

1978

the Church of Jesus Christ of Latter-Day Saints v. Industrial Commission of Utah, and Ivan L. Thurman : Brief of Plaintiff

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE CHURCH OF JESUS CHRIST OF :
LATTER-DAY SAINTS, :
 :
Plaintiff, :
 :
vs : Case No. 15640
 :
INDUSTRIAL COMMISSION OF UTAH, :
and IVAN L. THURMAN, :
 :
Defendants. :

BRIEF OF PLAINTIFF

ORIGINAL ACTION TO REVIEW THE PROCEEDINGS AND
ORDER OF THE INDUSTRIAL COMMISSION OF UTAH

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FILED

MAR 21 1978

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BRIEF OF PLAINTIFF

STATEMENT OF THE NATURE OF THE CASE

This action involves a determination by the Industrial Commission that defendant-claimant Thurman has sustained a compensable industrial injury, which determination is contested by plaintiff.

DISPOSITION OF THE CASE BEFORE THE INDUSTRIAL COMMISSION

This case was heard by an Industrial Commission administrative law judge on December 1, 1976, whereupon the matter was sent to a medical panel. Thereafter, on November 3, 1977, an order awarding defendant-claimant Thurman certain benefits was entered by the Commission. On November 18, 1977, a motion for review prompted a supplemental order denying the motion in part and amending the award in part. On December 15, 1977, a motion for review of the supplemental order was filed by plaintiff

which was denied by the Industrial Commission on January 9, 1978. A petition for writ of review was filed with this Court on January 27, 1978, pursuant to Utah Code Annotated §35-1-83.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks to have this Court determine that defendant-claimant Thurman did not sustain a compensable injury under Utah's Workmen's Compensation Law and that the order of the Commission granting such compensation should be overturned and the claim of defendant-claimant Thurman should be dismissed in its entirety.

STATEMENT OF THE FACTS

On March 31, 1976, defendant-claimant Thurman was employed by the plaintiff as a janitor of a meetinghouse. On that day he was following his typical routine in preparation for a meeting of the Relief Society by setting certain chairs and tables in their place.

Mr. Thurman had no complaint of pain and had engaged in no unusual activities on the morning of March 31, 1976, but did feel a bit more tired than usual. As a consequence, he sat down and rested for about five minutes. Upon hearing the telephone ring, he stood up suddenly and for the first time felt a sharp pain in his lower back.

The pain caused him to sit down again and rest.

After resting, Mr. Thurman was able to continue work but not without pain. He reported the problem to his supervisor the next day and subsequently sought medical assistance. He was ultimately operated on by Dr. Edward Heyes and Dr. John R. Reem, on June 23, 1976 at St. Marks Hospital. He was subsequently released to light duty on September 23, 1976 and worked from September 23, 1976 to at least the date of the hearing on December 1, 1976, receiving his full salary.

ARGUMENT

POINT I

THERE IS NO PROVABLE ACCIDENT IN THE COURSE OF
EMPLOYMENT WHICH CAUSED THE INJURY OF WHICH
DEFENDANT THURMAN COMPLAINS.

One of the fundamental requirements of the Utah Workmen's Compensation Law is that an "accident arising out of or in the course of his employment" has to be established by the claimant. Utah Code Ann. §35-1-45; Redman Warehousing Corp. v. Industrial Commission, 20 Utah 2d 398, 454 P.2d 283 (1969). This creates a three-prong test which the claimant has the burden of establishing:

1. There was an accident;
2. Arising out of or in the course of employment;
3. Causing the injury complained of.

These will be treated in sequence.

A. There was no accident.

The Utah Workmen's Compensation Law does not specifically define "accident" although that is a central part of the definition of compensable injury. The case law, however, has defined that term to mean an occurrence of an unintended, unforeseen and unusual event. Carling v. Industrial Commission, 16 U.2d 260, 399 P.2d 202 (1965). The most common incident to qualify as an accident is where an employee is struck by an object or a person or where he falls and strikes a portion of his body against an object or a structure. In the present case, there was nothing which struck the claimant, Mr. Thurman, nor is there any claim that he fell against an object or structure or fell to the ground. Nor is there any evidence that he was doing something unusual or different at the time he felt the pain. In fact, this question was repeatedly asked to Mr. Thurman both by his own counsel and by counsel for plaintiff (Transcript, Pages 6, 30, 31) Examples of his testimony are as follows:

"Q When you were setting up those tables on that, I believe you said a Wednesday morning, was this a routine that you normally engage in every Wednesday?

A Yes."

(Transcript, Page 30)

"Q (By Mr. Rust) You talked about the pattern of activity that you'd had on Wednesdays over the many years that you've been a janitor. My question is, prior to the time you sat down on the chair when you felt tired, was there anything in your activities, as far as what you had to do that morning, in the way of setting up chairs or tables or doing any of your janitorial activity, that was in any way unusual or out of the ordinary from your normal activity for that particular day?

A No."

(Transcript, Page 31)

The claimant testified the first time he felt any pain in his back on that particular day was after he had been sitting for about five minutes and then stood up to answer the telephone. He was asked by his counsel as follows:

"Q (By Mr. Tate) And as you commenced your work that day, how did you feel physically?

A I felt fine as I went to work and started my daily chores there."

(Transcript, Page 6)

There is absolutely nothing in the testimony of the claimant himself that shows anything unusual about his activities, that shows any unusual exertion or strain, that shows any contact with any objects whether solid or moving, and that shows anything unusual or different about his activities that day as compared with any other day. There was, in short, no accident.

B. Any injury did not arise out of or in the course of employment.

As discussed above, there is no evidence that there was any accident which occurred during the normal working hours defendant Thurman was employed. Nor has he pointed to any accident on any previous day occurring during his working hours. It stands to reason, therefore, that if there was any trauma or unusual exertion to the back, it did not occur in the course of employment.

C. There is no causal relationship between defendant Thurman's injury and his employment.

Since both Mr. Thurman's own physician and the medical panel found that there was injury to Mr. Thurman and since there is no evidence to the contrary, that fact must be assumed to be correct for the purpose of this appeal. Nevertheless, there is nothing which causally connects that injury to an accident at Mr. Thurman's place of employment.

POINT II

THE INDUSTRIAL COMMISSION IGNORED THE FINDINGS OF THE MEDICAL PANEL.

The medical panel report in this case is most specific in its findings on cause of the injury. This is listed as conclusion number 5 and the pertinent part states:

as follows:

It is the opinion of the Medical Panel that at that time when Mr. Thurman arose from his chair, degenerated disc material, as we all have, protruded into or partway through the surrounding ligament, the anulus fibrosus, and that by the time he developed his leg pain, the disc material had progressed far enough through the anulus fibrosus surrounding the nucleus pulposus that it was then pressing on the nerve root and in this way and to this degree there is a causal relationship between the claimant's problems and complaints and the activity at that time. (Emphasis added)

The Findings of Fact of the Industrial Commission of November 3, 1977 state that Mr. Thurman "was injured while in the process of lifting chairs and tables in the preparation of a room for a meeting of the Relief Society." The supplemental order of December 7, 1977 stated:

Although the case is close, it would appear the pain and difficulty can be linked to the lifting of the table and chairs prior to the onset of pain.

Contrary to the Commission's findings, it is clear from the medical panel's specific findings that it was the standing up which caused the problem, not the moving of the tables and chairs. There is nothing in the record which sustains any other decision or determination. The Industrial Commission incorrectly substituted its findings, for which there is no medical evidence, for the specific findings of the medical panel. It was improper for the Commission to

to have reached such a conclusion without any corroborating medical evidence.

POINT III

THE INDUSTRIAL COMMISSION EXCEEDED ITS POWERS IN FINDING A COMPENSABLE INJURY.

This Court has repeatedly made it clear that simply because someone complains of injury, the onset of which is noted during the course of employment, that does not mean there is a compensable injury.

The case of Redman Warehousing Corp. v. The Industrial Commission, 22 U.2d 398, 454 P.2d 283 (1969) is a case exactly in point and its facts are worth repeating. In that case a truck driver noticed back pain during one of his trips. Subsequently he was hospitalized for a herniated disc. The medical panel in that case found that the mere sitting and driving a truck precipitated the difficulties and could have aggravated a pre-existing condition since there was some evidence of disc degeneration. He had been performing exactly the same kind of work over an 11 year period and there was nothing different about this particular trip from others. This Court then stated:

There is nothing in this record that shows any unusual event, or "accident" if you please, justifying compensability within the nature, intent or spirit of the Workmen's Compensation Act. To conclude otherwise, would insure every truck driver, every railroad engineer, every airline pilot and a lot of others, against a physiological malfunction or physical collapse of any of hundreds of human organs, completely unproven as to cause, but compensable only by virtue of the happenstance that the malfunction, collapse or injury occurred while the employee was on the job and not home or elsewhere.

454 P.2d at 285 (Emphasis added)

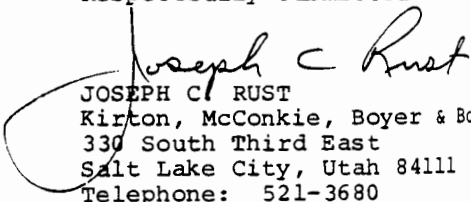
Mr. Thurman was not engaged in anything unusual or different and there is no evidence of any unusual exertion or strain which had not been present on that same day in the week over the many years he had been a janitor. He had felt neither pain nor difficulty with his back prior to his sitting down. The medical panel specifically found that the injury occurred when he stood up. The Industrial Commission therefore operated outside of its authority when it granted compensation in this particular case.

CONCLUSION

It is of course indeed unfortunate that Mr. . Thurman developed back problems and has subsequently been limited in his ability to work. Nevertheless, the Utah Workmen's Compensation Law is not at present designed to

cover every single injury which occurs to employees. The law applies only to those injuries which can be classified as accidents and which occur out of or in the course of one's employment. That burden had not been met by Mr. Thurman and the Industrial Commission erroneously awarded him compensation in this case. The decision of the Industrial Commission should be reversed and the claim of Mr. Thurman should be dismissed.

Respectfully submitted



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CERTIFICATE OF SERVICE

I hereby certify that I delivered 2 copies
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