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# Workmen's Compensation

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the common use of the several tenants," and the defendant landlord will be liable for the injuries and damages suffered by the plaintiff and his wife.

*Shannon Jones, Jr.*

## WORKMEN'S COMPENSATION

### Traumatic Neurosis as a Compensable Disease

TRAUMATIC neurosis is a nervous condition which arises from a physical or organic injury which the patient has suffered, and the result of this nervous condition is that the patient is actually ill and in need of medical attention.[1] The effect of this can best be illustrated by an example. A person receives an injury, which actually is not serious, and which heals within a short time, however, as a result of hysteria and nerves the person continues to believe that his health is seriously impaired. He suffers actual pain and is unable to use that portion of the body affected.

It has long been held in England and in a great many American jurisdictions that when such a condition exists as a direct result of a physical injury sustained in the course of employment that it is compensable under the Workmen's Compensation Laws,[2] even though other subconscious mental factors play a large part in creating the disability.[3] This question had not been definitely passed upon by the courts of Texas until the recent case of *Hood v. Texas Indemnity Insurance Co.*[4]

In the *Hood* case the employee sustained an injury to his foot as a result of a fall while engaged in the work of his employer. The

[1] Klein v. Medical Building Realty Co., Inc., 147 So. 122 (Ct. of App. of La. 1933).

[2] For discussion of the holding on this subject in the various jurisdictions see note, 86 A. L. R. 961 to 966 (1933).

[3] Horovitz, Injury and Death Under Workmen's Compensation Laws 75 and 76 (1st ed. 1944), which states: "Traumatic neurosis following physical injuries are almost universally compensated, even though financial, marital and other worries play a part."

[4] 146 Tex. 522, 209 S. W. (2d) 345 (1948).

physical injury, so caused, healed within four weeks, however, by this time the employee had developed a neurosis, which according to expert testimony, completely disabled him at the time of the trial. Though his foot had actually healed, his sub-conscious belief that it was still injured was so strong that he was unable to use the injured member, and would remain so incapacitated until he became convinced that his foot was cured.

The court held that the employee was actually incapacitated to do physical labor, and that this incapacity was not simulated but very real; therefore if the neurosis is a direct result of the physical injury it is such a disease as is contemplated by the statute,[5] and compensable.

The holding in this case goes beyond the decision in a previous Texas case, [6] upon which the court relies, by stating that even though it is clearly shown that there is no further physical cause of the incapacity, that so long as the employee is unable to do his work as a result of his injury he can recover. The fact that the continued disability is motivated principally by a sub-conscious desire to receive compensation is held not to bar his right of recovery.

## Recovery by Employee of Non-Subscribing Employer Barred When Negligence is the Sole Cause of Injury

In the recent case of *Najera v. Great Atlantic & Pacific Tea. Co.*[7] the Supreme Court held that finding by the jury that the employee was negligent and that such negligence was the *sole* proximate cause of his injury, would have prevented his recovery; even though the employer was deprived of the common law defense of

[5] Tex. Rev. Civ. Stat. Ann. (Vernon's 1925) art. 8309, § 1, defines injury compensable under the Workmen's Compensation Law as "damage or harm to the physical structure of the body and such diseases or infections as naturally result therefrom."

[6] Houston & T. C. R. Co. v. Gray, 137 S. W. 729 (Tex. Civ. App. 1911) *writ of error refused.* In this case there was a conflict in the evidence as to whether the cause of the employee's paralysis was organic or mental and the court held that it was immaterial, since the final result was the same. The injured man was incapacitated.

[7] 146 Tex. 367, 207 S. W. (2d) 365 (1948).

contributory negligence by failure to become a subscriber.[8] This is in conformity with a prior Texas decision upon which the court relies.[9]

In the case of a non-subscribing employer, a careful distinction must be drawn between contributory negligence of the employee which is a proximate cause of his injury, and negligence on his part which is the sole proximate cause of the injury. In the first instance proof that the injured party's negligence proximately caused his injury does not show that the negligent acts of the employer, or some other employee were not also a proximate cause of the injury, thus proof of such fact is in effect no more than proof of contributory negligence, which would not constitute a defense to the employee's cause of action.[10] However, a finding that the employee's negligence was the *sole* proximate cause of his injury would negative any possibility of negligence on the part of the employer or other employees, and thus would constitute a complete defense in such a situation,[11] since it is necessary to the employees right to recover when employer is not a subscriber "to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment."[12]

The court in interpreting this portion of the statute in the case of *West Lumber Co. v. Smith*,[13] in which the assumption of risk was involved, held in line with the ruling in the *Najera* case as to the necessity for negligence on the part of a non-subscribing employer. They stated the rule as follows:

> "In a word an employer is not permitted to excuse his own negligence on the ground that the employee knew thereof and by continuing in such employment assumed the risk of such negligence. But it is still true that

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[8] TEX. REV. CIV. STATS. ANN. (Vernon's 1925) art. 8306, §§ 1 and 4.

[9] Gulf States Utilities Co. v. Moore, 129 Tex. 604, 106 S. W. (2d) 256 (Tex. Com. App. 1937).

[10] El Paso Electric Co. v. Sawyer, 298 S. W. 267 (Tex. Com. App. 1927).

[11] *Ibid;* Great Atlantic and Pacific Tea Co. v. Najera, 203 S. W. (2d) 577 (Tex. Civ. App. 1947) confirmed on this point in 207 S. W. (2d) 365; 29 TEX. JUR. 103 (1942).

[12] TEX. REV. CIV. STATS. ANN. (Vernon's 1925) art. 8306, § 1.

[13] 292 S. W. 1103 (Tex. Com. App. 1927).

no recovery can be had against a non-subscriber where no negligence on his part is shown, but where the injury is due to risks inherent in a given employment."[14]

MODIFICATION OF RULE REGARDING CONTINUANCE OF GOOD CAUSE

It has been repeatedly held that a claimant who fails to file his claim with the board within the six months period immediately following his injury must show good cause for such failure, not merely during the six months period, but continuing up to the time the claim is actually filed.[15]

This rule was modified in the case of *Hawkins v. Safety Casualty Co.*[16] when the court held that in all cases a reasonable time would be allowed for the investigation, preparation, and filing of a claim, after the seriousness of the injury was discovered. It seems probable that in following this decision in the future the courts will hold that such a period of preparation should be allowed following the termination of any factual situation which has been construed to be "good cause" for failure to file within six months from the date of injury.

Regarding the question of what would constitute a "reasonable time" for such investigation and preparation the court said, "[n]o set rule can be established for measuring diligence in this respect. Each case must rest on its own facts."[17] This is ordinarily a matter to be determined by the jury or trier of the facts in determining "good cause."[18]

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[14] West Lumber Co. v. Smith, 292 S. W. 1103, 1105 (Tex. Com. App. 1927).

[15] Williamson v. Texas Indemnity Ins. Co., 90 S. W. 1088 (Tex. Sup. Ct. 1939); Petroleum Casualty Co. v. Dean, 132 Tex. 320, 122 S. W. (2d) 1053 (Tex. Com. App. 1939); Holloway v. Texas Indemnity Ins. Co., 40 S. W. (2d) 75 (Tex. Com. App. 1931); Dunham v. Texas Indemnity Ins., 60 S. W. (2d) 255 (Tex. Civ. App. 1933) *writ of error dismissed;* Petroleum Casualty Co. v. Fulton, 63 S. W. (2d) 1068 (Tex. Civ. App. 1933).

[16] 146 Tex. 381, 207 S. W. (2d) 370 (1948).

[17] *Id.* at 386, 207 S. W. (2d) 370, 373.

[18] In the *Hawkins* case the court refused to hold as a matter of law that a delay of eight days was imprudent. Also in Texas Employers Ins. Assn. v. Fowler, 140 S. W. (2d) 545 (Tex. Civ. App. 1940) *writ of error refused,* the Supreme Court refused writ of error where recovery was allowed on a jury finding of good cause, when 23 days had elapsed, after he learned of the nature of his injury, before he filed a claim.