

FILE NAME: Saranac 7th Symposium (SSY)

DATE: 1952

DOC#: SSY046

DOCUMENT DESCRIPTION: Text of Presentation by Unknown - As Industry
Regards Partial Disability in Dusty Trades

1 0
AS INDUSTRY REGARDS PARTIAL DISABILITY IN DUSTY TRADES

5081
RECEIVED F.H.H&S
DATE: JUL 31 1979

MEM. Workmen's
Particularly difficult problems are presented under the Compensation Laws by silicosis, asbestosis and other lung conditions resulting from the inhalation, over long periods of time, of certain dusts. These problems are difficult for the administrators of the law from the standpoint of the workers, from the standpoint of the medical profession, the safety engineer, and in a very special way from the standpoint of industry, which in the last analysis must pay the whole cost and try as best it can to collect such cost in the pricing of its products or service.

Notwithstanding that industry has long recognized and pointed out many of these difficulties and has earnestly cooperated in trying to work them out in practical ways, fair both to the workers and to industry, it has been assumed by many to be hostile to any form of compensation for silicosis and unfriendly to the workers in those trades where dust is created. Nothing could be further from the fact. Actually, the record of industry in New York State has been outstanding in working out, with labor and the public authorities, the many difficult obstacles met with in providing compensation for disability from dust in ways and means not too disrupting to the industries involved, thereby avoiding the creation of widespread unemployment.

Characteristically, the original pattern of compensation laws did not include silicosis or other dust disease as a basis for claiming compensation from the employer. For that matter, occupational diseases (of which silicosis is the most frequent and characteristic one) were not directly provided for in the early laws. Probably that fact resulted from the want of a remedy, under the old common law, for disease resulting from the occupation. When compensation laws were

RECEIVED F.H.H&S
DATE: JUL 3, 1979
M.E.M

5082

amended specifically to include occupational disease, dust disease of the lungs was not included presumably because of the lack of understanding of the nature and causation of those conditions and the determination medically of them. It took many years of intensive study by medical and engineering researchers to arrive at such understanding. Without express knowledge of the nature of the disease, the kinds and substance of dusts - both as to particle size and concentration -, the length of time of exposure, the effects of frequent changes of employment, the existence of lung pathology without marked effect on working ability or earning capacity, the vast difficulty in many cases of evaluating disability and relating it to the occupation or allocating the disability frequently among different employers by whom the worker has been employed under injurious exposures, lawmakers were moving in complete darkness in attempting to bring such conditions under the law. They were met with the problem of disability. The potential cost of ill-advised laws was frightening, both to industry and to labor. The cost of so-called "accrued liability", by which is understood the cost of full compensation to a worker for a dust disease that became disabling after the law became effective, although years of exposure had occurred, perhaps in the same employment, perhaps in other employments, created a situation unknown and little understood. Employers in trades where dust exposure was a necessary incident of the work could not view with unconcern the burden of possible liability that might wreck their business; labor could not take a chance of closing down the industries on which their livelihood depended and driving them out of the State. And yet, all recognized the necessity of doing something about it to get silicosis and other dust diseases under the law in some form.

DATE: Jul 3, 1979

M.E.M

Finally, after some years of discussion that got nowhere, the subject was examined by the Industrial Survey Commission, created by the Legislature in 1926, and a bill was drafted to bring silicosis under the law with provision for annual physical examinations of the workers, so that men might be removed from the dusty exposure upon the early manifestations of the disease. Speaking for employers generally, Mark A. Daly, Executive Vice President of Associated Industries, agreed with the Commission to accept the bill; the Industrial Commissioner, Hon. Frances Perkins, agreed that the bill constituted a long step in the right direction. But the representatives of labor notified the Commission that they would oppose most vigorously any bill that made provision for medical examinations as a condition of compensation. The proposal was thereupon dropped by the Industrial Survey Commission. This was long before silicosis or other dust disease was specifically mentioned in any state compensation law. Labor's position, which was understandable, was that the men working in dusty employments and who had no other trade at which they could work, should be allowed to continue their work at their trade, so long as they were physically able to do so. They preferred full wages to compensation. They were insistent, and rightly so, that measures should be enforced for the control of dust. The employers were in complete agreement with that demand, provided the measures of control were practical and were not such as would reduce output to the point where employments in this State could not survive in competition with industries in other non-regulated states.

All of industry, including labor and management, finally agreed, in order to bring silicosis under the law even though in an incomplete form, but with the expectation that benefits would rise as industry got

DATE: III 31 1979

M.E.M

into the stride, upon a law by which in consideration of no physical or medical examinations, but permitting men to work and earn their regular wages, reduced compensation benefits would be paid upon proof of full disability, that is, inability to work and earn wages at their regular trade; such benefits to increase in accordance with a schedule, as time passed and employment in a dusty trade continued, the amount of compensation being related to the increased exposure under the law; no physical examinations to be required; adequate measures to be taken for the control of dust and the necessary engineering studies to be carried out promptly; and no compensation to be payable for partial disability. That law was enacted in 1936, and since that time benefits have increased, both under the schedule and by agreed legislation, after the top amount set in the schedule had been reached, so that now benefits for full disability equal those for any other condition under the Compensation Law.

It was not by inadvertence that the new law made no provision for benefits to workers claiming for partial disability resulting from silicosis. Such benefits were excluded because of the inherent difficulties in determining and evaluating partial disability in such cases, and because it was deemed essentially unreasonable to charge upon industry, and thereby the buying public, an unmeasurable burden of cost for a condition that is not disabling in the sense that it deprives the worker of his wage earning capacity.

Let us consider some of the characteristics of partial disability, so-called, in silicosis and certain other dust diseases, and why it does not lend itself to accurate determination or evaluation under compensation laws.

RECEIVED F.H.H&S
DATE: JUL 31 1979

5055

M.E.M

First, let me say that the basic principle of all compensation laws is disability or death. By disability is understood inability to work and earn wages. Compensation was provided as a percentage of the lost earning capacity to maintain the injured person and his family. Much confusion of thought occurs when we try to classify as a "disability" merely a physiological fact constituting possibly an impairment of function, but not necessarily constituting a bar to earning full wages. Some are prone to consider a physiological defect the same as a compensation disablement. The New York Workmen's Compensation Law in Section 37, relating to occupational disease, defines a compensable disability as a "disablement" which prevents the worker from earning full wages at his trade or occupation. The condition of silicosis is one characteristic of working for years in employments where silica dust is generated or present. The dust, to be harmful to the human body, must contain particles under a certain microscopic size and in a sufficiently large number. We commonly find workers in such dust exposures showing definite evidence of silicosis, both by X-Ray and by clinical findings, and yet they are working regular hours and earning full wages, the same as those who do not exhibit the same conditions. The doctor correctly testifies that the man has silicosis, but in view of the fact that the person is working and earning full wages, he cannot say that he is "disabled". If he cannot work and earn wages, he is totally disabled, and in any such case he is unquestionably entitled to full compensation benefits - as a life pension if the condition is classified as permanent, and as temporary total disability when the condition is not so classified.

Then again, there is the well-nigh impossibility of evaluating

the degree of partial disability in dust conditions of the lungs. I am told by medical experts that there is no standard and no way of telling by X-ray the degree, if any, of partial disability. Men showing a marked silicosis by X-ray may not have any clinical signs or symptoms of the condition, while other men showing very little or no positive signs by X-ray, may nonetheless have severe complaints and shortness of breath and allege an inability to earn full wages at their occupation. At the stoneyard, cutting and polishing stone, at the moulder's bench or in the foundry, running a rock drill in the tunnel or in the quarry, if men work they earn full wages; the unions see to that, if the employers do not, and there is no light work or partial ability to work. There are only two classes of men - those who are able to find work, and those who are disabled and are thereby entitled to full compensation.

It has been urged that employers are disinclined to hire new men who are known to have any degree of silicosis, even though not at the time disabled. It has been said that the fear of the cost to them of paying full compensation benefits, in case the man later becomes totally disabled, bars such a man from getting remunerative work. This did not seem to us well founded. Yet, we approved and agreed to a bill, enacted a few years ago, whereby the eventual total disability due to silicosis or other dust disease was deemed to be in the nature of a second injury and so the liability of the employer in such a case is shared in by the Special Disability Fund, to which all employers contribute regardless of whether or not they have any cases that are payable out of the Fund. Since New York State led the way in a constructive and practical manner to meet the problems presented by silicosis and similar conditions, and since in its main features industry has cooperated fully and has agreed with the program, we take

pride in the accomplishments of the New York Legislature.

As I have pointed out, however, the question of compensation for partial disability from silicosis presents difficulties that to us seem to be insurmountable. When attempting to surmount one difficulty, we find that thereby we may increase the difficulties presented by another. It is in this field that we find the necessity of keeping clearly in mind the distinction between a physiologic or anatomic defect or so-called "disability", and the disability that prevents wage earning. The one presents physical discomfort and even a lowered vital capacity, without loss of earnings, while the other presents the actual inability to work, resulting in loss of earnings - in other words, an economic loss such as the compensation laws all seek to indemnify. To compensate for a bodily injury which does not involve a reduction of wage-earning capacity, is to warp the compensation system into something approaching damages recoverable by actions at law.

It may be said by those who urge compensation for partial disability in silicosis that this is no different than the fixing of the schedule payment for loss or loss of use of a member. In every case of a schedule loss of a member, however, it is necessary to make a finding that the condition presented has reached its maximum improvement and that it is a permanent loss. Not so with partial disability from silicosis. Instead, we anticipate that the condition will become worse, and if the worker continues in the same or a similar occupation, we look for eventual total disability, which will be permanent.

In considering this problem, we must keep in mind another distinction. Partial disability, following a traumatic injury, occurs

RECEIVED F.H.H&S
DATE: JUL 31 1979
M.E.M

5095

generally following a period of total disability, and the partial disability most often is reduced by the lapse of time and the effect of healing, until finally it disappears wholly. The trend of partial disability in dust cases is the other way; it never becomes less, it can only change for the worse.

Another thing, at what point does compensable partial disability begin? In the case of traumatic injury or of an acute occupational disease, we have a point before which no recognizable compensable condition can exist, that is, the date of the injury. In the case of silicosis, we have a slowly progressive condition. As generally seen, silicosis or asbestosis is found to exist only after the lapse of a long time, frequently many years. The length of time may be a shorter or longer period by reason of the susceptibility of the individual, the kind of dust, the size of particles and the number of particles found in the atmosphere. This may vary from one employment to another and most often does not all occur in a single employment. Just when a worker may show the characteristic X-ray markings of the disease is difficult to discover. Certainly, they will not be discovered until too late unless physical examinations are made periodically. Will a claim be made at the first signs of dust by X-ray, or by a reduced vital capacity of the lungs, and if so, will an award be made? And if made, how will the percentage loss of use be measured? Will an award close the case or may it subsequently be reopened and a further award made? And if then total disability eventuates, will credit be given against the total disability award for the amount or amounts already paid on the partial condition?

Will the employee be benefited by an award for partial disability? I think not. In the first place, once a man has been officially adjudged

to be a sillicotic, will he be employable? Hardly! An employer whose operations create dust will be quite unlikely to give employment to a man who has already been found, by medical evidence and an official decision of the referee, to have silicosis. It is quite likely that the official board may direct that such person shall not return to a dusty trade on a penalty of losing all subsequent right to compensation for a total disability. And in like circumstance, any other employer will hesitate a long time before hiring such an officially stamped sillicotic. Moreover, few men who have worked at a dusty trade for many years will readily be adaptable for work in a new and different trade. Experience has demonstrated time and time again that men do not readily change occupations when they have learned a trade. This fact has been recognized from early times, as witness the old saw that goes "Shoemaker, stick to thy last."

And what of the effect upon the worker who submits to examination and is then found to be in some degree a sillicotic? Would it surprise anyone if such a person became immediately depressed and utterly discouraged? Would he not be likely to feel that he has been condemned to early total disability and death? Will any possible benefit of the law outweigh the seriously depressing effects of the official adjudication of his disease? Doctors mercifully try to spare their patients the knowledge of a fatal and malignant condition when they find one. How many cases are there of persons who take their lives, because of some real or fancied desperate condition? Would the meager compensation benefits, whatever they might be, make the Compensation Law a kindly one by robbing the worker of peace of mind?

There are no statistics available as to the number of men who may

potentially be claims under any law that provides for partial disability for silicosis. There is no possible way for industry to make an estimate, within reasonably accurate figures, of the cost of compensating for such partial disability, except by the slow and laborious process of having all men in certain industries examined by X-ray, which labor has always fought against.

I know nothing about the making of rates for insurance under the Compensation Law, but I can well imagine that this new field of partial disability would create great difficulties in the way of insurance, and would be costly to the industry to the extent of seriously, and I mean seriously, hampering New York employers in meeting the competition of other states.
