

May 2021

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### Recommended Citation

William H. Hazlitt, One Year Review Colorado Workmen's Compensation Law, 33 Dicta 37 (1956).

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## ONE YEAR REVIEW COLORADO WORKMEN'S COMPENSATION LAW

By WILLIAM H. HAZLITT of the Denver Bar

Only one decision involving workmen's compensation was handed down during the last year. That case reduces but does not eliminate uncertainty from compensation claims arising out of heart attacks, despite the Court's assertion that the law is settled. The case was *Industrial Commission et al. v. International Minerals and Chemical Corporation et al.*<sup>1</sup>

Gallegos was employed by International Minerals for one day. His job was to assist another employee in filling sacks with mica. The procedure was to place an empty sack on a scale and pull a lever which would release mica in a chute to fill the sack. No heavy work was involved. When he had weighed a few sacks, his co-worker's nephew came in and asked Gallegos to fix his car. Gallegos fixed the car and then helped push it some little distance to start it. When he returned to work, he found that his co-worker had loaded a hand truck with four sacks. Gallegos pushed the truck about thirty feet on a cement floor, dumped it, started back with the empty truck, collapsed and died of a coronary occlusion. He did not slip or have an accident of any kind. At the hearing before the Referee, the pathologist's autopsy report showing that death was a result of acute congestive heart failure and that excessive physical exertion probably induced the heart failure was placed in evidence. Gallegos' co-worker, the only eye-witness, testified that Gallegos did not have an unusual exertion on the job. There was evidence that Gallegos had a longstanding heart condition.

The Referee denied the claim because there was no history of accidental strain. This finding was vacated by the Commission which awarded compensation. The District Court set the award aside and the Supreme Court affirmed, saying it has consistently held that, in such cases, claimant must prove more than mere exertion but must establish over-exertion.

Going further, the Court commented that the evidence was undisputed that Gallegos over-exercised himself in pushing the automobile which he had repaired, an act outside the scope or course of employment. This is unfortunate and has the effect of

<sup>1</sup> C.B.A. Ad. Sh. Vol. 7, P. 498. Case No. 17712.

rendering uncertain an otherwise clearcut statement of the law. Despite the statement that over-exertion is essential to a claim for compensation for congestive heart failure, one wonders what the conclusion would have been had Gallegos remained on the job and, doing ordinary work, suffered the attack. If there had been no evidence of any exertion other than that involved in the ordinary work, might not the Court possibly have applied the rule that it applied in a previous heart case (*USF&G v. I. C.*?) "That an accident is a result, the causes of which are unexpected and unusual or that it may be also an unexpected and unusual result from ordinary causes." We are still not sure that over-exertion is a *sine qua non*.

There have been statutory changes increasing the award for burial expenses to \$350.00, the maximum death benefit to \$9,859.50, the temporary total disability benefit to \$31.50 per week, the maximum facial disfigurement award to \$1,000.00, the death payment to the "subsequent injury fund" (where there were no dependents of the deceased) to \$1,250.00, the permanent partial disability maximum to \$8,190.00, the lump sum maximum to \$9,859.50, and adopting a new mortality table. Also of considerable interest is the new Medical, Surgical and Hospital Fee Schedule which became effective August 1, 1955 and which reflects the general rise in the cost of living.—*W. H.*

96 Colo. 571.

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