

8—Workmen's Compensation Insurance

As might be expected, disagreement is most likely when it is alleged that mental stimulation has resulted in a mental illness without obvious physical change. Although many jurisdictions award compensation in such cases, others still are reluctant to perceive that psychological disorder is a physical injury.

Work-related impairment. The term "arising out of and in the course of the employment," applied by almost every jurisdiction, is meant to define a certain level of relationship between the employment and injury or disease as a condition of eligibility for workmen's compensation. The phrase obviously lacks certainty. Often it is quite difficult to determine whether a given set of facts will support an award of compensation.

The "course of the employment" aspect of this test refers primarily to the time frame of the injury. Virtually every jurisdiction holds that an employee is within the course of his employment, barring certain types of unusual circumstances or unreasonable conduct, from the moment he steps onto the employer's premises at the beginning of the work day to the moment he leaves the premises at the end of the day.

Although this test appears to be relatively simple to apply, it has not been so. One uncertain issue is, what are the premises? Injuries which clearly occur off premises but appear to deserve compensation lead to a search for exceptions and encourage courts to modify the basic rules. Many workers are not attached to particular premises. Even though an injury occurs off premises, as in travel to and from work, the employee may be compensated if a sufficient employment relationship can be found, such as payment for time or expense of travel or the provision of a company vehicle for transportation. In these circumstances, the period of travel time to and from home may be incidental in the course of employment.

The "arising out of" segment of the test is intended to provide a causal relationship between the employment and the injury. For example, it is not enough that an employee suffer a heart attack while at work. He must show that the heart attack arose out of the employment or, in other words, that it was causally related to the employment.

This means that at a minimum (some states have more stringent rules) it must be shown that it was the stress and strain or exertion of the employment that caused the heart attack, not merely a spontaneous breakdown of the cardiovascular system.

The degree of employment relationship necessary varies from state to state and has been modified as workmen's compensation law has evolved. In earlier years, it was generally felt that the hazard-causing injury must be peculiar to the particular employment or be increased by the employment before the injury could be said to "arise out of the employment." This rather narrow view of compensability has been modified and to some extent abandoned in recent years.

Although it is difficult to place each jurisdiction in a particular category as to what it will hold sufficient to meet the "arising out of" test, two additional theories have been developed and followed. The first and more widespread is the "actual risk doctrine," which requires that the hazard resulting in injury be a risk of the particular employment, without regard to whether it was also a risk to which the general public is exposed. The second or "positional risk doctrine" could also be called the "but for" test. Here, if the employment places the worker in a position where he is injured ("but for" the employment the injury would not have occurred), the injury "arises out of the employment."

Benefits

Almost \$3 billion in cash and medical benefits were received by workers in 1970 through the workmen's compensation system. Benefits include medical services, cash benefit payments to the worker while totally disabled, payments for residual partial disability, burial allowances (in all but one state) for work-related deaths and benefits to the worker's dependent survivors.

Some states provide special benefits also to cover attendants or prostheses, about three-fourths of the states provide maintenance and other services for rehabilitation. The largest proportion of benefits are in cash, either as periodic payments or as lump sums in settlement of claims. About \$1.9 billion, almost two-thirds of the \$3 billion 1970 benefit total, were paid to workers or their survivors in cash.