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Several physicians testified to the effect that the general public could develop bronchiectasis if the conditions were sufficient; that the dust irritations caused the inflammation of the claimant's lungs; that the inflammation itself was a disease to which bronchiectasis was incidental; and that an operative removal of the diseased area was required to effectuate claimant's cure.

Subdivision (a) of section 6 of the Occupational Diseases Act defines an occupational disease as one "arising out of and in the course of employment." Subdivision (b) of the same section delineates the requisites necessary to establish a disease as occupational. The employer in its brief urged a limitation of the scope and application of the Act to a few diseases of an unusual nature which are natural incidents of particular employments and which are known to be usual and customary incidents of such employments. However, the Act was not intended to be limited to a few specific diseases. The Act merely provides that where a diseased workman is employed in surroundings which are usual, common, and ordinary in all employments, he cannot claim compensation simply because he became a victim of a disease while working for the employer. But where his surroundings and conditions of employment possess inherent risks, dangers, and hazards which are not present in other employments, and he contracts a disease due to such hazards which furnish the cause of the disease compensation is afforded. The disease may be of a class or nature which the general public may acquire under ordinary circumstances, if the disease did not arise out of such ordinary circumstances but was in fact a result of being subjected to risks afforded by unusual conditions in his work. The question is not whether the disease is more or less common to the general public but whether the particular conditions of work were the cause of the disease. Nothing in the Act requires or implies that the work conditions must subject all employees as a class to the same exposure. Nor does the Act require a long period of exposure or that the disease be an expected one.

The evidence most favorable to the claimant, though conflicting in some respects, was of sufficient probity that the Board could conclude that the claimant suffered an occupational disease as defined in section 6 and that there was a causal connection between the disease and the employment. Award affirmed.

[¶ 4024] **Union Asbestos and Rubber Co., Inc. v. Industrial Commission.**

Illinois Supreme Court. No. 32588. May 20, 1953.

Death Benefits—Death of Employee During Litigation—Substitution of Administratrix for Claimant—Abatement—Review.—The administratrix of a claimant who dies pending an appeal of an award is entitled to be substituted in his place and to collect his award; his right to compensation does not abate with his death. The widow and children of the decedent are then entitled to death benefits upon filing their claim within one year after the death. The employer may not defend a claim for death benefits thus instituted by arguing that the claim is barred because the employee died more than one year after the date of disablement and because no compensation was paid to him during his lifetime. The payment of the award to the administratrix is tantamount to a payment to the claimant during his lifetime and forms a proper basis for an award of death benefits as provided by the statute.

DAILY, J. [*Digest of opinion*] The claimant alleged that he had become disabled from asbestosis on May 2, 1947. The Industrial Commission found that the claimant was permanently disabled as alleged and granted him an award therefor. The employer thereupon instituted review proceedings and while these proceedings were pending, the claimant died on January 2, 1950.

A motion was filed by the employer to set aside the award on the basis that the claimant's death abated his right to compensation. The claimant's widow, as administratrix of his estate, however, filed a petition to substitute herself for the claimant in the proceedings. This latter action was allowed by the lower court. The employer then filed a petition for a writ of error to review the order of the lower court, but when the petition was denied, it paid the award to the administratrix.

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The denial occurred September 13, 1950 and the payment was made three days later.

On September 22, 1950, the claimant's widow and minor child filed an application for death benefits. The employer resisted, contending that the dependents had no right to death benefits because no compensation had been paid to the employee in his lifetime and because his death had occurred more than one year after the date of disablement. After a hearing and a decision that death benefits were due, the employer prosecuted a writ of error to the Supreme Court.

In connection with this appeal, the employer contended again that the substitution of one administratrix for the claimant had been wrongful and that the record of the original proceeding should be reviewed.

The Supreme Court ruled that the denial of the first petition for writ of error had the effect of leaving the judgment record as it was entered by the trial court. It is therefor *res judicata* on the merits of the proceeding and the employer may not again relitigate its claims that the employee's right to compensation abated on his death and that the superior court was without authority to substitute the administratrix. Insofar as those questions are concerned, we must hold that the conditions precedent to the right of the dependents to maintain a claim for death benefits have been established.

"This brings us to the remaining question which is raised in this proceeding. Section 24 of the Occupational Diseases Act, which pertains to notice of disablement and limitation of commencement of proceedings, contains the following provision: '* * * provided, no proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six (6) months after the occurrence of the disablement from the occupational disease; provided further, that in any case, unless application for compensation is filed with the Industrial Commission within one (1) year after the date of the disablement, where no compensation has been paid, or within one (1) year after the date of the last payment of compensation, where any has been paid, the right to file such application shall be barred: Provided, further that if the occupational disease results in death within said year, application for compensation for death may be filed with the Industrial Commission within one year after the date of death, but not thereafter.' * * *

"The statute does not specifically provide that the payment of compensation must have been made to the employee but refers only to the element of time of payment.

". . . the employee filed his claim within the period fixed by the act, . . . the employer's liability for compensation was determined by the commission during the claimant's lifetime, and . . . when the award was judicially confirmed after his death and payment thereof made to his administratrix, it was payment of compensation which was due to him in his lifetime, and was payment within the meaning of section 24. * * *

"The facts here show that the claim . . . was filed within a few days after the payment of compensation to the administratrix and within one year after the employee's death. We conclude, therefore, for the reason stated, that a right to death benefits had vested in the dependents and that the commission had jurisdiction to entertain their claim. There being no other objections, the judgment of the superior court of Cook County will be affirmed."

[¶ 4025] Resurrection Mining Co. v. Roberts.

Colorado Supreme Court. No. 17729. June 15, 1953.

Miner—Silicosis—Medical Testimony—Burden of Proof.—A miner who became ill of silicosis and whose only exposure to silicon dioxide was at his employer's mine, was entitled to an award against his employer under the Occupational Disease Disability Act. The miner's burden of having to "establish" his case meant only that he had to "prove" it in the ordinary sense and not beyond a peradventure of doubt. Conflicting medical evidence resolved by the Commission was not subject to review by the court. The Commission, in such a case, is the trier of facts.

KNAUSS, J. [*Digest of opinion*] From July 1941 until February 1951 the claimant was employed in mines where silicon dioxide was present. In March, 1951 a physician

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