

1978

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

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *LDS Church v. Indus. Comm'n of Utah*, No. 15640 (Utah Supreme Court, 1978).
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IN THE SUPREME COURT OF THE STATE OF UTAH

THE CHURCH OF JESUS CHRIST :
OF LATTER-DAY SAINTS, :

Plaintiff and :
Appellant, :

vs. : Case No. 15640

INDUSTRIAL COMMISSION OF :
UTAH and IVAN L. THURMAN, :

Defendants and :
Respondent. : -

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FILED

APR 19 1978

Clerk, Supreme Court, Utah

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STATEMENT OF FACTS

Defendant agrees with the statements of the nature and disposition of the case as set forth in plaintiff's brief. The Statement of Facts needs to be expanded to include the following information: Defendant suffered a herniated disc when he was injured in the course of his employment as a church custodian. While moving tables and chairs he felt sudden and unusual fatigue compelling him to sit down. Moments later he felt severe back pain as he tried to move. Doctors diagnosed that he had an L-5, S-1 disc herniation on the left and required a laminectomy. The medical panel found that there was a reasonable causal relationship between the activities of the custodian and the subsequent pain which occurred when he arose from his chair moments after the heavy lifting and later when disc material had progressed far enough to press against other nerve roots. The administrative law judge ruled that a compensable accident had occurred during the time that Mr. Thurman was

lifting the tables by himself. From the finding of a compensable accident the appellant has taken this appeal.

ARGUMENT

POINT I

THERE WAS A COMPENSABLE ACCIDENT WHICH
OCCURRED IN THE COURSE OF EMPLOYMENT
CAUSING INJURY.

The administrative law judge ruled that the applicant was injured on March 31, 1976, while in the course of his employment as a custodian with the Church of Jesus Christ of Latter-Day Saints. The applicant was injured while in the process of lifting chairs and tables in preparation of a room for a meeting of the Relief Society. The administrative law judge's letter to the medical panel summarized the claimant's testimony by stating:

Claimant complained of rapidly becoming fatigued while continuing to lift the chairs and tables and finally was compelled to sit down and rest. This fatigue ultimately turned into a sharp pain in his lower back and for some period of time he was unable to walk. Claimant continued to experience sharp pain in his back and finally he left the job and returned home.

Record, p. 82.

This summary of the facts is consistent with the claimant's testimony (Record, p. 22), and the medical reports of Dr. Edward A. Heyes (Record, p. 2) and Dr. John A. Ream (Record, pp. 4-5). The medical panel reviewed the applicant's history and the medical reports of Dr. Cloud who had treated the claimant for other impairments prior to the industrial injury and concluded that "the panel did not detect significant evidence of permanent physical impairment attributable to

pre-existing conditions." The panel also concluded that "all of this 10 per cent permanent physical impairment is attributable to the industrial injury."

The description of the injury is consistent with the medical panel's findings that disc material progressed through the annulus fibrosus surrounding the nucleus pulposis until it pressed on a nerve root which created a causal relationship between the activity and the subsequent pain. With this explanation, the medical panel found that the pain suffered by Mr. Thurman when he tried to stand up after a brief rest and subsequently when he incurred left leg pain had a causal relationship to the industrial injury. The evidence is undisputed that the diagnosis by the treating physicians was a herniated disc which resulted in surgical removal of disc material including a free fragment of disc. (Record, p. 63).

Plaintiff in these proceedings relies on two cases in support of its appeal seeking reversal of the Commission's ruling. Both cases can be clearly distinguished in their fact situation from the case before the court. In Carling v. Industrial Commission, 16 Utah 2d 260, 263, 399 P.2d 202 (1965) the injured party claimed that he had a partial loss of hearing from an industrial accident resulting from a loud noise created while he was operating an air gun. The Industrial Commission found that the claimant had a prior history of deficient hearing as early as fourteen years before the incident. The Supreme Court affirmed the Industrial

Commission's position that there was insufficient evidence to support the claim that the noise from the air tampering gun was the cause of the hearing loss. It should be particularly noted, however, that even in ruling against the claimant the court reaffirmed the law that it is not necessary for an accident be restricted to a single incident which happens suddenly at one particular time. The court's dictum made it clear that it is possible that due to exertion, stress, or other repetitive cause, a climax might be reached in such a manner as to fall within the definition of an accident.

The other case relied upon by the plaintiff is the case of Redman Warehousing Corp. v. Industrial Commission, 20 Utah 2d 398, 454 P.2d 283 (1969). Again we have a claimant with a long history of back problems with intermittent episodes of low back difficulty resulting from a degenerative disease. The Supreme Court ruled that there was no incident or accident that precipitated additional back problems resulting in the discomfort that developed while claimant was driving a truck along interstate highways.

The case at bar can be clearly distinguished from the preceding cases. In the instant case, Mr. Thurman's history showed an absence of back problems related in any way to the herniated disc. The time of the injury to Mr. Thurman can be pinpointed to when he was lifting heavy tables and chairs which resulted in rapid exhaustion and subsequent intense pain after he was compelled to sit down briefly to recuperate.

There are two decisions of the Utah Supreme Court that have fact situations comparable to the case before this court. In Baker v. Industrial Commission, 17 Utah 2d 141, 405 P.2d 613 (1965), the court reversed an Industrial Commission order denying compensation to a clerk typist who suffered a herniated disc while filing papers in the bottom drawer of a filing cabinet. In a similar fashion to the case at bar, the claimant felt a sudden sharp pain as she "stooped over or raised up" in the process of her secretarial duties. The court held:

It is undisputed that claimant suffered a disability resulting from a back injury. The sole question is whether the injury resulted from an accident arising out of or in the course of her employment. In accordance with the purpose of the Industrial Compensation Act to alleviate hardships upon workers and their families, the facts and inferences therefrom constituting a worker's right to recover are liberally construed.

Another case that is closely in point is a 1974 decision, Residential and Commercial Construction Company v. Industrial Commission, 529 P.2d 427 (1974). The Supreme Court affirmed an Industrial Commission ruling that a workman suffered a compensable accidental injury while moving lumber for his employer. After the claimant had been engaged in moving lumber for a period of time, he was unable to straighten up. Subsequent pain developed in his lower back and legs. In that case a bone chip was removed from claimant's back. The fact that the medical panel found that the bone chip resulted from a congenital anomaly was not controlling on

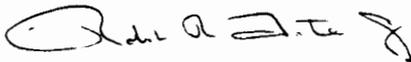
these circumstances the ruling of the Commission should be left undisturbed by this court.

CONCLUSION

It is the law of this state that the intent of the workman's compensation laws are to be liberally construed in favor of the workman and that the Commission's findings should not be disturbed unless they are capricious, arbitrary, or clearly without foundation. In the case before the court the undisputed fact situation as related by the claimant is supported by two doctor's reports relating the injury to the accident, evidence showing that the condition was not pre-existing, and a medical panel finding that the entire 10% disability relates to the industrial injury. Whether the injury occurred while the claimant was lifting the tables and chairs or five minutes later when he rose from a chair after sudden exhaustion may provide good academic rhetoric as to the time of the accident. However, nobody disputes that a herniated disc occurred and that the events that occurred within a few minutes disabled Mr. Thurman so that he could not continue his work. The Industrial Commission, based upon reasonable facts, acted in good faith in ruling in favor of the claimant and the decision of the Commission should be affirmed by this court. Defendant respectfully requests the court to affirm the decision of the Industrial Commission and award defendant its costs together with interest at the judgment rate of interest

from the date of the Industrial Commission award.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. R. Tate, Jr.", with a stylized flourish at the end.

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CERTIFICATE OF SERVICE

I hereby certify that I delivered 2 copies of
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This 19 day of April, 1978.

