. 965810 **Index No. 436**
En Banc **Judgment Affirmed**

Opinion by Justice Knauss

Claimant, a miner working underground, was engaged by the employer as such from July, 1941 to February, 1951. In his employment he worked in stopes, breaking ore and flushing it in chutes and, in addition thereto, did drilling and blasting in the mine. Admittedly, claimant worked in quartzite, where dust was generated from that rock, which contained free silicon dioxide.

The medical testimony was in conflict. That silicon dioxide was present in harmful quantities in the employer's mine was not seriously disputed.

The Referee and the Commission determined that claimant was permanently and totally disabled due to silicosis and complications resulting therefrom.

Counsel for plaintiff-in-error assert that since Sec. 10 (a), Chap. 163, S.L. 1945, requires that claimant must "establish" the facts of his case, the General Assembly thereby intended to impose on him a burden greater than that imposed upon a plaintiff in an ordinary civil action, or on a claimant in other claims before the Commission.

In affirming the District Court which, in turn, affirmed the Referee's order for compensation benefits, the Court

HELD: "In view of our holdings as to how the Compensation Act should be construed, we cannot believe that the General Assembly in passing the Occupational Disease Disability Act intended to place upon the claimant the duty of proving beyond

peradventure of a doubt the fact that he was suffering from silicosis. The word 'establish' means 'prove', and this claimant did to the satisfaction of the Commission."
* * *

"The record discloses that several apparently competent medical experts testified that claimant had silicosis and was totally disabled on account thereof. It is true that other physicians came to different conclusions regarding claimant's condition, but the Commission as the trier of the facts was called upon to decide the conflict, and did so, finding in favor of claimant.

"There being a conflict in the evidence, under the established rule in this jurisdiction, we are not at liberty to disturb the award and judgment. * * *

"All the witnesses agreed that some persons are more susceptible to silicosis than others. It is not disputed that the only exposure that claimant had to silicon dioxide was in employer's mine, and no attempt was made to prove otherwise. This brings the case directly within our ruling in Gates vs. Tice, 24 Colo. 595, 239 Pac. 2d 611.

"The Commission, therefore, was justified in concluding that since claimant had silicosis, he contracted it through exposure while working in employer's mine."

Judgment affirmed.

AUSTIN COMPANY vs. INDUSTRIAL COMMISSION and CRAIG

I. C. No. 1-017-897 Index No. 437

Judgment Affirmed Without Written Opinion

UNITED STATES FIDELITY AND GUARANTY CO. vs. INDUSTRIAL COMMISSION and BUGINO

..... Colo. .....

..... P. (2d) .....

I. C. No. 971651 Index No. 438

En Banc **Judgment Reversed With Directions**

Opinion by Justice Moore

The Referee concluded from the evidence that claimant's complaint of a ruptured intervertebral disc was not the result of an accidental injury arising out of and in the course of his employment but had pre-existed the alleged injury.

The Referee was reversed by the Commission which claimed further that claimant had suffered an injury to his back in an accident arising out of and in the course of his employment and ordered compensation benefits paid. The Commission's action was affirmed by the District Court.

In its reversal the Supreme Court held:

"We have announced, too often to require citation of authorities, that the district court in workmen's compensation cases, and this court on review, are bound by the *findings of fact of the commission which are SUPPORTED BY EVIDENCE.* Unless the commission first finds the evidentiary and ultimate facts, it is futile for the reviewing court to examine the record, for it cannot sit as a fact-finding body to ascertain facts from the testimony in the first instance, and it cannot on review determine whether the testimony is sufficient to establish *facts that have not been found by the commission.*"

The second requirement of Sec. 15 (b) W.C.A., Sec. 294, Ch. 97, C.S.A. '35

"by necessary implication, is that the commission find from the evidence how claimant was engaged and what happened to him at the time and place he sustained the alleged accidental injury. These are the evidentiary facts to be determined on the hearing and when the Commission finds them it should then find the ultimate fact, namely, whether at that time and place, the employee was performing services arising out of and in the course of his employment."

(Metros v. Denver Coney Island, 110 Colorado 40, 129 P. [2d] 911)

We expressly disapprove the opinions in *Picardi v. Industrial Commission* 70 Colo. 266, 199 Pac. 420; *Central Surety and Insurance Corp. v. Industrial Commission*, 94 Colo. 341, 30 P. (2d) 253; and *Industrial Commission v. Calumet Fuel Company*, 108 Colo. 133, 114 P. (2d) 297, in so far as they purport to approve findings of fact in general terms, and we establish the rule announced in *Metros v. Denver Coney Island*, supra, for the guidance of the Industrial Commission.

STEARNS-ROGER et al vs. CASTEEL and INDUSTRIAL COMMISSION

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-023-787 Index No. 439

En Banc **Judgment Affirmed**

Opinion by Moore, J.

Respondent employer was in the course of completing a contract at Grand Junction and was in need of additional steamfitters. Respondent contacted the Denver Secretary of the Union having jurisdiction over steamfitters, and requested the Union to furnish five or six steamfitters for the Grand Junction job. The Union directed claimant, together with others, to do the work.

On April 22, 1952, claimant riding as a passenger with another steamfitter, left Denver for Grand Junction to begin work for respondent employer. By use and custom and prior arrangement, respondent employer did pay the employees sent out by the Union the going scale of wage for the travel time between Denver and the job under construction, together with necessary traveling expenses. This, the employer was to do for the claimant herein.

In the course of the travel from Denver to Grand Junction, claimant and the driver of the car in which he was riding, stopped at Georgetown for lunch and while there purchased one-fifth of a quart of liquor and had several drinks. Enroute to Grand Junction the driver lost control of the car near Minturn, Colorado, and the claimant suffered multiple fractures and the loss of his right ear. Claimant was forced to abandon his journey as he was temporarily and totally disabled.

Two questions are to be determined:

1. Was claimant in the course of his employment at the time of the accident?
2. Should he be penalized for intoxication even though he was not driving the car at the time of the accident?

The Referee held the case compensable without penalty. Upon appeal by respondents, the Commission affirmed his award but reduced claimant's compensation 50% for intoxication. No petition for review was filed by respondents to the Commission's first award but claimant filed such a petition and after further consideration, the Commission reversed that part of its award reducing compensation 50%, thereby affirming the Referee. Within fifteen days from the entry of the Commission's

second award, the employer and his insurer filed a petition for review in which they not only challenged the legality of the new award restoring full compensation, but also attempted to question the legality of the findings and award with relation to liability. Upon consideration of this petition, the award of the Commission remained unchanged. Thereupon suit was instituted in District Court.

No one objected to the finding of liability made by the Commission in its first order. The employer, and insurer, were adversely affected by that finding and award. Under the statute they were required to "specify in detail the particular errors and objections" which they found therein, within fifteen days. By remaining silent, when it was their duty to speak, they consented to the finding and award. As to them, the finding of liability became final. The only portion of the award remaining open for amendment or change upon application of either of the parties, was that which was specified with particularity by claimant, namely, the 50% penalty invoked against him. Upon the hearing of claimant's petition, the Commission could consider only the single point raised by him. (London Guarantee and Accident Company vs. Sauer and Industrial Commission, 92 Colo., 565.)

> "No authority need be cited for the proposition that an intoxicated person, asleep in the rear seat of an automobile at the time of an accident, cannot be guilty of conduct proximately causing his injuries in such accident. The Commission was correct in holding that the 50% penalty provision of the statute was not applicable, and the trial court committed no error in sustaining the award in that particular.
>
> "We do not pass upon the question as to whether the injuries sustained by claimant arose out of and in the course of his employment. The trial court had no jurisdiction to pass upon that question. Its judgment is correct; accordingly under its view, as well as that of this court, the judgment must be, and is, affirmed."

INDUSTRIAL COMMISSION and DUMKE vs. PACIFIC EMPLOYERS INSURANCE COMPANY

..... Colo. .....
..... P. (2d) .....

I. C. No. 951972 **Index No. 440**
En Banc **Judgment Reversed**
Opinion by Alter, J.

Charles W. Dumke was a plumber who on February 13, 1951, was working in a cramped position in a two-foot space with heavy plumber's tools, trying to disconnect a three-inch pipe. While in a sitting position and pulling on a heavy wrench, he felt a pain in his groin and when he emerged from his working place, he found a protrusion from his rectum which was accompanied by discomfort and some pain. On the following day he consulted his physician who diagnosed his condition as hemorrhoids and recommended surgery. The Commission found the case to be compensable and respondent filed its complaint in the District Court, where upon hearing, an order was entered remanding the case to the Industrial Commission for medical testimony. The Commission referred the entire record to a proctologist who reported that while he did not think the hemorrhoids were caused by the accident as reported, he did think it was "entirely possible and quite probable that the hemorrhoids had existed for some time unknown to claimant and that the physical strain and position" of his body were responsible for the symptoms described. The District Court found no evidence that the hemorrhoids were either caused or aggravated by the accident and reversed the Commission. In its reversal, the Supreme Court

> HELD: "The only question presented here for determination is whether there was competent evidence before the Commission to support its finding that in an accident arising out of and in the course of claimant's employment, he accidently sustained injuries which aggravated a pre-existing condition entitling him to compensation and medical services under the provisions of the Workmen's Compensation Act. Claimant's evidence, supported by the medical report, was sufficient to entitle him to the Commission's Award * * *. We hold that the District Court erred in reversing the supplemental award of the Commission and ordering dismissal."

FLAKE MOTORS vs. HUSKINS and INDUSTRIAL COMMISSION

..... Colo. .....
..... P. (2d) .....

I. C. No. 1-024-301 **Index No. 441**
En Banc **Judgment Reversed With Directions**
Opinion by Knauss, J.

Flake Motors was engaged in the business of buying and selling used automobiles and for that purpose operated used car lots including one at 324 Broadway, Denver. Flake Motors contracted with G. S. Carter, doing business as Neon Maintenance Company, for the manufacture and installation of a sign on the Broadway lot bearing the lettering "Used Cars." Claimant was an employee of Carter. On May 25, 1952, claimant was injured while installing the sign Carter had contracted to make and erect for Flake Motors. Claimant filed his claim for compensation against Carter and Flake Motors asserting that they were his employers. The award of the Commission in favor of claimant was against both Carter and Flake Motors. Carter did not object to the award. Flake Motors filed appropriate petitions for review, which were denied, and in due course filed a complaint in the District Court, which affirmed the award against Flake Motors.

The sole question is whether or not Flake Motors is liable to claimant under Sec. 49 of the Workmen's Compensation Act (Sec. 328, Chapter 97, C.S.A. '35) which reads in part:

> "Any person, company or corporation operating or engaged in or conducting any business by leasing, or contracting out any part or all of the work thereof to any lessee, sub-lessee, contractor or sub-contractor, shall, irrespective of the number of employees engaged in such work, be construed to be an employer * * *."

Claimant was under the direct supervision and control of Carter who furnished claimant's tools and materials, paid his wages and determined his hours of employment. It is admitted that Flake Motors had never engaged in the sign business and that its sole business was the buying and selling of automobiles. In its reversal, the Supreme Court

> HELD: "This is not a case of dispute in the evidence. The record, without denial anywhere, discloses that the manufacture and erection of signs was no part of the business or calling pursued by plaintiffs in error, and we must conclude that Flake Motors, under the record, did not lease or contract out any part of its work."

Judgment reversed with directions to set aside the Commission's Award against Flake Motors.

UNITED STATES NATIONAL BANK, GUARDIAN OF CONAWAY vs. INDUSTRIAL COMMISSION and STATE FUND

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-040-536 — Index No. 442

and — Reversed and Remanded

I. C. No. 1-040-537 — With Instructions

En Banc

Opinion by Holland, J.

Albert D. and Ruth C. Conaway, husband and wife, and parents of two minor children, were employed by the Conaway Furnace Company, Inc., whose compensation coverage respondent State Fund insured. On May 9, 1952 both were instantly killed in an airplane accident while in the course of their employment. The United States National Bank was appointed Guardian of the persons and property of the two minor children and on their behalf, filed claim for death benefits because of the death of both the father and the mother.

The only question presented was whether the dependent children are entitled to compensation benefits because of the death of both of their parents, since each contributed of his earnings to the support of the family, and the respondent insurance carrier received premium for the coverage of both parents. The Commission on the strength of the decision of London Guarantee and Accident Company v. Industrial Commission, 78 Colo. 478, 242 Pac. 680, concluded that the claimants were totally dependent upon their father and, therefore, not dependent upon their mother. The only section of the statute involved is Sec. 331 of the Workmen's Compensation Act, Chapter 97, C.S.A. '35, to wit:

> "For the purpose of this article the following described persons shall be conclusively presumed to be wholly dependent:
>
> "(a) Wife, unless it be shown 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.
>
> "(b) Minor children of the deceased under the age of eighteen years * * *."

HELD: "Because the respondent insurance carrier, the Referee and the trial court seemed to rely upon the case of London Guarantee and Accident Company v. Industrial Commission, supra, as a basis for denial for claim for benefits to the minor children under the insurance coverage on the mother, a careful study of the opinion in that case has been occasioned. Such study reveals that loose language was employed in the opinion which has led to some likely confusion by other courts and particularly by the compilers of A.L.R. * * *."

> "A close study of the question here presented discloses that it is not a question of double dependency, but whether or not the conclusive presumption is to be recognized in two separate and different claims based upon the death of two different people, each of whom the respondent required to be insured against this eventuality. Under this statute, the Commission, or the trial court, cannot make a selection as to which parent the liability rests upon, and a determination by the Commission and the court that it rests upon the father is without any support in the statute. In Colorado, the question of dependency of a widow and minor children is purely a question of law, and the conclusive presumption contained in the statute which makes it a question of law, runs in this case to each of the claims made because of the death of both parents of the minor children. Further analyzed, the statute does not hold that they must be wholly dependent upon only one of the parents. Since, under the statute in this case, the employer being within the terms of the statute, was required to insure its employees, including the mother of claimants herein and, therefore, the insurer cannot escape liability to answer to these minor children for her death."

Judgment reversed and remanded with directions to enter award in claimant's favor.

MONTGOMERY WARD AND COMPANY vs. INDUSTRIAL COMMISSION and NELSON

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-001-624 — Index No. 443

En Banc — Judgment Affirmed

Opinion by Clark, J.

This claim is based upon an allegedly sustained injury by claimant when she fell from a defective ladder on January 17, 1952, while employed as a saleslady for the store of Montgomery Ward & Company at Durango. The first hearing was before a Referee of the Industrial Commission at Durango, when the testimony of claimant and several other witnesses was taken. At the conclusion, counsel for both claimant and employer having stated that they wished an opportunity to present medical testimony, the Referee announced a continuance of the case until further medical examination of the claimant could be made. He also directed claimant to submit herself for examination to such doctors as the employer might request. The employer designated Doctors Gunderson, Stanfield and Freed of Denver. Thereafter medical reports were submitted and the Referee requested the employer to notify him if it wished to produce any of the doctors above-mentioned for direct testimony or, "if you wish the reports made a part of the file and an appropriate order entered." The same day the Referee furnished claimant's counsel with copies of the reports and gave time to elect to cross-examine. Respondent employer stated that it wished to present the three doctors for direct testimony at a hearing to be held in Denver, while attorneys for claimant replied that they had no desire to cross-examine. Accordingly, the case was set for further hearing at Denver, at which claimant was not present nor did she appear by counsel. Dr. Freed was the only witness called by the employer and his written report, along with that of Dr. Stanfield, was marked as an Exhibit. Dr. Gunderson was not called nor was his report formally offered in evidence. The Referee found that claimant had suffered a compensable injury and awarded compensation for temporary total and permanent partial disability.

> "A study of the foregoing specifications and supporting arguments, in conjunction with the record in this case, narrows the issue practically to the contention of employer's counsel that there is no material, competent evidence in the record from which the resultant effects of claimant's accident may be determined other than the testimony of employer's witness, Dr. Freed.
>
> "It is contended that this witness testified positively that whatever disability claimant sustained was due to her having suffered a stroke and that the stroke was not induced by the accident upon which she bases her claim."

HELD: "Did the injury resulting from the fall cause the lesion to develop or did the stroke occurring while claimant was on the ladder, cause her to fall? Is the Commission bound by the oral testimony of Dr. Freed, or may it look elsewhere in this record in an attempt to reconcile the apparent conflict in evidence? Dr. Gunderson's report was not formally offered in evidence and it is contended that the Commission should not

have considered it. With this we cannot agree. Dr. Gunderson was the employer's witness. The reason that an order making his written report a part of the case was not entered, was that the employer's representatives stated to the Referee that they wished to present the doctor for oral examination at the hearing to be held in Denver. This they did not do. Claimant's counsel already had waived the cross-examination of this witness. Certainly no surprise can be claimed in the consideration of the Gunderson report by the Commission.

"Where there was sufficient competent evidence before the Commission from which deductions could be made and inference drawn which supports the findings of the Commission, the fact that there is testimony to the contrary does not justify a vacation of the findings of the Commission.

"Where the evidence is such that honest men fairly considering it might arrive at contrary conclusions, the findings of the Commission in resolution thereof are binding, not only upon the District Court, but likewise on this court upon review * * *."

From a review of the record in this case, we are unable to say that as a matter of law the findings of the Commission are based upon conjecture and mere possibility. It is our conclusion that there was ample evidence to support the Commission in its findings of liability and this finding we cannot disturb.

Judgment affirmed.

YATES vs. INDUSTRIAL COMMISSION and HUBNER CO.

..... Colo. .....

..... P. (2d) .....

I. C. No. 996036 **Index No. 444**

En Banc

Judgment Affirmed Without Written Opinion

SCHOOL DISTRICT NO. 97 vs. SCHMIDT and INDUSTRIAL COMMISSION

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-033-263 **Index No. 445**

En Banc **Judgment Affirmed**

Opinion by Stone, C. J.

Claimant was employed as custodian by the employer. By informal arrangement between a local church organization and the School Board, certain boys were to perform the duties of his employment for a few days in return for the donation of his services to the church organization to assist in stuccoing its church building. He was not a member of that church organization. While so engaged, the scaffold under claimant collapsed and he was injured.

The Referee found that the arrangement between the School Board and the church constituted a loan service within the meaning of Section 11 of the Compensation Act and that the accident arose in the course of claimant's employment while so loaned, and accordingly awarded compensation. Reversal is sought on the ground that school districts are not subject to the provisions of Section 11 of the Workmen's Compensation Act, for the reason that said section applies only to "an employer who has accepted the provisions of this Act"; that as to school districts the law is compulsory and, therefore, the district had not accepted.

HELD: "Having in mind the beneficent purposes of the Act, we see no basis for distinction as between an employee of a school district and one of a private employer and cannot find an intent to make such distinction in the statute."

DEVORE vs. INDUSTRIAL COMMISSION and STATE FUND

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-038-719 **Index No. 446**

En Banc **Judgment Affirmed**

Opinion by Stone, C. J.

It is admitted that under the statute the Award of this Commission in this case against the claimant becomes final unless a petition to review the same shall be filed within fifteen days after its entry or such further time as may be granted within said fifteen-day period. It is further admitted that no such petition to review was filed. However, claimant relies on the provisions of Section 376, Chapter 97, C.S.A. '35, which provides that "all parties in interest shall be given due notice of the entry of any Referee's order or any award of the Commission, and said period of fifteen days shall begin to run only after such notice, and the mailing of a copy of said order or award addressed to the last known address of any party in interest shall be sufficient notice." A copy of said award as shown by the record was mailed to claimant on June 4, 1953 addressed to her at 430 Edwards Street, Fort Collins, Colorado, and it is alleged in her behalf that her address on that date was the General Rose Hospital, 1050 Clermont Street, Denver, Colorado, and that consequently the notice was not addressed to her last known address.

"From the record of the testimony tendered to the trial court, it appears that 430 Edwards Street, Fort Collins, Colorado, was the home address of claimant where she lived with her husband at the time the claim was filed in her behalf and that it was still her home address where her husband then lived at the time of the notice of June 4. It was also the address given by her in her claim to the Industrial Commission, as her address on the date of injury, and as her present address.

"The only basis of contention that the Fort Collins address was not the 'last known address' of claimant is based on the tender of testimony that in December, 1952, and through the month of June, 1953, she was in the General Rose Hospital, 1050 Clermont Street, Denver, Colorado; that she returned to the home of her parents on LaForte Avenue in Fort Collins, in the month of July and then subsequently went back to the General Rose Hospital and, upon being discharged from there, returned to Fort Collins to live with her husband at an address other than 430 Edwards Street; together with the further fact that following receipt of notice of hearing upon her claim mailed to claimant at the Fort Collins address, her counsel advised the Referee that 'she is now at General Rose Hospital in Denver and a bedside hearing can be set at your convenience'; that continuance order was entered on December 19, 1952, setting the hearing on January 6, 1953, 'by agreement between the parties, to take claimant's testimony at General Rose Hospital' and that copy of such order was sent to claimant c/o General Rose Hospital, 1050 Clermont Street, Denver, Colorado." The Court

HELD: "Presumably a person's address is the place of his domicile and residence. For the purpose of receiving mail or notice, the address of a claimant is the designation of the place where delivery is desired. That place is best known to claimant and it is his duty to advise the Commission of his place of residence or other designation of place for delivery * * *. The fact that her counsel advised, for the purpose of taking her testimony, that she was then at the hospital and arranged for taking her bedside statement there, would give no knowledge or indication that the hospital was her residence or the address where it was desired that future notices should be sent. The notice sent to 430 Edwards Street, Fort Collins, was mailed to her domicile, to her residence and to her last known address appearing in the record of her claim. We must hold that due notice was given

thereby to the claimant of the award of the Commission, that such award became final in the absence of petition for review, and that the trial court properly determined that it had no jurisdiction in the action brought to vacate the order."

TRANSPORT INDEMNITY CO., et al vs. COMMISSION and BRIGGS

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-015-142 **Index No. 447**

En Banc **Judgment Affirmed Without Written Opinion**

Claim for workmen's compensation by employee for alleged injury resulting from accident in the course of his employment.

District Court affirmed the award of compensation by the Industrial Commission.

Judgment affirmed without written opinion.

THE COLORADO FUEL & IRON CORPORATION vs. COMMISSION and DRAIN

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-015-142 **Index No. 448**

En Banc **Judgment Affirmed**

Opinion by Stone, C. J.

Vernon Drain sustained a burn on his foot on February 24, 1951 in the course of his employment in the plant of respondents at Pueblo, as a result of which his foot was very tender and swollen and required daily treatment and dressing, which was given by the employer's physician. He continued to work until March 4, when he went to see his own physician, who had him immediately sent to the hospital with the diagnosis of pneumonia. He died there on March 12 and an autopsy disclosed that the cause of death was a pulmonary embolus occluding both pulmonary arteries. The autopsy was not extended to the site of the burn and did not establish the cause of the embolism. No effort was made to find it within the limitation of the body's cavity. Dr. Norman, the orthopedic surgeon who testified as an expert witness, stated that it would have to be assumed that the burns would be a causative factor of the thrombus and that it was his opinion that the burns were the cause of the thrombus. Some time previously, decedent had been treated for phlebitis and the witness stated that in his opinion the chances were that if the decedent hadn't had phlebitis and this burn had occurred he would not have had the difficulty, and that phlebitis alone could cause emboli.

Decedent left surviving a widow, and three minor children born of a prior marriage, who were living with their mother. Claim was filed on May 12, 1952, by the widow in behalf of herself and the three minor children.

Respondents contend that:

1. Decedent did not sustain an accident or injury arising out of or in the course of his employment.
2. The injury was not the proximate result of the accident.
3. The claim should have been denied for want of reasonable excuse for not filing claim within one year from date of death.

In its affirmance of an award for compensation benefits the Court

HELD: "It is further urged that there must be shown not only excuse for delay, but lack of prejudice to the employer by

reason of such delay, and that the burden of proof of lack of prejudice is on plaintiff. We think the burden of proof of such a negative is not on claimant. Nowhere in the record is there any showing of prejudice and it is not to be presumed from mere delay in filing the claim. Prejudice must be actual and must be shown to be actual.

"We think the answer given her (the wife) at the employer's social insurance department was misleading and that an ordinarily prudent person might well have misunderstood the reference therein to self-insurance. As to the rights of the minors, we think the ignorance by them and by their mother and natural guardian of the fact that death arose from accident, in view of the circumstances, might well be considered a reasonable excuse for the delay. The finding of the Commission that reasonable excuse existed for the delay was not arbitrary or an abuse of discretion.

"We need not determine whether a factual finding is necessary in case of disputed evidence on the issue of reasonable excuse and prejudice, under the rule declared in the case relied on, because here, as admitted by plaintiff in error, there was no conflict in the evidence, a finding thereon was unnecessary, and the proper legal conclusion therefrom may be determined by us.

"Finally it is urged that the findings and award are based upon showing of only a mere possibility that the accident caused the death. The record does not support that contention. * * * Dr. Norman, who testified for claimant, positively testified that it would have to be assumed that the burns would be a causative factor. * * * No evidence was tendered to dispute that testimony and it was sufficient to justify the finding of the Commission."

THE COLORADO FUEL & IRON vs. COMMISSION and REYNOLDS

..... Colo. .....

..... P. (2d) .....

I. C. No. 1-026-660 **Index No. 449**

En Banc **Judgment Affirmed in Part and Reversed in Part**

Opinion by Moore, J.

Claimant was employed by the CF&I and on February 26, 1952 while in the course of his employment, was struck on the head by a heavy object and knocked down backwards. He sustained a severe cut on his head and was taken to the company emergency hospital where the laceration in his head was sutured. Shortly after the accident claimant noticed a soreness in his back which extended down his right leg and grew steadily worse and caused him to rest two or three times between the main gate and the place of his employment. On April 22nd he went to the company dispensary and asked that his spine be X-rayed. The company doctor X-rayed his hip but not his spine, gave him penicillin hypodermically and also a quantity of pills to ease his pain. On May 16th the pain became so severe that claimant consulted his own physician who diagnosed and surgically corrected a ruptured intervertebral disc. Claimant did not return to the company doctor after his visit on April 22nd until after the surgery was performed.

The Referee found that a pre-existing degeneration of the disc at the right fifth interspace had been aggravated and that resulting surgery was made necessary by the injury, and ordered compensation for temporary total and permanent partial disability and ordered the self-insurer to pay for the services of claimant's private physician. The

Supreme Court affirmed that part of the order requiring the payment of compensation during temporary total and for permanent partial disability, but reversed that part of the order requiring the payment of claimant's private physician. It

HELD: "It is clear from the foregoing provision of the statute that if a claimant in a workmen's compensation case desires to avail himself of the services of a physician other than the one furnished by his employer, the consent of the Industrial Commission is necessary before the employer can be held liable for the expense of such services. * * *"

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