

# OCCUPATIONAL DISEASES UNDER THE GEORGIA WORKMEN'S COMPENSATION ACT

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Since the beginning of World War II, there has been a rapid expansion of industrial growth in Georgia and throughout the Southeastern States. Beginning with the expansion, many varied industries not heretofore existing in Georgia, have initiated operations here. Many of these various industries require in their manufacturing process the use of elements, metals, and chemical by-products which often prove harmful and sometimes fatal to the employees of such industrial plant.

Prior to 1946, The Workmen's Compensation Act of Georgia only covered those injuries of traumatic origin. The idea of accident was dominant in the earlier Workmen's Compensation Acts of many of the States. This accident idea was also dominant in Georgia prior to the enactment of the Occupational Disease Act of 1946.

With the advent of this industrial revolution in Georgia came many new processes which had as their by-products many gases which could often prove harmful to employees. Also many existing plants established research laboratories and often the chemicals used in these research experiments resulted in mixing of elements and chemicals which could often prove harmful to those engaged employees. Certain diseases and infirmities often develop gradually and imperceptibly as a result of engaging in these particular employments. These disabilities were recognized by the Legislature of Georgia, and in 1946, the Occupational Disease Act was enacted into law in Georgia.<sup>1</sup>

An occupational disease has been defined as some ailment, disorder or illness which is the expectable result of working under conditions naturally inherent in the employment and inseparable therefrom, and is ordinarily slow and insidious in its approach.<sup>2</sup> If a disease is not a customary or natural result of the profession or industry, per se, but is the consequence of some extrinsic condition or independent agency, the disease or injury cannot be imputed to the occupation or industry and is in no accurate sense an occupational disease.

It is well established that occupational and industrial diseases, as here defined, cannot be regarded as having arisen "by accident," within the meaning of that term as used in the Georgia Workmen's Compen-

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1. Ga. Laws, 1946, p. 103, GA. CODE ANN. § 114-8 (1956 Rev.).

2. Foble v. Knefely, 176 Md. 474, 6 A.2d 48, 122 A L R 831 (1939).

sation Act. Under the Georgia Act<sup>3</sup> the disablement or death of an employee resulting from an occupational disease shall be treated as the happening of an injury or accident, and the employee, or in the case of his death, his dependents, shall be entitled to compensation. The "occupational diseases" are defined in Code section 114-803 of the Georgia Code and are enumerated in said Code section. Only such listed diseases are included in the definition of the term "occupational diseases", and only for such listed diseases can there be a recovery.

It should be borne in mind that, although the Occupational Disease Act is part of The Workmen's Compensation Act and expressly provides that all the provisions of the Workmen's Compensation Law shall be applicable to the Occupational Disease Act, unless provided for or inconsistent therewith,<sup>4</sup> the procedures, remedies, compensation and employer's liabilities substantially differ from the Act as governing common traumatic injuries.

An occupational disease, to be compensable, must arise out of and in the course of employment and be the result of the nature of employment in which the employee was engaged. The occupation in which the employee was engaged must be one of a particular hazard that distinguishes it from the usual run of occupations, *e.g.*, one contracting silicosis as a result of mining operations.

To be compensable under this Act the employee must become actually incapacitated because of the particular occupational disease from his work in the last occupation in which injuriously exposed to the hazards of such occupational disease or disabled from performing any other remunerative work in other occupations. Code section 114-802 of the Georgia Code then defines remunerative work in other occupations as  $33 \frac{1}{3}$  per cent of such employee's last average weekly wages at the time of the last injurious exposure or \$20.00 per week, whichever is less. So it can be seen that under the present Georgia Act as long as an employee can earn  $1/3$  of former wages or \$20.00 per week, no compensation is recoverable.

As stated before, the Act<sup>5</sup> defines Occupational Diseases and covers only those diseases enumerated in said Code section. Attention should be called to the various diseases caused by poisoning. Sub-section 1 of Code section 114-803, of the Georgia Code deals with twenty-two different type poisons enumerated therein and often several of the various carbons and metals enumerated therein will be

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3. Ga. Laws, 1946, p. 103, GA. CODE ANN. § 114-801 (1956 Rev.).

4. Ga. Laws, 1946, pp. 102, 108, GA. CODE ANN. § 114-810 (1956 Rev.).

5. Ga. Laws, 1946, pp. 102, 106, GA. CODE ANN. § 114-803 (1956 Rev.).

present in the employee's occupation. In these cases some research in a medical treatise on various poisonings before consultation with your medical expert, may prove helpful. Code sections 114-812 and 114-813 of the Georgia Code concern asbestosis and silicosis and what constitutes disablement caused by these diseases. Under this Act the only way determination can be made of these diseases is by x-ray if the employee is living and by autopsy if such employee is deceased. It is doubtful if a biopsy showing lung fibracitic changes or either asbestosis or silicosis could be used as evidence as the statute must be strictly construed.

Attention, also, should be called to the discrepancy in medical and burial expenses of the Occupational Disease Act and The Workmen's Compensation Act. The former<sup>6</sup> limits the medical, surgical, hospital and other treatment to an amount not to exceed \$500.00, whereas in The Workmen's Compensation Act dealing with traumatic injuries, it provides that such medical, hospital and surgical expenses may be allowed up to the sum of \$1500.00.<sup>7</sup>

In any contested cases where any occupational disease is present, medical questions will arise. Chapter 114-819 of the Code provides for an investigation by a Medical Board. Even if the disablement due to occupational disease is undisputed, the time or date of disablement, if disputed, will necessitate a hearing before the Medical Board.

This Medical Board is composed of five physicians appointed by the Governor from a list of ten physicians nominated by the Medical Association of Georgia. Staggered terms are provided and the law contemplates that the appointees be physicians with training and experience in the field of internal medicine, roentgenology, pathology, diseases of skin and toxicology. The Medical Board has authority to make reasonable rules and regulations for examinations and autopsies. The Medical Board has authority to set a date for examinations but must notify all parties of said place and date. The law provides for examination to be held in the County where injury occurred if practical, and if not, a place of selection by the Medical Board.

As a matter of practice, the Medical Board usually meets in the hearing room of the State Board of Workmen's Compensation in Atlanta. Any three members may hear and determine the matter and also examine the witnesses. It is well to have your medical testimony, x-rays, reports and your client present at this hearing set down by the Medical Board.

When the hearing is completed, the Medical Board reports its findings to the Board of Workmen's Compensation. The report of

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6. Ga Laws, 1946, pp. 102, 119, GA. CODE ANN. § 114-824 (1956 Rev.).

7. Ga. Laws, 1955 Jan.-Feb. Ses. pp. 210, 216, GA. CODE ANN. § 114-501 (1956 Rev.).

the Medical Board must contain the evidence introduced, medical reports, x-rays produced by both sides at issue and the conclusions of the Medical Board. After the report is filed, the State Board of Workmen's Compensation shall have the right to examine the members of the Medical Board as to the correctness of their findings. Such examinations by the State Board of Workmen's Compensation of the Medical Board shall be a part of the final report.

As soon as practicable after receiving the Medical Board's report, the State Board of Workmen's Compensation shall send copies of the report to all interested parties, and either party may, within thirty days, appeal from the report findings. Provision is made for the aggrieved party to propound additional questions to the Medical Board or to any physician who testified at the hearing concerning the medical evidence. Upon appeal additional evidence may be admitted within the discretion of the Medical Board.

The report of the Medical Board upon original examination or upon appeal becomes a part of the record in the case and must be accepted by the State Board of Workmen's Compensation as conclusive on all medical questions involved. The State Board of Workmen's Compensation has no power to change or restrict the medical conclusions reached by the Medical Board. Neither can the Board of Workmen's Compensation even so much as change the date of disablement, and the remedy of the aggrieved party lies to the Superior Court to determine if said Medical Board (1) acted without or in excess of its powers, (2) decision was procured by fraud, (3) or that the facts found by the Medical Board did not support the decision of the Board, (4) or that there was not sufficient, competent evidence in the record to warrant the Medical Board in making the decision complained of, (5) or that the decision of the Medical Board was contrary to law.

From the provisions of the Occupational Disease Act as discussed above it appears that the Act is cumbersome and awkward and that anyone concerned with litigation under the terms of this Act and the procedure as outlined can be a party to long, drawn-out hearings that could prove of no benefit to either the employer or employee. With this in mind, the Workmen's Compensation Committee of the Georgia Bar Association is giving consideration and study to recommendations for amending or re-writing in its entirety, the present Occupational Disease Act of Georgia and such recommendations will be presented to the Georgia Bar Association and its Legislative Committee with the view of remedying the obvious defects in the present Occupational Disease Act.