1979

McKay Dee Hospital v. Industrial Commission of Utah and Ted Clark Spackman : Brief of Plaintiff

Utah Supreme Court

Robert B. Hansen; Frank V. Nelson; Attorneys for Defendants;
Joseph C. Rust; Kirton & McConkie; Attorneys for Plaintiff;

IN THE SUPREME COURT OF THE STATE OF UTAH

McKAY DEE HOSPITAL, Plaintiff,	:	
vs.	:	Case No. 16182
INDUSTRIAL COMMISSION OF UTAH and TED CLARK SPACKMAN, Defendants.	:	

BRIEF OF PLAINTIFF

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

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STATEMENT OF THE NATURE OF THE CASE

This action involves a determination by the Industrial Commission that defendant-claimant Spackman had 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 October 2, 1978, whereupon on October 24, 1978 an order awarding defendant-claimant Spackman certain benefits was entered by the Commission. On November 6, 1978 an extention was granted for filing a motion for review and on November 13, 1978 a motion for review of the order of the Industrial Commission was filed. On November 28, 1978 the motion for review was denied by the Industrial Commission. A petition for writ of review was filed with this Court on December 8, 1978 pursuant to Utah Code Annotated, Section 35-1-83.

Relief Sought on Appeal

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

STATEMENT OF THE FACTS

On April 5, 1978 defendant-claimant Spackman was employed on a part-time basis in the dietary division of plaintiff McKay Dee Hospital. During a half hour break in his

work on that day, defendant-claimant Spackman talked to his supervisor with regard to his work schedule. As a result of the conversation defendant-claimant Spackman became very angry. As a consequence, after leaving the supervisor's office he hit some garbage cans and some boxes, and finally in a fit of anger hit some metal swinging doors with his fists knowing full well that the right door was locked.

As a result of hitting the right locked metal door, defendant Spackman broke the little finger on his right hand. About two weeks after the cast had been put on the finger and while defendant Spackman was in bed, he was startled and hit a low ceiling overhead with his cast. This caused the pin which had been inserted at the time of the original casting of the finger to come out. Later some infection developed in the bone. After the last of some four or five subsequent casts on the finger had been removed, defendant Spackman was released to return to work on August 16, 1978.

ARGUMENT

POINT I

THE INJURY FOR WHICH DEFENDANT SPACKMAN SEEKS COMPENSATION WAS PURPOSELY SELF-INFLICTED.

The definition of a compensable accident within the meaning of the Workmen's Compensation Law of Utah requires that "the same was not purposely self-inflicted." Utah Code Ann. § 35-1-45. The testimony in this case is clear that in fact the injury for which defendant Spackman seeks recovery was purposely or intentionally self-inflicted. There is no question that after

defendant Spackman left his supervisor he was very mad. His hitting a garbage can and some boxes in the back room clearly demonstrates that he was taking out his anger by hitting things. He did not stay in the back room very long but rather, continuing in anger, smashed his fist against the metal doors knowing full well that the right metal door was not ever open but was always kept locked. Defendant Spackman's own testimony best describes the situation:

> A: Well I was mad. I hit some garbage cans, I hit some boxes and garbage cans, and I went through the door mad.
>
> . . . .
>
> A: Just like -- Well I was mad. I went running out the doors, you know, and pushed the doors open, you know, in a very angry state. I pushed the doors open, and I hit the door.
>
> Transcript Page 10.
>
> Q: Okay, when you went through those metal doors, did you hit your fist against the metal doors, or was it with your open hand?
>
> A: It had to have been with my fist, because it got my knuckle. It wasn't -- Well, you know. It was both fists that I hit it with.
>
> Q: And that was in anger? You don't normally open the door that way?
>
> A: No, I don't normally open the door that way.
>
> Transcript Page 21.
>
> Q: You hit the right door, --
>
> A: Yes.
>
> Q: -- that didn't move?
>
> A: Yes.

Q: You knew that that door was always locked though?

A: Yes.

Transcript at Page 26.

There should be no doubt that defendant Spackman's actions in hitting a metal door with his fist after he had hit garbage cans and boxes and while he was admittedly very mad can be classified as a purposeful, self-inflicted injury, as that term is used in the Utah Workmen's Compensation Law.

The award in this case by the Industrial Commission does not deny the anger of Mr. Spackman nor that he struck both doors in his anger. Rather the decision of the Industrial Commission is that "self injury other than suicide or injury from suicide attempt is not a defense" under the Utah Statute. Industrial Commission Order, October 24, 1978. In reaching that decision the administrative law judge cited two Utah cases.

In the case of Sugar v. Industrial Commission, 94 Utah 56, 75 P.2d 311 (1938) the court had before it the question of whether a death was in fact suicidal. The court made no determination which would exclude any other kind of self-inflicted injury as a defense for purposes of Industrial Compensation recovery. Rather, the court decided in that case that since the death was suicidal, there could be no recovery.

In the case of Buhler v. Maddison, 109 Utah 245, 166 P.2d 205, (1946), the case did not involve an industrial injury at all. The only question in that case was whether a violation of a safety rule constituted self-injury. The court concluded it

did not. That, however, does not mean that a defense of self-inflicted injury is not a valid defense. It only means that there has to be good evidence on that point. One cannot rely only on evidence that there was an intentional or willful violation of a safety rule.

The administrative law judge also relied on the noted treatise of Arthur Larson, The Law of Workmen's Compensation, Volume I A, Section 36.50. Not only is that treatise misapplied in this case but it is also misquoted. The section involved says: "The defense of intentional self-injury, not apart from suicide, has produced virtually no law of significance." (Epmphasis added). In citing that same provision in the order, the administrative law judge substituted the word "rule" for the underlined word "law."

In other words, Professor Larson does not suggest there is no rule allowing the defense of intentional self-injury to apply in cases not involving a suicide. Rather, he says there are very few cases on the subject. Professor Larson goes on to explain the reason, namely that the compensation levels for workmen's compensation are sufficiently low that most workers would not intentionally injure themselves for the purpose of receiving workers compensation benefits.

The language of the statute is clear and courts must construe language of a statute to make it purposeful and effective rather than futile and meaningless. Davis v. Washington Toll Bridge Authority 357 P.2d 710 (Wash. 1960). The administrative law judge in this case has written in a

qualification to the clear langugage of the statute which would make it futile and meaningless and certainly destroys the clear language of the statute. As was stated in a recent Indiana case, the meaning of "intentionally self-inflicted" is plain and unambiguous, and "when the evidence suggests, and the Board finds that an employee intentionally inflicted injury upon himself, compensation must be denied." Henry v. Schenk Mechanical Contractors, Inc. 346 N.E.2d 616 (Ind. 1976).

A good case in point is Carland v. Vance, 137 Pa. Super. 47, 10 A.2d 114 (1939), where the claimant working in a gasoline station had his trousers saturated with gasoline. On a dare, he struck a match and applied it to his trousers which caught fire, causing him injury. The court in that case denied the claim on the basis of both the self-inflicted injury as well as the fact that there was no accident. The court held that "the element of being unforeseen, something that is not expected or intended, result from an unknown cause, or an unusual effect of a known cause" was missing. Id. at 115. The court stated further:

> The claimant's own testimony conclusively shows that the result which followed his foolish act was expected. The inevitable and anticipated consequence of applying a match to material made inflammable by gasoline occurred.
>
> Id. at 115.

There is no question in this case that the claimant did what he did because of anger and intentional conduct. In this regard Spackman's conduct was much the same as in the case of Moore v. Travelers Ins. Co., 143 So. 2d 256 (Fla. 1962). In that

case the court held that the claimant's injuries from a co-worker's blows were the result of the claimant's willful intention to injure himself. The court held that the claimant in anger intended to provoke his co-worker with his remarks. The fact that he was injured by his co-worker came because of his own deliberate action. There was, said the court, "a reasonable expectation of bringing about a real injury to himself." Id. at 260.

The Industrial Commission has not cited a case nor does there appear to be a case which holds that the self-injury must be suicidal in nature in order for it to be a defense. The fact that most self-injury cases which have come before the courts are suicidal in nature does not change the real intent of the language nor place any modifications on the same. The Industrial Commission was in error in determining that the self-inflicted injury defense applies only in the cases of suicide or attempted suicide. Therefore the decision of the Industrial Commission should be reversed and defendant Spackman's claim should be totally denied.

POINT II

SPACKMAN'S INJURY DID NOT COME IN THE COURSE OF HIS EMPLOYMENT

As has been outlined in the Statement of Facts of this case, defendant Spackman was clearly on his break during the entire episode involved in this case. He was neither discharging his duties nor doing something in some way connected with or incidental to the duty owed his employer at the time he hit the

door. See, Sullivan v. Industrial Comm., 79 Utah 317, 10 P.2d 924 (1932). Although a temporary work stop will not by itself bar recovery, the injury has to be one to which the employee is exposed as an employee in his employment. California Casualty Indem. Exch. v. Industrial Acc. Comm., 21 Cal.2d 461, 132 P.2d 815 (1942).

In this particular case defendant Spackman would not normally have been injured by going through the one door he used in the course of his employment. He testified, as cited above, that he did not normally smash both fists against the two doors at the same time since he knew that the right door was always locked. Hence, Spackman was not carrying out his duties as an employee and was engaged in an activity to which he would not normally be exposed as an employee at the time he injured himself. For that reason he should be denied compensation in this case.

POINT III

THERE WAS NO "ACCIDENT" INVOLVED IN THIS CASE AS THAT WORD IS DEFINED IN WORKMEN'S COMPENSATION LAW.

As was decided in a recent case before this Court, and as has been the rule of law in Utah throughout the life of workmens' compensation law, an "accident" for purposes of compensability must involve an unanticipated, unintended occurrence different from what would normally be expected to occur in the usual course of events. The Church of Jesus Christ of Latter-day Saints v. Industrial Commission, ____ P.2d ____ (Utah 1979); Carling v. Industrial Commission, 16 U.2d 260, 399

p.2d 202 (1965). There was nothing unusual or unanticipated about the injury which occurred to defendant Spackman. He purposely and intentionally hit his hand against a locked metal door. That he received a broken finger as a result is no more an unusual result than in the Carland v. Vance case, supra, where the employee by igniting his pants soaked with gasoline received a rather bad burn. In both cases, there was injury but in both cases it was the very injury which one would anticipate or expect under the circumstances. The only surprising fact is that Spackman's hand was not more severely injured.

POINT IV

IF SPACKMAN IS TO BE AWARDED COMPENSATION, THE PERIOD OF TEMPORARY TOTAL DISABILITY AND THE AMOUNT OF MEDICAL EXPENSES TO BE PAID SHOULD BE REDUCED.

As noted in the Statement of the Facts in this case, within one week after the initial injury, defendant Spackman hit the ceiling of his room, causing additional injury to his finger. The act of hitting the ceiling was not secondary to the original injury but was a new intervening action. Therefore the period of recovery as well as medical expenses connected with the prolonged recovery, including the onset of infection, should not be charged against plaintiff in this case.

It should also be noted that the injury was only of the little finger. There is no evidence that defendant Spackman could not work with the rest of his uninjured body. Moreover, defendant Spackman was going to school and had only been working part-time for plaintiff. There is no evidence that he could not

get some other part-time job. Hence, except for perhaps a very short period, plaintiff should not be charged temporary total disability.

SUMMARY

There is no dispute in this case that the injury to defendant Spackman came as a direct result of his expressing anger by smashing his fist against a locked metal door. That action constitutes an intentional self-inflicted injury clearly within the meaning of the law. There was no "accident" involved since the ensuing result was anticipated. Moreover, all of this took place during a lunch break period. Therefore, considering the nature of the activity Spackman was involved in and the fact that he was not performing any service for his employer at the time of the injury, he was not injured in the course of his employment.

Totaling everything up, there is more than ample reason to find that defendant Spackman was not entitled to any compensation for his injury of April 5, 1978. The Industrial Commission clearly misapplied the law in this case in so awarding compensation. That award should be reversed by this Court and defendant Spackman's claim for compensation should be denied.

Respectfully Submitted,

Joseph C. Rust
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CERTIFICATE OF DELIVERY

I hereby certify that I hand delivered two copies of the foregoing to Robert B. Hansen, Attorney General, and Frank V. Nelson, Assistant Attorney General, at 236 State Capital Building, Salt Lake City, Utah, on the 2nd day of February, 1979.