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WORKMEN'S COMPENSATION

by

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I. SUBSTANTIVE LAW

New Legislation. The most significant development in Texas workmen's compensation law during the survey period was the enactment of legislation protecting claimants who have "instituted . . . any proceeding under the Texas Workmen's Compensation Act."[1] The measure prevents any employer from discharging or otherwise discriminating against any employee who has filed a claim or instituted any proceeding under the Act. Provided the employee sustains the burden of proof, any person violating the Act is liable for reasonable damages suffered by the employee as a consequence of the violation.[2] An additional provision provides for the reinstatement of the employee to his former position if unlawfully discharged under the Act.[3]

Good Cause. An essential requirement for the recovery of compensation benefits under the Act is the filing of a claim with the Industrial Accident Board within six months of the date of the injury.[4] However, "for good cause in meritorious cases,"[5] the Board may waive compliance with the six-month filing deadline. Although the term "good cause" is not defined by statute, it has been held by the Texas Supreme Court to be "whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised . . . ."[6] Consequently the Board has and apparently will continue to be very generous in finding good cause.

In at least four Texas cases during the past year the good cause issue was resolved in favor of the injured employee. In *Allstate Insurance Co. v. Maines*[7] good cause was justified on the grounds that (1) a representative of the employer said he would file a claim for the employee, which he failed to do, and (2) even more importantly the employee did not learn the true facts of her injury until nine months following the expiration of the six-month filing period. The employee had visited several doctors who dismissed any findings of injury, and it was not until consultation with a doctor just before filing the claim that the injury was discovered.[8] Similarly, the fact that an employee was told he would be "taken care of" was good cause to excuse a late filing.[9] The same re-

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[1] Ch. 115, § 1, [1971] Tex. Laws 884, *amending* TEX. REV. CIV. STAT. ANN. art. 8307c (1971).

[2] The employee has the burden of proving the damages specifically. *Id.* § 2.

[3] *Id.*

[4] TEX. REV. CIV. STAT. ANN. art. 8307, § 4a (1967).

[5] Texas Employers' Ins. Ass'n v. Brantley, 402 S.W.2d 140 (Tex. 1966).

[6] Hawkins v. Safety Cas. Co., 146 Tex. 381, 384, 207 S.W.2d 370, 372 (1948).

[7] 468 S.W.2d 496 (Tex. Civ. App.—Houston [14th Dist.] 1971).

[8] The claimant had prudently consulted five doctors who after examination reached conclusions varying from the pain is a result of "job pressure" to "muscle spasms." *Id.* at 498.

[9] Texas Gen. Indem. Co. v. Youngblood, 466 S.W.2d 329 (Tex. Civ. App.—Fort Worth 1971).

sult was reached in *Charter Oak Fire Insurance Co. v. Dewett*,[10] in which a safety director told the injured employee that the claim was filed.[11]

The belief of the claimant that the injury was "trivial" constituted good cause for delay in *Aetna Casualty & Surety Co. v. Brown*.[12]

Course of Employment—Furtherance of Business. The Workmen's Compensation Act provides that an employee may recover against his employer for "injuries sustained in the course of employment."[13] The first factor to consider under this requirement is whether the employee was injured while in the furtherance of his employer's business. *Roberts v. Texas Employers' Insurance Ass'n*[14] presented a situation in which an employee, before starting work, was given a box by her superintendant, who allowed the employee to take the box to her automobile parked on the employer's lot. On the way to her automobile she was injured and sought recovery under the Workmen's Compensation Act. The court determined that the claimant was not engaged in the furtherance of her employer's affairs or business. The court found this to be merely a "personal mission."[15] In *Shubert v. Fidelity & Casualty Co.*[16] the claimant was struck by an automobile as he crossed the street to have a cup of coffee while waiting for his place of employment to open. Although the court recognized the course-of-employment principle, the general rule prevailed that injuries sustained while the employee is using public streets are not compensable under the compensation statute.[17]

Course of Employment—Causal Connection. Having first determined that the injury was suffered in the furtherance of the employer's business, it must be determined if the injury was causally connected with the employment risks. A distinguishing characteristic of workmen's compensation cases as contrasted with ordinary negligence cases is the quantum of proof sufficient to establish causation between an occurrence or event and the physical condition of the plaintiff.[18] As opposed to the ordinary negligence cases, which mandate a finding of

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[10] 460 S.W.2d 468 (Tex. Civ. App.—Houston [14th Dist.] 1970).

[11] The safety director testified he could not remember what representations he had made to the claimant, and that he did not at any time tell the claimant that he would file the claim for him. *Id.* at 469-70.

[12] 463 S.W.2d 473 (Tex. Civ. App.—Fort Worth 1971), *error ref. n.r.e.* For a similar finding of good cause for delay, see Prince v. Texas Employers' Ins. Ass'n, 466 S.W.2d 642 (Tex. Civ. App.—Eastland 1971), *error ref. n.r.e.* (in which the claimant was told to keep quiet, not hire a lawyer, and that he would be taken care of).

[13] TEX. REV. CIV. STAT. ANN. art. 8309, § 1 (1967). The statute includes "all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employee while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere."

[14] 461 S.W.2d 429 (Tex. Civ. App.—Waco 1971).

[15] *Id.* at 430.

[16] 467 S.W.2d 662 (Tex. Civ. App.—Houston [1st Dist.] 1971), *error ref. n.r.e.*

[17] *Id.* at 664. *See also* Shelton v. Standard Ins. Co., 389 S.W.2d 290 (Tex. 1965); American Gen. Ins. Co. v. Coleman, 157 Tex. 377, 303 S.W.2d 370 (1957). The often-stated reason for this rule is that in using the public streets, the employee is subject only to risks to which the general public are subjected, and not risks inherent in the work of the employee.

[18] *See* Musslewhite, *Medical Causation Testimony in Texas: Possibility v. Probability*, 23 SW. L.J. 622 (1969).

"proximate cause," the workmen's compensation cases require the more relaxed standard of "causal connection." The general principle that has evolved is that there must be a showing that the injury was a producing cause of the incapacity, or that the incapacity must have naturally resulted from the injury.[19]

The rule that injury sustained as a result of exertion by an employee in the course of his employment is regarded as an accidental injury was reaffirmed in *Commercial Standard Insurance Co. v. Curry*,[20] in which a kitchen helper suffered a stroke as a result of overexertion while laboring in a hot room. A fine distinction in the application of this rule was made in *Hartford Accident & Indemnity Co. v. Olson*.[21] In *Olson* the claimant suffered a heart attack while on the jobsite and alleged that job-connected "mental stimulus" caused it. Recovery was denied on the grounds that the mental stimuli which allegedly caused the heart attack were "no more than the usual differences and irritations, the stresses and the strains, that are apparent in everyday living as well as in employment."[22]

A case somewhat in between these two extremes was presented in *Millers Mutual Fire Insurance Co. v. Gilbert*,[23] in which a claimant's functions as an employee encompassed the duty to spray warehouse grain with toxic and irritating chemicals. The court stated that it was proper to submit to the jury the employer's defense that the injury resulted from the claimant's alcoholism. The court upheld the jury's finding that the alcoholism was not the primary causal factor, even though there was evidence that the effects of toxic fumes from the chemicals used would be aggravated by the use of liquor.

Causal connection was found in *Maryland Casualty Co. v. Davis*,[24] in which it was held that infection to other parts of the body resulted from an eye injury sustained while grinding optical lenses, and not by another disease which was not causally connected with the injury. In *Allstate Insurance Co. v. Maines*[25] causal connection was shown even though it took five doctors and fifteen months to accord the crucial significance to the claimant's encounter with a file cabinet and the injury-resulting disability.

The rule that when injury results to a particular body member, compensation is specifically limited by statute[26] even though the loss of or injury to that particular member results in total permanent incapacity of the employee to work, was questioned in *Hartford Accident & Indemnity Co. v. Helms*.[27] The insurer pleaded that the injury was limited to the right arm, while the claimant contended the shoulder was injured as well, and that the result was total disability. The court held an "employee is not precluded from recovering for total incapacity if he alleges and proves that the injury to the particular member

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[19] Akin, *Workmen's Compensation, Annual Survey of Texas Law*, 25 SW. L.J. 122, 124 (1970).

[20] 460 S.W.2d 464 (Tex. Civ. App.—Houston [1st Dist.] 1970), *error ref. n.r.e.*

[21] 466 S.W.2d 373 (Tex. Civ. App.—El Paso 1971), *error granted.*

[22] *Id.* at 376.

[23] 462 S.W.2d 112 (Tex. Civ. App—Beaumont 1970), *error ref. n.r.e.*

[24] 464 S.W.2d 433 (Tex. Civ. App.—Amarillo 1971).

[25] 468 S.W.2d 496 (Tex. Civ. App.—Houston [14th Dist.] 1971).

[26] TEX. REV. CIV. STAT. ANN. art. 8306, § 12 (1967).

[27] 467 S.W.2d 656 (Tex. Civ. App.—Tyler 1971).

also extended to and affected other portions of the body . . . to such an extent as to totally and permanently incapacitate him."[28]

Death Benefits. Statutory language provides that compensation for an injury causing the death of an employee "shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided according to the laws of descent and distribution of this State."[29] In 1971 an amendment to the existing legislation added "dependent grandchildren" to the list of beneficiaries.[30] In addition, the amendment provided that "in case of death where a guardian has not been appointed for a beneficiary who is disqualified for taking because of lunacy, infancy, or other disqualifying cause, payments may be made to the person having custody of the person of such beneficiary, who shall receive payments until a guardian is appointed."[31] Such language will provide immediately much needed payments for the maintenance of the beneficiary in the custody of those who need the support.

Even though the language is explicit about who the recipients of death benefits are to be, ambiguities still arise requiring an interpretation of the statute. In *Howard v. Howard*[32] it was determined that the decedent's purported common-law wife was entitled to death benefits due under a workmen's compensation insurance claim.

Medical Expenses. Huckabee v. Industrial Underwriters Insurance Co.[33] reaffirmed the rule that compensation for injury will be allowed only to the extent that the evidence sufficiently supports such award. The court held that the evidence was sufficient to support the jury findings that the claimant sustained only temporary total incapacity of two-sevenths of one week, and that the claimant incurred only $52 of medical bills as a result of the injury. Thus, this amount was the maximum allowed.

Partial Loss. The Texas workmen's compensation statutes provide that when disability results solely from an injury to a member of the body compensable under the specific injury provision of such statute, the employee cannot be compensated under the general disability provision.[34] However, if the claimant shows the specific injury has extended to some part of the body other than to the specific member injured, and the claimant demonstrates that a condition of general permanent incapacity was caused by such extension, he is entitled to recover for general total permanent incapacity.[35] In *Leonard v. Hartford Accident & Indemnity Co.*[36] the court found that the employee had failed to establish a causal link between a leg fracture resulting from a work-related injury

[28] *Id.* at 661.
[29] TEX. REV. CIV. STAT. ANN. art. 8306, § 8a (1967).
[30] Ch. 372, § 1, [1971] Tex. Laws 1386, *amending* TEX. REV. CIV. STAT. ANN. art. 8306, § 8a (1967).
[31] *Id.*
[32] 459 S.W.2d 901 (Tex. Civ. App.—Houston [1st Dist.] 1970).
[33] 465 S.W.2d 185 (Tex. Civ. App.—Amarillo 1971).
[34] TEX. REV. CIV. STAT. ANN. art. 8306, § 12 (1967).
[35] *Id.*
[36] 466 S.W.2d 794 (Tex. Civ. App.—Houston [14th Dist.] 1971), *error ref. n.r.e.*

and an alleged shortening of his leg. Nor was the employee-claimant able to show that the alleged shortening of the leg caused curvature of the spine and general disability. The same principle obtained in *Herrin v. Standard Fire Insurance Co.*,[37] in which the amputation of a middle finger and metacarpal joint and additional injuries to the hand constituted only one injury to *one* member of the body. Thus, the employee was not entitled to receive compensation for the loss of the use of a hand in addition to compensation for permanent loss of the use of a finger resulting from amputation.

An interesting situation was presented in *Prewitt v. Liberty Mutual Insurance Co.*,[38] in which the claimant suffered a severe laceration on his arm above his elbow. The court held that the claimant sustained a twenty-five-percent loss of the use of his hand after medical testimony revealed that any incapacity existing was in hands, fingers, and forearms, and not the arm itself. The court of civil appeals affirmed the lower court on the theory that direct injury to a specific body member was a prerequisite to specific-injury compensation. The court concluded that permanent partial injury was to the hand, not the arm, and thus the statutory provision pertaining to recovery for disability to the arm was not applicable.

Liability of Nonsubscriber. In *Powell v. Narried*[39] judgment for a nonsubscribing workmen's compensation employer was sustained against his insurance brokers upon various grounds of negligence relating to their failure to procure workmen's compensation insurance coverage. Coverage was held to exist for an injured employee of the employer who had been assured by brokers that he was covered, although the brokers were subsequently unable to obtain insurance and had failed to notify the employer of that inability.

In another action[40] an employee of a personnel supplier was injured while cleaning a heater treater on an oil field lease. A surety of the personnel supplier intervened asserting a right of subrogation for workmen's compensation benefits paid to the employee. The supplier of personnel was obligated under the contract with the cleaning contractor to furnish workmen's compensation benefits to employees. The employee received compensation benefits from the surety, but the contractor never filed anything with the Industrial Accident Board. The personnel supplier accepted the benefits, but made no claim that the injured employee was its employee until after the employee brought suit for injuries. The court held that the contractor was estopped to deny the existence of the contract upon which the personnel supplier and the surety had relied, and that the personnel supplier would not be allowed to attempt to avoid liability by contending that its employee was loaned as a temporary servant.[41]

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[37] 466 S.W.2d 798 (Tex. Civ. App.—Houston [14th Dist.] 1971), *error ref. n.r.e.*

[38] 461 S.W.2d 522 (Tex. Civ. App.—Waco 1970), *error ref. n.r.e.*

[39] 463 S.W.2d 43 (Tex. Civ. App.—El Paso 1971).

[40] Sanchez v. Leggett, 463 S.W.2d 517 (Tex. Civ. App.—Corpus Christi 1971), *error ref. n.r.e.*

[41] The court applied the rule that one who accepts the benefit of a contract must also assume its burdens and is estopped from denying liability thereunder. *See, e.g.*, Daniel v. Goesl, 161 Tex. 490, 341 S.W.2d 892 (1960); Evons v. Winkler, 388 S.W.2d 265 (Tex. Civ. App.—Corpus Christi 1965), *error ref. n.r.e.*

II. PROCEDURAL LAW

New Legislation. The Sixty-second Texas Legislature amended two statutes during the survey period that have particular importance to the procedural aspects of workmen's compensation law.[42] Paragraph (c) of article 5.76 of the Texas Insurance Code[43] established the duty of private companies to provide insurance under the workmen's compensation laws of Texas and the Longshoreman's and Harbor Workers' Compensation Act.[44] Article 5.76 has been amended to include provision of coverage for employees of political subdivisions and agencies of the state of Texas, and to make the Texas Workmen's Compensation Assigned Risk Pool[45] responsible for the policies and claims of any insurance company that is legally insolvent.[46]

Section 5c has been added to article 8307.[47] It provides for payment of workmen's compensation awards prior to determination of liability when multiple subscribers are involved. When there is no dispute about the award granted, but there is a question of who the employee was serving at the time of the injury, the insurers of each subscriber with a possible liability shall contribute a proportionate share. After the final determination of liability, the responsible insurer shall reimburse the nonresponsible contributors.[48]

Parties. The workmen's compensation laws were held to preclude a suit for damages by the parents of a minor employee of a subscribing employer for that minor's injuries received in the course of employment.[49] The court rejected the claim that knowledge of or consent to the minor's employment by the parents was a prerequisite to the denial of relief to the parents.[50]

In *Home Indemnity Co. v. Mosqueda*[51] the appellant sought to avoid the statutory sanctions for failure to pay an award as it matured.[52] The appellant tried to establish as a "justifiable cause"[53] for nonpayment the fact that the beneficiary-appellee had no legal guardian.[54] The guardian, even if one existed, was held not to be a necessary, proper, or indispensable party[55] after the ward had become of age.[56] The court further held that payment directly to the appel-

[42] Ch. 230, § 1, [1971] Tex. Laws 1080, *amending* TEX. INS. CODE ANN. art. 5.76(c) (1963); ch. 152, § 1, [1971] Tex. Laws 940, *amending* TEX. REV. CIV. STAT. ANN. art. 8307 (1967).

[43] TEX. INS. CODE ANN. art. 5.76(c) (1963), *as amended*, (Supp. 1972).

[44] 33 U.S.C. § 901 (1971).

[45] TEX. INS. CODE ANN. art. 5.76(b) (1963).

[46] *Id.* art. 5.76(c) (1963), *as amended*, (Supp. 1972). The agency is given the same rights against the insolvent's receiver as loss claimants of the same insolvent company.

[47] TEX. REV. CIV. STAT. ANN. art. 8307, § 5c (Supp. 1972).

[48] *See generally* Akin, *Workmen's Compensation, Annual Survey of Texas Law*, 22 SW. L.J. 15, 27 (1968); Akin, *Workmen's Compensation, Annual Survey of Texas Law*, 21 SW. L.J. 85 (1967).

[49] Martin v. Southland Corp., 463 S.W.2d 471 (Tex. Civ. App.—Corpus Christi 1971), *error ref.* TEX. REV. CIV. STAT. ANN. art. 8306, § 3 (1967) specifically excludes recovery by parents of minor employees.

[50] 463 S.W.2d at 472. The statute contains no such knowledge requirement.

[51] 464 S.W.2d 902 (Tex. Civ. App.—Corpus Christi 1971), *error granted.*

[52] TEX. REV. CIV. STAT. ANN. art. 8307, § 5a (1967) provides a right to the entire sum for the beneficiary, as well as a penalty and attorneys' fees.

[53] *Id.*

[54] The appellant was in fact ordered to pay to the beneficiary's guardian "when appointed." 464 S.W.2d at 906.

[55] TEX. R. CIV. P. 39.

[56] 464 S.W.2d at 906.

lee[57] or into the registry of a probate court[58] would have discharged the obligation.

Jurisdiction. A strict interpretation of section 5 of article 8307[59] was applied in *Clawson v. Texas Employers' Insurance Ass'n.*[60] Because of an incorrect address[61] the Industrial Accident Board failed to give notice of an award. This failure made it impossible to comply with the statutory provisions for filing an appeal within the twenty-day time limit.[62] A district court cannot exercise jurisdiction over an award of the Industrial Accident Board unless the appeal is perfected within twenty days after the rendition of the award.[63] The claimant filed a bill of review to reopen the Board's hearing twenty-one days after the award was granted,[64] claiming the Board retained jurisdiction until the end of that hearing. The court determined that the Board had not retained jurisdiction and, thus, no new time period was established.[65] The statute was tolled from the time of the original award (not from the actual receipt of notice), and not from the end of the rehearing. Thus, the defendant's summary judgment was upheld.[66]

Summary Judgment. The Texas Court of Civil Appeals at Dallas gave sanction to the lost art of "concubinage" by reversing a summary judgment.[67] The sole question presented to the court was whether the claimant was lawfully married to the deceased when he was killed in an industrial accident. To qualify for death benefits, the claimant raised a question of fact by stating in an affidavit that she and the deceased made an agreement in Texas to consummate the common-law marriage. This allegation precluded a summary judgment in favor of the deceased's mother.[68]

Another summary judgment was reversed over a question of good cause for delay in filing a claim.[69] The court found that the employee-claimant raised a

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[57] *See* TEX. PROB. CODE ANN. § 406 (1956).

[58] *See id.* § 220.

[59] TEX. REV. CIV. STAT. ANN. art. 8307, § 5 (1967).

[60] 469 S.W.2d 192 (Tex. Civ. App.—Houston [14th Dist.] 1971).

[61] The plaintiff's address was listed as Houston, when in fact his correct address was South Houston. *Id.* at 195.

[62] TEX. REV. CIV. STAT. ANN. art. 8307, § 5 (1967).

[63] *Id. See also* Pappas v. Royal Indem. Co., 251 F.2d 439 (5th Cir. 1958).

[64] The plaintiff alleged "change of condition, mistake or fraud," under the authority of TEX. REV. CIV. STAT. ANN. art. 8306, § 12d (1967).

[65] "The mistake for which the Board may grant a rehearing under this statute is for one leading to or causing the *entry* of an erroneous award; not for a mistake occurring *after* the entry of an award." 469 S.W.2d at 195. Because the plaintiff did not receive actual notice of the award, and since the Board had no jurisdiction for the rehearing because of the above rather spurious distinction, the plaintiff's appeal was fruitless.

[66] *See generally* Guinn, *Judicial Review of Administrative Orders in Texas*, 23 BAYLOR L. REV. 34 (1971).

[67] Gonzalez v. Gonzalez, 466 S.W.2d 839, 841 (Tex. Civ. App.—Dallas 1971), *error ref. n.r.e.*

> 'Concubinage' was said to be a relationship recognized by law in the Republic of Mexico. The court acknowleged that while there was no legal marital relationship between the plaintiff and her deceased 'husband,' 'still it was not a status of such depravity and immorality as is usually thought of when a man and a woman cohabit casually without the semblance of marriage.'

Id.

[68] *See* TEX. REV. CIV. STAT. ANN. art. 8306, § 8a (1967).

[69] Sprouse v. Texas Employers' Ins. Ass'n, 459 S.W.2d 216 (Tex. Civ. App.—Beaumont 1970), *error ref. n.r.e.*

genuine issue with his deposition testimony. This was so held even though the only testimony of the claimant was in the form of self-serving statements.[70]

Evidence—Admissibility. In *Moore v. Standard Fire Insurance Co.*[71] the trial court excluded as hearsay the opinion of a diagnostic physician who had been consulted. It was held that the trial court's action in not admitting the consulting doctor's opinion for the purpose of impeaching the treating doctor's testimony was error, but not such error as would have probably caused the rendition of an improper verdict.[72]

Evidence—Sufficiency. In *Standard Fire Insurance Co. v. Cuellar*[73] the court applied a rather liberal interpretation of an earlier standard for determining the work-relatedness of an injury.[74] The court found the evidence established that an insect bite sustained by the claimant (a truck driver) resulted from his effort to discharge the duties of his employment.

In two cases medical testimony was insufficient to show a causal link between the injury suffered and a heart attack.[75]

In *Texas Employers' Insurance Ass'n v. Sellers*[76] the court reversed because of insufficiency of evidence. However, although causation of death by gas inhalation was not shown with any reasonable probability, the court refused to enter judgment for the insurer. Because the evidence on the causation issue was so meager, the court remanded on the authority of *National Life & Accident Insurance Co. v. Blagg*,[77] which held that a remand is proper when justice so demands.

Court's Charge. In *Standard Fire Insurance Co. v. Cuellar*[78] the trial court did not err in failing to submit the insurer's requested special issue inquiring whether the accidental injury (an insect sting) resulted from a risk or hazard necessary, ordinary, or inherent in the conduct of the employer's business.[79] In another case[80] the claimant alleged total and permanent disability from a back injury sustained while pushing a dolly. The court held that in the absence of a jury finding the trial court was not in error in finding for the claimant upon the issue of injury. Neither party requested submission of the injury issue, and the insurer did not make an objection to the jury charge.

[70] "The failure of Sprouse in the hearing on the motion for summary judgment to discharge the burden which would rest on him at a trial on the merits is no ground for a summary judgment in favor of the insurance company." *Id.* at 220.

[71] 461 S.W.2d 213 (Tex. Civ. App.—Amarillo 1970), *error ref. n.r.e.*

[72] *See* TEX. R. CIV. P. 434.

[73] 468 S.W.2d 880 (Tex. Civ. App.—San Antonio 1971), *error ref. n.r.e.*

[74] An injury has been said to be work oriented "when it results from a risk or hazard which is necessarily or ordinarily or reasonably inherent in or incident to the conduct of such work or business." Lumberman's Reciprocal Ass'n v. Behnken, 112 Tex. 103, 110, 246 S.W. 72, 73 (1922).

[75] Travelers Ins. Co. v. Guidry, 461 S.W.2d 170 (Tex. Civ. App.—Beaumont 1970), *error ref. n.r.e.* (a leg injury was found not to be attributable to a non-work-related heart attack); Whitaker v. General Ins. Co. of America, 461 S.W.2d 148 (Tex. Civ. App.—Dallas 1970), *error ref. n.r.e.* (the claimant's deceased husband had a prior history of heart attacks).

[76] 463 S.W.2d 36 (Tex. Civ. App.—El Paso 1971), *error ref. n.r.e.*

[77] 438 S.W.2d 905 (Tex. 1969).

[78] 468 S.W.2d 880 (Tex. Civ. App.—San Antonio 1971), *error ref. n.r.e.*

[79] *See* TEX. REV. CIV. STAT. ANN. art. 8307, § 1 (1967).

[80] Travelers Ins. Co. v. Woodard, 461 S.W.2d 493 (Tex. Civ. App.—Tyler 1970), *error ref. n.r.e.*