

1979

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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McKAY DEE HOSPITAL,

Plaintiff,

vs.

INDUSTRIAL COMMISSION OF  
UTAH and TED CLARK SPACKMAN,

Defendants.

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Case No. 16182

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PLAINTIFF'S REPLY BRIEF

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## CASES AND STATUTES CITED

### Cases:

Carland v. Vance, 137 Pa. Super 47, 10 A.2d 114 (1939). . . . . 2

Hafer's Inc. v. Ind. Comm. of Utah, 526 P.2d 1188 (Utah 1974) . . . . . 3

M & K Corp. v. Ind. Comm., 122 U. 488, 139 P.2d 132 (1948) . . . . . 3

Twin Peaks Co. v. Ind. Comm. of Utah, 57 U. 589, 196 P.853 (1921). . . . . 2

### Statutes:

Utah Code Annotated (1953) Section 35-1-45. . . . . 1

Plaintiff wishes to reply to the defendants' brief in the following respects:

Point I

Defendant Spackman's Injury was Self-Inflicted Flowing Naturally from the Defendant's Intentional Act of Slamming his Fist Against a Metal Door in a Fit of Rage

In the defendants' brief counsel states, "The act of the employee, in hitting the door with his fist, was an intentional and purposeful act." (Defendants' Brief, p.3.) Admitting this, counsel, however, goes on to say that, "The act was intended but not the injury." (Defendants' Brief, p.3.) In this way counsel for the defendants would suggest that the employee's injury was not self-inflicted and therefore compensable.

U.C.A. (1953) Section 35-1-45 clearly provides that an employee's loss or injury shall be compensable, ". . . provided the same was not purposely self-inflicted. . . ." The loss and injury suffered by the defendant in this case were self-inflicted, flowing naturally from the claimant's act of slamming his fist against a metal door in a fit of rage. To separate Spackman's intentional act from the consequences of that act under the facts of this case would be to torture the common and reasonable interpretation of this statute. The consequences of the said defendant's act were natural, probable and foreseeable. Therefore, defendant Spackman

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should be held to have purposely inflicted injury upon himself thereby making him ineligible for compensation.

Counsel for the defendants cites the rule that negligence alone will not prevent compensation. Twin Peaks Co. v. Ind. Comm. of Utah, 57 U.589, 196 P. 853 (1921). Plaintiff has no argument with the rule. The facts of the instant case, however, indicate that the defendant Spackman intentionally, as opposed to negligently, slammed his fist against a metal door, thereby inflicting injury upon himself.

Counsel for the defendants would distinguish a purposeful self-infliction of injury from a foolish or negligent act; admitting that compensation should be denied for self-infliction but allowed for a foolish act. (See Defendants' Brief, p.3). As noted earlier, the facts of this case present no negligence issues. Moreover, the case of Carland v. Vance, 137 Pa. Super. 47, 10 A.2d 114 (1939), cited by defendants as support for their position, in reality supports the plaintiff's position herein. The court in that case specifically labeled the claimant's act of striking a match to his gas saturated pants, "on a dare," as a "foolish act". In that case the court denied compensation on the basis that the injury was self-inflicted and was no accident. 10 A.2d at 115.

## Point II

### Defendant Spackman's Injury Did Not Arise Out of or in the Course of Employment

Under Point II of defendants' brief, counsel points out that, "Utah is the only state according to Larson which uses the more broad language of 'arising out of or in the course of employment.'" (See Defendants' Brief, pp. 5-6). Although most state's statutes require that the injury arise out of and in the course of employment, the distinction seems to be unimportant. In M & K Corp. v. Ind. Comm., 112 U. 488, 189 P.2d 132 (1948), this court interpreted "arising out of or in the course of employment" as follows:

The accident (must) arise . . . while the employee is rendering service to his employer which he was hired to do, or doing something incidental thereto, at the time when and the place where he was authorized to render such service.

189 P.2d at 134.

Thus, it is clear that to be eligible for compensation the defendant-claimant must show that his injury occurred while he was rendering a service for which he was employed or doing something incidental thereto. Clearly the defendant was not hired to smash his fist into a door.

In Hafer's Inc. v. Ind. Comm. of Utah, 526 P.2d 1188 (Utah 1974), this Court explains what is meant by "incidental thereto":

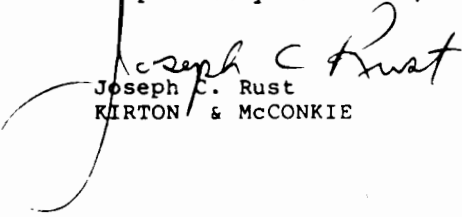
The scope of one's employment includes not only those things which are the direct and primary duties of the assigned job (that which he is hired to do); but also those things which are reasonably necessary and incidental thereto.

526 P.2d at 1189. (Emphasis added.)

The defendant's act of slamming his fist into a door in a fit of rage cannot be termed "reasonably necessary" to the fulfillment of the duties which he was hired to perform.

WHEREFORE, the plaintiff prays that the award be reversed and the defendant's claim for compensation be denied.

Respectfully submitted,

  
Joseph C. Rust  
KIRTON & McCONKIE



HAND-DELIVERY CERTIFICATE

I hereby certify that I hand-delivered 2 copies of  
the foregoing Plaintiff's Reply Brief to Robert B. Hansen and  
Frank V. Nelson, 236 State Capitol Building, Salt Lake City,  
Utah, on the 6 day of June, 1979.

A handwritten signature in cursive script, reading "Kathy Rickett", written over a horizontal line.