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CARDIAC CASES UNDER OKLAHOMA'S WORKMEN'S COMPENSATION ACT — A REJECTION OF THE USUAL EXERTION RULE

In the recent Oklahoma Supreme Court case of *Ideal Cement Co. v. The Oklahoma State Industrial Court*,¹ the court reversed an Industrial Court decision allowing death benefits to the widow of an employee who suffered a fatal heart attack while doing routine clean-up work for his employer. In reversing the decision of the Industrial Court the Oklahoma Supreme Court emphatically rejected a doctrine well established in Oklahoma and in a majority of jurisdictions throughout the country.² This doctrine, commonly known as the usual exertion rule, is a manifestation of the judicial feeling that in heart attack cases considered under a workmen's compensation act, the requisite causal connection between the injury and the employment is established by a mere showing that the employee was doing routine work in a usual fashion while on the job. The public policy basis for the rule stems from the difficulty in actually distinguishing the line between usual and unusual exertion and from the idea that workmen's compensation statutes should be liberally construed in favor of the claimant.³ The Oklahoma court specifically rejected this idea by holding that, absent unusual strain or exertion, the necessary causal connection could not be established. In *Ideal Cement*, the deceased died of heart failure on the day after he had experienced chest pains while on the job. His job included manual clean-up work involving sweep-

¹ 486 P.2d 712 (Okla. 1971).

² Larson, *The "Heart Cases in Workmen's Compensation: An Analysis and Suggested Solution"*, 65 MICH. L. REV. 441 (1967).

³ *Mid-Continent Cas. Co. v. Miller*, 451 P.2d 932 (Okla. 1968); *Marr v. American Flyers Airline Corp.*, 443 P.2d 961 (Okla. 1968); *Melrose v. Oklahoma College for Women*, 393 P.2d 878 (Okla. 1964).

ing and shoveling. On the day he experienced the chest pain, he had performed no duties outside of his normal routine. The deceased began the day in good health. The evidence before the Industrial Court indicated no unusual exertion, and the Supreme Court held that in the absence of any showing of unusual strain or exertion beyond that encountered normally, no causal connection was possible and therefore the award must be vacated.

Compensability of heart attack cases under the Oklahoma Workmen's Compensation Act⁴ creates two specific problems, both of which arise from language embodied in the act.⁵ These problems concern the statutory requirements that the injury be both one that is accidental and one that arises out of the employment. The usual exertion rule has often been applied for the purpose of satisfying both of these requirements.⁶ However, in *Ideal Cement* the court utilized only the second of these requirements to render the rule inapplicable in Oklahoma,⁷ and for this reason it is only this aspect of the statutory requirement that will be pursued here.

The requirement that the injury, to be compensable, must arise out of the employment, deals with the idea that there must exist some causal connection between the injury incurred and the work being performed. The employment must

⁴ OKLA. STAT. tit. 85, §§ 1 to 176 (1971).

⁵ OKLA. STAT. tit. 85, § 11 (1971), which provides that:
Every employer . . . shall pay, or provide as required by this Act, compensation according to the schedules of this article for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury

⁶ *Farmer's Co-Op Exchange v. Krewall*, 450 P.2d 506 (Okla. 1969); *Bill Gover Ford Co. v. Roniger*, 426 P.2d 701 (Okla. 1967); *H. J. Jeffries Truck Line v. Grisham*, 397 P.2d 637 (Okla. 1964).

⁷ 486 P.2d at 715.

be a precipitating cause of the injury. Because of the difficulty in actually determining the cause of cardiac failure, this requirement causes obvious problems in the area of heart attack claims. Due to this difficulty in determining causation, a number of Oklahoma decisions in this area apparently required that in the case of claimants whose claims arose as a result of cardiac injury, some showing of unusual exertion or strain was necessary before compensation would be allowed, the irregularity of the work performed being the element satisfying the requirement of causal connection.⁸ However, in 1961, with the decision in the *Ben Hur Coal Co. v. Orum*,⁹ the Oklahoma Supreme Court announced the first clear acceptance of the usual exertion rule in the area of cardiac injury by allowing compensation to the widow of a coal miner who had died of a heart attack while doing routine work in an ordinary fashion. No unusual exertion existed under the facts of *Ben Hur Coal*, and none was required, the court adopting the reasoning that the question of causation was one of fact for the determination of the State Industrial Court sitting *en banc*, considering lay and expert testimony concerning the work actually being done by the employee at the time of the injury. No showing of unusual exertion or irregular working conditions was required, and the court quoted approvingly from the case of *Safeway Stores, Inc. v. Simons*,¹⁰ which held, in regard to a claim under the Workmen's Compensation Act for a shoulder injury, that clearly no unusual strain or exertion need be proven for an injury to be compensable. The *Ben Hur Coal* court applied this same rationale to the area of cardiac claims. The holding of the court in the *Ben Hur Coal* case has been followed almost without exception

⁸ *Berryhill v. Prudential Premium Co.*, 394 P.2d 520 (Okla. 1964); *Ada Coca-Cola Bottling Co. v. Snead*, 364 P.2d 625 (Okla. 1961); *Glaspey v. Dickerson*, 350 P.2d 939 (Okla. 1960); *Gulf Oil Corp. v. Kincannon*, 203 Okla. 95, 218 P.2d 625 (1950); *Carden Mining & Milling Co. v. Yost*, 193 Okla. 423, 144 P.2d 969 (1943).

⁹ 366 P.2d 919 (Okla. 1961).

¹⁰ 331 P.2d 934 (Okla. 1958).

in the cardiac area until the June, 1971, decision in *Ideal Cement*. Numerous cases during this period allowed compensation under facts involving no unusual strain or exertion and specifically stated that none was required.¹¹ In the 1968 case of *Flint Constr. Co. v. Downum*,¹² the court clearly laid down the accepted rule in Oklahoma at that time by holding that:

This court is definitely committed to the rule that a disability attributable to a heart condition caused or precipitated by an antecedent strain or exertion occurring while the employee is doing his work in the usual and customary manner as an employee coming within the provisions of the Oklahoma Workmen's Compensation Act is compensable although nothing unusual occurred to cause the strain or exertion.¹³

As late as September, 1970, in the case of *King v. Honegger Constr. Co.*,¹⁴ the court apparently reiterated its acceptance of the usual exertion rule by allowing death benefits to the widow of an employee, even though the deceased worker was not doing work involving unusual strain or exertion. Although there are a few recent decisions in Oklahoma rejecting or at least choosing not to utilize the rule in what would seem to be applicable situations,¹⁵ these may be explained by the

¹¹ *King v. Honegger Constr. Co.*, 476 P.2d 72 (Okla. 1970); *Farmer's Co-Op Exchange v. Krewall*, 450 P.2d 506 (Okla. 1969); *Flint Constr. Co. v. Downum*, 444 P.2d 200 (Okla. 1968); *Fisher v. Douglas Aircraft Co.*, 440 P.2d 708 (Okla. 1968); *Bill Gover Ford Co. v. Roniger*, 426 P.2d 701 (Okla. 1967); *H. J. Jeffries Truck Line v. Grisham*, 397 P.2d 637 (Okla. 1964); *Safeway Stores, Inc. v. Evans*, 376 P.2d 336 (Okla. 1962); *Co-Operative Publishing Co. v. Jestes*, 373 P.2d 33 (Okla. 1962).

¹² 444 P.2d 200 (Okla. 1968).

¹³ *Id.* at 203.

¹⁴ 476 P.2d 72 (Okla. 1970).

¹⁵ *Berryhill v. Prudential Premium Co.*, 394 P.2d 520 (Okla. 1964); *Ada Coca-Cola Bottling Co. v. Snead*, 364 P.2d 696 (Okla. 1961); *Glaspey v. Dickerson*, 350 P.2d 939 (Okla. 1960). For a possible explanation of these inconsistencies,

Supreme Court's limited jurisdiction for review of workmen's compensation cases, that review being restricted to purely legal questions. The court has been hesitant to overturn the Industrial Court on the question of causation due to the fact that causation is correctly a determination of fact for the Industrial Court.¹⁶ These cases clearly appear to be exceptions to the weight of authority in this state giving support to the rule.¹⁷

In *Ideal Cement*, the court emphatically rejected this authority by first observing that the majority of recent decisions concerning this problem, although voicing acceptance of the rule, factually involved unusual strain or exertion,¹⁸ the court suggesting that a trend toward this position had developed through these earlier decisions. The court goes on to cite the case of *Kinser v. Western Sands, Inc.*¹⁹ to support the proposition that: "When the evidence reflects that the deceased at the time he sustained a heart attack was doing exactly the same type of work he normally does, and was not subjected to any unusual strain or exertion, there is no causal connection between the heart attack and the work."²⁰ *Kinser*, there-

see 1A A. LARSON, WORKMEN'S COMPENSATION LAW 559 (1967), which states that:

[C]ourts suddenly seem to become worried about the almost unlimited range of heart cases they might be bringing within the Act and as a result produce an occasional restrictive decision difficult to reconcile with the main line of cases.

¹⁶ *King v. Honegger Constr. Co.*, 476 P.2d 72 (Okla. 1970); *Flint Constr. Co. v. Downum*, 444 P.2d 200 (Okla. 1968); *Fisher v. Douglas Aircraft Co.*, 440 P.2d 708 (Okla. 1968).

¹⁷ See *Derryberry & Selph, Workmen's Compensation: Recovery for Heart Attack—Waiver Needed*, 22 OKLA. L. REV. 345 (1969) for a full discussion of Oklahoma's acceptance of the usual exertion rule.

¹⁸ 486 P.2d at 715.

¹⁹ 454 P.2d 305 (Okla. 1969).

²⁰ 486 P.2d at 715.

fore appears to be the vehicle used by the court in *Ideal Cement* to overturn the usual exertion rule. Utilization of *Kinser* for this purpose, however, somewhat confuses the court's decision in *Ideal Cement*. In *Kinser* the Supreme Court merely affirmed the State Industrial Court's determination of fact that there was no causal connection between the death by heart failure of a motel manager and his duties in that position. It is not clear, however, whether the Industrial Court based its holding on a lack of causal connection between the work and the heart injury or whether it based its finding on the claimant's failure to prove unusual exertion. The question in issue before the Supreme Court was whether or not the Industrial Court could render a decision without specifying the factual determination made in reaching that decision.²¹ Even though the facts of the case evidence no unusual strain, the Industrial Court might consistently have rejected causal connection while accepting the usual exertion rule by holding that there was no causal connection between the usual employment of the deceased and the injury. For this reason, use of the *Kinser* decision to support the position taken by the court in *Ideal Cement* is of questionable merit. A reading of the entire opinion in *Ideal Cement*, however, supports the conclusion that the court is firmly rejecting the use in Oklahoma of the usual exertion rule and that in all future cases in this area, in order to show causal connection between the employment and the injury incurred, as is required under the Workmen's Compensation Act, some evidence of unusual strain or exertion will be required before compensation will be allowed.

The position of the court in *Ideal Cement* puts Oklahoma in a minority of jurisdictions throughout the country that do not endorse the rule.²² It should be noted that at least one state has created an unusual exertion requirement by statute,²³

²¹ 454 P.2d at 307.

²² 1A A. LARSON, *supra* note 15, at 541-42.

the administration of which has forced that state to deal with the problems resulting from this position, such as the problem of defining unusual exertion and the problem of the quantum of proof necessary to establish it. Oklahoma's approach to these problems will be determined by future litigation in this area. It is clear, however, that *Ideal Cement* is a narrowing of the coverage of the Oklahoma Workmen's Compensation Act and will preclude a large number of awards for injury in the heart attack area. It remains to be seen whether or not the court's decision in *Ideal Cement* will create a binding precedent in this state or will merely become another of the infrequent exceptions to endorsement of the rule to be found among the decisions of the Supreme Court of Oklahoma in the cardiac area. However, it appears from the unequivocal language used by the court in *Ideal Cement* that the decision is one that will have long lasting effect on workmen's compensation coverage of heart cases in Oklahoma.

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²³ KAN. STAT. ANN. ch. 44, § 501 (Supp. 1970), amending KAN. STAT. ANN. ch. 44, § 501 (1963). See also Kelly, *The Usual Exertion Requirement and Employment-Connected Heart Attacks*, 16 KAN. L. REV. 411 (1967). For other legislative treatment, see NEV. REV. STAT. § 616.110 (1951) which completely precludes recovery for heart connected injury.