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~~BY MR. CHAIRMAN:~~

Mr. Chairman, Ladies and Gentlemen: It's an honor and a privilege to be here. I'm grateful for the opportunity

to participate in this symposium. I'm tremendously impressed with the amazing job that is being done here and I only wish that all compensation administrators could have this experience, as I am sure that it would be as inspiring to them as it has been to me.

As originally enacted, none of the workmen's compensation laws specifically provided benefits for disability or death resulting from occupational disease. However, the Massachusetts Act, passed in 1911, covered personal injuries without the qualification that they be accidental, but it was not until 1929 that it was determined that silicosis was covered by the law.

It is now generally recognized that disability or death from occupational diseases should be compensated. General coverage for all occupational diseases is provided in 24 states, Alaska, District of Columbia, Hawaii and under the Federal Employees Compensation Act and the Longshoremen and Harbor Workers' Act. Schedule coverage is provided in 20 states and Puerto Rico.

It is quite obvious that the all-inclusive type of coverage provides the better protection and the only just coverage. There is not one good reason to give compensation benefits to one man suffering from an occupational disease and to deny them to another simply because the latter is suffering from a disease not known when the schedule was

made.

The provisions regarding payment for disability or death and medical care in the case of occupational disease, are usually the same as for other injuries, except for pulmonary dust diseases which are subject to limitations, not placed on benefits for other injuries.

A man disabled by a pulmonary dust disease is as much a casualty of industry as a man who suffers from a ruptured disc or a broken leg, but he does not, except in a few jurisdictions, get the same treatment.

Now, I was not here on Monday morning, so I didn't have the benefit of the definitions, but as I understood the term 'pneumoconiosis' it means dust storage and includes all conditions of the lungs that result from the inhalation of dust, that from simple dust storage and those from the storage of various irritating dusts, the most common of which is silica.

I understand that silica is the most harmful dust to which workers are exposed in industry, and that silicosis is the most common of the dust diseases found in industry. As a compensation administrator, my experience has been limited to the evaluation of silicosis cases, so I shall direct my remarks in the main to some of the problems we meet in the handling of silicosis claims.

Of course, it's comparatively simple when the

employer or carrier is satisfied that the worker has a disabling silicosis. In those cases, the benefits provided by the act are automatically paid. However, that may not be an adequate disposition of the case. Many workers suffering from silicosis are as much in need of rehabilitation as the worker suffering from the effects of a traumatic injury. A foundry worker suffering from silicosis and unable to work at his skilled trade, but able to work, should be given the opportunity and the means for rehabilitation.

Our serious problems arise in the contested cases, where the employer and carrier, if the risk is insured, contends that the worker does not have silicosis and denies that he is disabled because of silicosis. Administratively, it was a comparatively simple task, under the original part of the occupational disease part of the act, to determine whether a worker had silicosis. It provided for the appointment of a commission of three qualified, impartial physicians to examine the worker when it was disputed that he was suffering from an occupational disease.

It also provided that the report, when signed by two members, was final and conclusive on the question of whether or not the claimant was suffering from the disease claimed. So, in every disputed silicosis case, the claimant was cited for such an impartial physical examination. If the report stated that he did not have silicosis, his

claim was summarily dismissed. If it was reported that the worker had silicosis, a hearing was necessary to determine whether he was disabled. That procedure worked satisfactorily. It provided a scientific method for the determination of medical facts and relieved us of that burden. It was used for over eight years, until our Supreme Court decided the provision was unconstitutional because it violated the due process clause, as the opportunity for cross-examination of the physicians who made the medical finding, was not given.

Now, we make the medical fact-finding from medical testimony submitted by the parties. The testimony is generally conflicting, rarely can it be reconciled and at best, it is puzzling and very difficult to evaluate. As I understand it, there are three rather standard factors which must be considered in deciding whether a man has silicosis: First, occupational history; second, characteristic X-ray findings; third, characteristic clinical symptoms.

Ordinarily, it's not difficult to decide whether a worker could have had sufficient exposure to silica dust during the course of his employment to cause silicosis. The real problem begins when we attempt to evaluate the X-ray findings. Some physicians insist that a worker can not have silicosis unless his X-rays show discreet or conglomerate nodular fibrosis. They say that silicosis can not be

diagnosed without such X-ray evidence.

They refuse to consider reticulation or increased linear markings, regardless of occupational history and clinical symptoms, as diagnostic of silicosis. However, many will admit that a microscopic examination of the lung tissues might reveal evidence of silica.

Other physicians insist that increased linear markings when considered with history of exposure, and clinical symptoms, can be diagnostic. They call the condition early silicosis. Can silicosis be diagnosed from occupational history, chest X-rays showing reticulation and characteristic symptoms, or must the X-rays show discreet nodular fibrosis? Is there such an entity as a clinical dust disease caused by storage of silica dust, that can be diagnosed as a dust disease, though not labeled silicosis because it can not be recognized as silicosis from the X-ray? Which of the three factors, occupational history, X-ray findings, symptoms, is the most important in deciding whether the worker has silicosis or a pulmonary dust disease due to dust storage? Is there a correlation between the extent of the emphysema and the extent of the lung involvement? Does extensive emphysema indicate more silicosis than can be recognized by X-ray? Can emphysema be due to silica storage without X-ray evidence of discreet nodulation?

Some physicians say the emphysema is secondary to

the aging process and not to silica storage when the X-ray film fails to disclose nodular fibrosis. They maintain there must be nodular fibrosis in order to have sufficient lung involvement to cause emphysema. Other physicians take a contrary view and state that where the X-rays show increased linear markings, together with emphysema, that the emphysema is caused by the lung involvement due to silica storage.

Is it possible to determine which medical theory is accurate? The answers to these questions, if they can be specifically answered, would be invaluable to the compensation administrators who are not fortunate enough to have an impartial medical board to make the medical determination. It seems quite obvious that the most satisfactory result can be obtained by having the medical determination of whether the claimant has silicosis or any clinical dust disease conclusively decided by a qualified impartial medical board.

A large percentage of our silicosis claims in Michigan arise because the unemployed foundry worker or miner is unable to get a job. It is the policy in some foundries to discharge a worker when his chest X-ray shows an abnormal condition. That policy is not used by a single mining company. The worker is invariably refused employment when he applies for work at another foundry.

Generally, he has had several years experience in a skilled occupation and knows no other trade. He is willing and able to continue working at his trade, but his training, experience and ability to work are of no value to him when he can not get a job. Having failed to get a job, he employs an attorney and a silicosis claim is filed. It's not unusual for the physician who recommended his discharge to testify that the man does not have silicosis, because the disease can not be recognized from chest X-rays.

The claimant's physician will probably testify that the X-rays show first degree silicosis or both may testify that the X-rays show increased linear markings, but one says no silicosis and the other calls it early silicosis.

It makes no difference to the man whether it's discreet nodular fibrosis or increased linear markings. He doesn't care what the physician calls his condition. The important fact, to him, is that he can not get a job at his trade. He may not be physically disabled, but he has a definite disability, because his potential earning capacity has no value to him when he is not employable. His loss of employability must be considered in determining his right to compensation. Physical inability to do the job can not be the sole test.

We have a similar situation when a foundry lays off men in a slack period or ceases operations, or a mining

company closes one of its mines. The foundry worker with abnormal chest findings simply can not get a job, and sometimes the foundry does not recall him for work though the mining companies, invariably provide surface jobs for the men who have silicosis and should not work underground. They will not hire another company's workers when they have abnormal chest findings. These men become compensation claimants because they are not able to secure employment at their respective trades.

What can be done to prevent this loss of employability of workers with abnormal chest findings? How can the needed productivity of these men be utilized? It is certainly unrealistic to put these skilled workers on the shelf and pay them compensation which is unproductive and, at best, a very poor substitute for a regular pay check. Most of them would prefer to continue at their trade.

We are in a vicious cycle, because of the employers' employment standards. Of course, if you want to blame someone, you can readily blame the compensation administrator. We're public servants and it's rather popular to make us a whipping post. However, I think that any fair analysis of the problem will indicate that the loss of employability which precipitates a large percentage of the silicosis claims is due either to the employers' lack of understanding or his refusal to attempt to solve a problem which is peculiarly

within his power to solve.

The industrial physician is not entirely blameless because the employer often acts on his advice. The burdens are not going to be relieved until employers use every scientific measure known to remove the dust hazards and provide safe working conditions as many have already done, and then make any and every possible effort to utilize the skills of every available worker even though he may have some chest abnormality when such condition does not interfere with his performance of work.

Only then will we have a paucity of silicosis claims and the cost bought in human misery and compensation for silicosis will level off to a very minimum.

Several of the compensation laws provide that no compensation is payable for partial disability from silicosis. It would be almost impossible to evaluate percentage-wise a man's loss of physical ability due to silicosis. A silicotic is either employable in his regular trade or in another occupation where there is no exposure to silica or not employable. He should be compensated when he can not work at his regular trade or is unable to secure work because of his silicosis. He should be compensated for his wage loss when he is employed in a non-injurious occupation at a lower wage. He should be paid compensation in the amount of the difference between his weekly wage in his skilled

trade and that in the non-injurious occupation, but not to exceed the maximum payable for total disability.

Should the compensation laws contain a provision that to be compensable, disability from silicosis must occur within a specified period after the last exposure or after the last day of work for the employer from whom compensation is claimed? I say absolutely not, but several states have such a limitation in their compensation law, varying in time from 120 days to two years. Should a man become disabled from silicosis 25 months after he has, for one reason or another, left the employment in which he was last exposed to silica dust? If so, he would not have a remedy in many of our states in which silicosis is supposed to be compensable. His right to compensation would be barred because of the lapse of time since exposure or employment.

There is no good reason for denying compensation merely because the worker's disability did not occur within a specified period of time after exposure when the cause of the disability is established. Here in New York, the worker or in case of death, his dependents, can go and file a claim within ninety days after disablement and after knowledge that the disease is or was due to employment. The only time limitation in Michigan is that notice of the disablement must be given to the employer within 120 days after the date of disablement, which has been construed by our

court to be within 120 days after the worker has knowledge or reasonable ground for knowledge of his disablement.

In at least five other states, any limitation against the claim does not start to run until the worker becomes disabled from silicosis. There is absolutely no reason for making it more difficult to get benefits for silicosis than for a traumatic injury, when the disease is due to the nature of the employment.

Workmen's compensation benefits for silicosis has created several problems, none of which can be solved by an assortment of limitations which are manifestly unfair to the worker. I believe that the old adage, an ounce of prevention is worth a pound of cure, is a proper - is appropos in this field. Most of the problems can be solved by preventive measures designed to eliminate or minimize the silica hazard and by realistic sensible employment standards. The duration of the problems will depend directly upon the willingness or unwillingness of employers to adopt such measures and employment standards. Thank you. (Applause)

BY MR. WARREN:

Thank you very much, Jim. That was well stated, very effective statement of your point of view. Many of the issues, I happen to disagree with you upon, but that's my privilege and the similar privilege of those in the audience.

Our next speaker, William L. Connolly, is a Director of the Bureau of Labor Standards of the United States Department of Labor. He was called to that post after having served for six years as Director of Labor of the State of Rhode Island where he supervised the administration of the workmen's compensation laws of that state.

To his honor and credit, he is a former president of the Rhode Island State Federation of Labor. Some years past, he has served with distinction, and I underscore that word distinction, as chairman of the Co-ordinating Committee of the President's Conference on Industrial Safety.

Bill Connolly probably knows more about the problems incident to the administration of workmen's compensation laws than any of us in this room. Over and beyond that, he is a grand person and I know that his remarks this afternoon will go directly to the basic issues that are involved in this discussion.

BY MR. CONNOLLY:

(Mr. Connolly read a prepared paper which is on file at the Saranac Laboratory).

BY MR. WATERS:

Thank you, Bill, that was beautifully done.

Our next participant is a well known to this audience that I will make but brief comment in his introduction. His friendship with the Saranac Laboratory, for industry,

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
WASHINGTON

September 3, 1952

Dr. Arthur J. Vorwald, Director
The Trudeau Foundation and
The Saranac Laboratory
P. O. Box 551
Saranac Lake, New York

Dear Dr. Vorwald:

Thank you for sending a copy of the printed program for the Seventh Saranac Symposium. The schedule is completely in line with my understandings with Mr. Waters.

An advance copy of my statement at the opening of the panel discussion is enclosed in compliance with your request. Another copy has been sent to Mr. Waters, along with the questions which I am suggesting.

Since my participation in the Symposium is strictly "in line of duty," my expenses will be paid out of our travel appropriation.

I am looking forward to being with you later this month.

Very truly yours,

WILLIAM L. CONNOLLY
Director