Vanderbilt Law Review

Volume 8
Issue 3 *Issue 3 - April 1955*

Article 3

4-1955

Some Problems arising under the Workmen's Compensation Law of Tennessee

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NOTES

SOME PROBLEMS ARISING UNDER THE WORKMEN'S COMPENSATION LAW OF TENNESSEE

Although there are many problems arising under the Workmen's Compensation Laws of Tennessee, it appears that here, as elsewhere, the most difficult questions are those arising out of the interpretation of the phrases "injury by accident," "arising out of," and "in the course of," employment. The present study is therefore limited to a consideration of these three particular problems, and does not purport to be a comprehensive treatment of the entire topic of Workmen's Compensation Law in Tennessee.

I. Injury by Accident

Since the enactment of the Tennessee Workmen's Compensation Act in 1919, the fundamental requisite to compensation under its provisions, *i.e.* "injury by accident," has received numerous treatments by the Tennessee courts. The statute[1] is typically indefinitive of the exact meaning of an "injury by accident," thus leaving to the judiciary the final interpretation of the phrase.

Obviously, two questions concerning "injury by accident," arise in the courts' application of the statute. First, what type of disability will satisfy the requirement of an "injury" under the act? Secondly, what limitations flow from the phrase "by accident"?

1. *Injury*

The Tennessee court has held that "an accidental injury is not necessarily of traumatic origin, strictly speaking. [I]t is an accidental injury, whether occasioned by heat, germs, or more abrupt or perceptible physical force."[2] Such disabilities as sunstroke or heat prostration,[3] hemorrhage,[4] coronary thrombosis,[5] and coronary sclerosis,[6] have presented few difficulties to the courts, provided the other requisites of compensability are present.

However, the extension of coverage to injuries of nontraumatic nature has not been unlimited. The courts have been reluctant to allow

1. Tenn. Code Ann. § 6852(d) (Williams 1934). "'Injury' and 'personal injury' shall mean only injury by accident. . . ."
2. Hartford Acc. & Ind. Co. v. Hay, 159 Tenn. 202, 208, 17 S.W.2d 904, 905-06 (1929).
3. Jenkins v. American Mut. Liability Ins. Co., 113 F. Supp. 250 (E.D. Tenn. 1953); Milstead v. Kaylor, 186 Tenn. 642, 212 S.W.2d 610 (1948).
4. Cunningham v. Hembree, 195 Tenn. 107, 257 S.W.2d 12 (1953).
5. Patterson Transfer Co. v. Lewis, 195 Tenn. 474, 260 S.W.2d 182 (1953).
6. Charles H. Bacon v. Howell, 197 F.2d 333 (6th Cir. 1952).

compensation for disease as an injury under the act. In considering diseases as compensable injuries, it must be noted that in 1947 the Tennessee Act was amended to allow compensation for certain specified occupational diseases.[7] Disease as a compensable injury has not been limited to the prescribed occupational diseases, however.[8] Diseases naturally resulting from more perceptible injuries under normal rules of causation have often been the basis for compensation.[9] Compensation also has been allowed for diseases and infections contracted because of the entry of germs through unnatural body openings,[10] even though the opening is not work-connected.[11] Thus far the Tennessee courts have refused to allow compensation for a disease other than those listed in the act, which was contracted as a result of the entry of germs through normal and natural body openings or as a result of normal working conditions of the employment.[12]

Two Tennessee cases in which compensation was allowed for neurosis and epilepsy are indicative of the extent that the concept of an "injury" is removed from the necessity of a traumatic condition.[13] However, the courts of Tennessee have allowed compensation for such disabilities only when they have been the natural result of more perceptible physical injuries to the employee. While some jurisdictions have allowed compensation for such nervous disabilities resulting solely from purely nervous stimuli, it is doubtful that a Tennessee court would so allow, since the courts seem to seek some physical impact or injury as causation of the nervous condition in such cases.

A 1941 amendment[14] to the Tennessee Act provides that certain specific conditions must be met before compensation for hernia will be allowed. Thus, because of the particular nature of this disability,

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7. TENN. CODE ANN. § 6852(d) (Williams Supp. 1952). See Cate, *Occupational Diseases under the Tennessee Workmen's Compensation Act,* 20 TENN. L. REV. 230 (1948).

8. Buck and Simmons Auto & Electric Supply Co. v. Kesterson, 194 Tenn. 115, 250 S.W.2d 39 (1952).

9. Benjamin Shaw & Co. v. Musgrave, 189 Tenn. 1, 222 S.W.2d 22 (1949) (blows to chest caused pericarditis); King v. Buckeye Cotton Oil Co., 155 Tenn. 491, 296 S.W. 3 (1927) (heat prostration caused pneumonia); Vester Gas Range & Mfg. Co. v. Leonard, 148 Tenn. 665, 257 S.W. 395 (1923) (injury to back caused pyelitis).

10. Sears-Roebuck & Co. v. Starnes, 160 Tenn. 504, 26 S.W.2d 128 (1930) (infected callous on finger).

11. Hartford Acc. & Ind. Co. v. Hay, 159 Tenn. 202, 17 S.W.2d 904 (1929) (employee squeezed pimple on neck whereby blastomycosis germs entered).

12. Gabbard v. Proctor & Gamble Defense Corp., 184 Tenn. 464, 201 S.W.2d 651 (1947); Morrison v. Tennessee Consolidated Coal Co., 162 Tenn. 523, 39 S.W.2d 272 (1931); Meade Fiber Corp. v. Starnes, 147 Tenn. 362, 247 S.W. 989 (1923).

13. Buck and Simmons Auto & Electric Supply Co. v. Kesterson, 194 Tenn. 115, 250 S.W.2d 39 (1952) (traumatic neurosis resulting from blow on neck); Sears Roebuck & Co. v. Finney, 169 Tenn. 547, 89 S.W.2d 749 (1936) (epilepsy resulting from blow on head).

14. TENN. CODE ANN. § 6892(a) (Williams Supp. 1952).

special requisites must be met before hernia will be considered a compensable injury.

The fact that an injury is the result of aggravation or acceleration of a pre-existing condition or disease will not preclude compensation.[15] The theory of the courts seems to be that the employer hires the infirmity along with the employee.

In considering compensable injuries under the Tennessee Act, a 1945 amendment[16] providing for a "Second Injury Fund" should be noted. Under this amendment if an employee previously has sustained a permanent disability by loss or loss of use of a member, and by an injury in his employment loses another member or use thereof, becoming totally and permanently incapacitated, he is entitled to compensation for the toal disability. The employer, however, pays only the compensation for the disability resulting from the latter injury, the employee receiving the balance of the compensation for the total disability for the "Second Injury Fund" as set up by the amendment.

2. *By Accident*

"[I]t is not every injury which will entitle an employee to compensation, for the reason that the legislature was particular to limit compensation to those injuries which were accidentally sustained . . . ."[17] Thus in one of the earliest (1923) Tennessee Workmen's Compensation cases, the court called attention to the requirement of the accidental manner in which a compensable injury must be received. The limitations flowing from the "by accident" phrase of the Tennessee Act have often been the basis of litigation in the Tennessee courts.

In keeping with the general line of American authority,[18] the Tennessee courts have attributed "accident" with two facets of definition in Workmen's Compensation cases. The first aspect of the definition of the term—"an event or happening in the nature of a misfortune, casual or fortuitous"[19]—is in harmony with the lay conception of the term. The other, somewhat unusual, requirement of an "accident" is that it must be sudden or traceable to a definite time and place.[20] The latter requirement has become liberalized to a great extent.

To have an "accidental" injury there need not be an accidental

15. Lay v. Blue Diamond Coal Co., 264 S.W.2d 223, 196 Tenn. 63 (1953) (high blood pressure); Boyd v. Young, 193 Tenn. 272, 246 S.W.2d 10 (1951) (cancer); Storie v. Taylor Supply Co., 190 Tenn. 149, 228 S.W.2d 94 (1950) (syphilis); Tullahoma v. Ward, 173 Tenn. 91, 114 S.W.2d 804 (1938) (tumor).

16. TENN. CODE ANN. § 6871 (Williams Supp. 1952). See Giles County v. Rainey, 195 Tenn. 239, 258 S.W.2d 775 (1953).

17. Meade Fiber Co. v. Starnes, 147 Tenn. 362, 365, 247 S.W. 989, 990 (1923).

18. 1 LARSON, WORKMEN'S COMPENSATION § 37.20 (1952).

19. Meade Fiber Co. v. Starnes, 147 Tenn. 362, 365, 247 S.W. 989, 990 (1923).

20. Morrison v. Tennessee Consolidated Coal Co., 162 Tenn. 523, 527, 39 S.W.2d 272, 274 (1931); Sears Roebuck & Co. v. Starnes, 160 Tenn. 504, 511, 26 S.W.2d 128, 130 (1930); Meade Fiber Co. v. Starnes, 147 Tenn. 362, 365 247 S.W. 989, 990 (1923).

cause, the injury itself being capable of satisfying the "accident" requirements.[21] The Tennessee courts "consider the language 'accidental injuries' and 'injury by accident' as having the same meaning, that is, an unintended and undesigued, or unexpected result, arising from some act or acts done."[22]

The usual and clearest cases of accidental injuries occur when both the cause and the effect or result of the injury meet the requirements of an accident.[23] Into this classification fall the common traumatic injuries which rarely present complexities meriting appeal to the higher courts.

Injuries in which only the cause is an accident form another category of compensable accidental injuries. A disease or nervous condition resulting from a trauma best illustrates this type situation.[24] Compensation has also been allowed when an infectious disease was contracted as a result of germs gaining entrance into the body through a scratch or abnormal body opening.[25] The entry of the germs and the abnormal body opening help to satisfy the unexpectedness and traceability requirements of an accident.

A situation resulting in more complexities arises when only the result or the injury itself meets the requirements for an accident. As previously stated, an accidental result alone will satisfy the requirements for an accident. This type situation occurs when the injury is the unexpected result of the normal exertion or exposure of the employment. The cases dealing with such a situation seem to fall into four groups of injuries, *viz.*, (1) injuries involving "breakage" or rupture of some part of the body, (2) injuries involving a less perceptible and more generalized body change, (3) sunstroke or heat prostration, and (4) diseases. When normal exertion or exposure results in a rupture or "breakage" of some part of the body, an accidental injury is considered present.[26] An accident is also found when normal exertion, etc., results in more generalized body changes.[27] A fortiori, an accident is present when the less perceptible body change results from abnormal exertion.[28] In several cases[29] the Tennessee

21. Patterson Transfer Co. v. Lewis, 195 Tenn. 474, 260 S.W.2d 182 (1953); Roehl v. Graw, 161 Tenn. 461, 32 S.W.2d 1049 (1930).
22. *Id.* at 466, 32 S.W.2d at 1051.
23. Lucey Boiler & Mfg. Corp. v. Hicks, 188 Tenn. 700, 222 S.W.2d 19 (1949) (smashed finger caused rupture of aorta).
24. Buck and Simmons Auto & Electric Supply Co. v. Kesterson, 194 Tenn. 115, 250 S.W.2d 39 (1952) (blow to neck caused neurosis); Vester Gas Range & Mfg. Co. v. Leonard, 148 Tenn. 665, 257 S.W. 395 (1923) (blow to back caused pyelitis).
25. Hartford Acc. & Ind. Co. v. Hay, 159 Tenn. 202, 17 S.W.2d 904 (1929).
26. Lay v. Blue Diamond Coal Co., 264 S.W.2d 223, 196 Tenn. 63 (1953) (rupture of intercranial artery); Cunningham v. Hembree, 195 Tenn. 107, 257 S.W.2d 12 (1953) (cerebral vascular hemorrhage).
27. Patterson Transfer Co. v. Lewis, 195 Tenn. 474, 260 S.W.2d 182 (1953) (coronary thrombosis).
28. Sage v. Tennessee Eastman Corp., 98 F. Supp. 893 (E.D. Tenn. 1950).
29. T. J. Moss Tie Co. v. Rollins, 191 Tenn. 577, 235 S.W.2d 585 (1951)

court has found sunstroke or heat prostration resulting from the normal exertion or exposure of the employment to be accidents within the meaning of the act. The Tennessee courts have refused to find an accident when a disease has been contracted as a result of normal exertion or exposure.[30] The usual exposure or exertion resulting in a gradually developing disease falls short of the courts' concept of an accident. Of course, many of such diseases would be compensable as "occupational" diseases under the act. In the three categories mentioned in which an accident is found though there is normal exertion and exposure, it must be stressed that there must be *some* exertion or exposure that caused the injury. Mere coincidence of normal working conditions and the injury will not suffice.[31]

The situation presenting the greatest difficulties in finding an accident occurs when neither the cause nor the result or injury is accidental in the usual sense. In spite of the lack of a true accidental cause or result, the Tennessee court has found an accident in one fact situation by applying the "repeated trauma" doctrine. In *Benjamin Shaw and Co. v. Musgrave*[32] the employee was subjected to repeated blows on his chest and as a result developed pericarditis. The court treated each blow and impact as an accident and the culminating disease was held to be a compensable injury. Some jurisdictions have extended the "repeated trauma" doctrine to cases where an employee's repeated inhalation of some substance produces a disease, each inhalation and deposit on the lungs being considered as an accident. The Tennessee court failed to apply such a doctrine under similar circumstances.[33]

In the "repeated trauma" situation, the great liberalization of the traceability requirement of an accident is best evidenced, as neither the cause nor the result can be traced to a definite time or place. While an early case[34] speaks of the necessity of the cause being a "determinate or single occurence identified in time and space," the *Shaw* case states that the accident need not be so identified.[35] A 1953 Federal District

(sunstroke); Milstead v. Kaylor, 186 Tenn. 642, 212 S.W.2d 610 (1948) (sunstroke); King v. Buckeye Cotton Oil Co., 155 Tenn. 491, 296 S.W. 3 (1927) (heat prostration).

30. Gabbard v. Proctor & Gamble Defense Corp., 184 Tenn. 464, 201 S.W.2d 651 (1947) (disease caused by breathing melting pentolite fumes); Morrison v. Tennessee Consolidated Coal Co., 162 Tenn. 523, 39 S.W.2d 272 (1931) (tuberculosis resulting from breathing coal dust and other foreign matter); Meade Fiber Corp. v. Starnes, 147 Tenn. 362, 247 S.W. 989 (1923) (disease caused by breathing chemical dust).

31. Wilhart v. Warlick Construction Co., 195 Tenn. 344, 259 S.W.2d 655 (1953); Anderson v. Volz Construction Co., 183 Tenn. 169, 191 S.W.2d 436 (1946).

32. 189 Tenn. 1, 222 S.W.2d 22 (1949).

33. Meade Fiber Corp. v. Starnes, 147 Tenn. 362, 247 S.W. 989 (1923).

34. Morrison v. Tennessee Consolidated Coal Co., 162 Tenn. 523, 527, 39 S.W.2d 272, 274 (1931).

35. Benjamin Shaw and Co. v. Musgrave, 189 Tenn. 1, 8, 222 S.W.2d 22 (1949).

Court case[36] recognizes the *Shaw* view as the "more recent view."

While dictum in an early case[37] seemed to indicate that an intentionally inflicted injury would not be considered as accidental, later cases[38] adopt the view that the accidental nature of the injury is to be determined from the point of view of the employee, and that the injury is "accidental" within the statutory meaning though it results from the willful tort or criminal act of another. However, if the willful injury is inflicted because of a personal difficulty and is unrelated to the employment compensation will not be allowed.[39] Compensation is also precluded if the injury is due to the employee's willful misconduct or is intentionally self-inflicted.[40]

In dealing with the "injury" and "accidental" requisites to compensation under the Tennessee Workmen's Compensation Act, the Tennessee courts generally seem to follow the legislative mandate,[41] applying an "equitable construction" and liberal interpretation thereof.

II. Arising out of and in the Course of Employment

In its coverage formula the Tennessee Workmen's Compensation Law designates the tests by which a connection between work and injury is determined: there must be "an injury by accident *arising out of* and *in the course of* the employment."[42] Nowhere specifically defined in the act, the phrases "arising out of" and "in the course of" have been interpreted as referring to "the origin of the cause of the injury" on the one hand, and "the time, place, and circumstances under which the injury occurred" on the other.[43] Manifestly, an injury by accident cannot "arise out of" employment if it does not occur "in the course" thereof; an examination of cases in which the tests have been applied, therefore, should begin with decisions primarily concerned with the latter.

1. *In The Course Of*

Under the "coming and going" rule, followed in Tennessee and a majority of other jurisdictions, the boundary of the employer's premises is the point at which the course of employment begins and ends when hours and place of work are fixed.[44] In applying this rule, the

36. McMahan v. Traveler's Ins. Co., 114 F. Supp. 286, 288 (E.D. Tenn. 1953).
37. *See* Milne v. Sanders, 143 Tenn. 602, 621, 228 S.W. 702, 708 (1921).
38. Turner v. Bluff City Lumber Co., 189 Tenn. 621, 227 S.W.2d 1 (1950); Early-Stratton Co. v. Rollinson, 156 Tenn. 256, 300 S.W. 569 (1927).
39. Kinkead v. Holliston Mills, 170 Tenn. 684, 98 S.W.2d 1066 (1936).
40. Tenn. Code Ann. § 6861 (Williams 1934).
41. Tenn. Code Ann. § 6901 (Williams 1934).
42. Tenn. Code Ann. § 6852 (d) (Williams 1934).
43. *See* Stratton Co. v. Rollison, 156 Tenn. 256, 260 (1927); Hendrix v. Franklin State Bank, 154 Tenn. 287, 289 (1926).
44. Little v. Johnson City Foundry, 158 Tenn. 102 (1928); Moore v. Cincinnati, N.O. & T.P. Ry., 148 Tenn. 561 (1923). See 1 Larson, Workmen's Compensation § 15 (1952). But see Riesenfeld and Maxwell, Modern Social Legislation 236, note 10 (1950).

Tennessee courts have recognized two possible exceptions: where transportation to or from work is furnished by an employer; and where an employee has no discretion in selecting the route followed.[45] In *Free v. Indemnity Insurance Co. of North America*,[46] the Supreme Court seemed to approve extension of the "premises" concept to include injuries which occur "so close by" that they may be "considered" as having occurred thereon, or which occur while an employee is using "an immediate means of access to or from work" so that he is "directly and immediately connected with it."[47] However, in a later decision the court rejected this "so close by" rule and denied compensation to an employee injured on her way to work some six to twenty feet from her employer's doorstep.[48] The court pointed out that the employee was not constrained to follow one particular route, thus indicating that the result reached will not alter the recognized exception applicable to cases in which employees must follow one route. That particular fact situation, however, has not yet been presented in Tennessee cases.

Cases in which transportation to and from work was furnished by an employer indicate that the first exception to the "coming and going" rule will be applied notwithstanding the nature of the agreement by which an employer undertakes to provide transportation or the manner in which the obligation is met. The exception has been followed when the agreement was made part of the contract of hire expressly[49] or by implication,[50] or as an inducement to continue employment.[51] The same result has been reached when the conveyance was owned or controlled by the employer,[52] and when it was owned by the employee and rented by the employer.[53] Language in *Taylor v. Meeks*[54] indicates that transportation furnished gratuitously may also extend the employer's liability to injuries suffered en route to or from work, a result advocated by one writer as consistent with the reason behind the exception: extension of employer-controlled risks of employment.[55]

When an employee's work requires that he leave his employer's premises, or when travel is a necessary incident of his employment,

45. *See* Little v. Johnson City Foundry, 158 Tenn. 102, 106, 107 (1928).
46. 177 Tenn. 287 (1941).
47. Free v. Indemnity Ins. Co. of North America, *supra* note 46, at 291.
48. Smith v. Camel Mfg. Co., 192 Tenn. 670 (1951).
49. Sharp Drug Stores v. Hansard, 176 Tenn. 595 (1940); McClain v. Kingsport Improvement Corp., 147 Tenn. 130 (1922); Oman v. Delius, 10 Tenn. App. 467 (1930).
50. Vaughn v. Standard Surety & Casualty Co., 27 Tenn. App. 671 (1944).
51. Spradling v. Bituminous Casualty Corp., 182 Tenn. 443 (1945).
52. McClain v. Kingsport Improvement Corp., 147 Tenn. 130 (1922); Oman v. Delius, 10 Tenn. App. 457 (1930).
53. Sharp Drug Stores v. Hansard, 176 Tenn. 595 (1940).
54. 191 Tenn. 695, 698 (1951).
55. 1 LARSON, *op. cit. supra* note 44, at 237.

he is in the course of his employment throughout his journey.[56] However, the Supreme Court has held that an employee who leaves his employer's premises on a personal errand is not in the course of his employment because of an intention to accomplish a business purpose which is merely incidental to the primary purpose of the trip.[57] The court did not inquire whether the trip would have been made had there been no personal purpose to be accomplished—a test which has been suggested as the best means of determining whether the necessity for a trip is created by the employment.[58] The court's emphasis on the "primary" purpose may accomplish the same result; there was at least no indication that the duality of purpose automatically placed the trip outside the course of employment.

Tennessee courts have consistently held that although a trip is part of the duties of employment, a deviation for a personal purpose temporarily suspends the course of the employment;[59] but reasonable incidents of a journey, such as visiting eating places or stopping in hotels, have been found not to be "deviations" for they are "necessarily within the contemplation of the parties."[60] In addition, it has been held that the course of employment continues upon return to the prescribed route of travel after a deviation.[61] Two recent decisions of the Supreme Court illustrate the difficulty of determing the point at which a deviation terminates. In *Underwood Typewriter Co. v. Sullivan*,[62] an employee was sent to another city to attend a course in repairing electric typewriters. During his free time on Saturday evening, he was riding with a fellow-employee in the latter's car in search of bird seed for a friend's bird, and was killed while returning to his hotel after purchase of the seed. The court found that his death did not occur in the course of his employment because the duties of his employment required travel only between his hotel and the school. In *Lumbermen's Mut. Cas. Co. v. Dedmon*,[63] an employee was required to travel from town to town and to work at various lumber yards, and to remain at his hotel during the evening to make out reports and receive telephone calls from his employer. On his way to

56. Central Surety & Ins. Corp. v. Court, 162 Tenn. 477 (1931).
57. Free v. Indemnity Ins. Co. of North America, 177 Tenn. 287 (1941); *cf.* Jellico Grocery Co. v. Hendrickson, 172 Tenn. 148 (1937).
58. *See* Patton v. Brayton & Co., 184 Tenn. 592, 597 (1947); American Casualty Co. v. McDonald, 166 Tenn. 25, 28 (1933); Marks v. Gray, 251 N.Y. 90, 167 N.E. 181, 183 (1929).
59. Underwood Typewriter Co. v. Sullivan, 265 S.W.2d 549 (Tenn. 1954); Lumbermen's Mut. Cas. Co. v. Dedmon, 264 S.W.2d 567 (Tenn. 1954); *cf.* American Casualty Co. v. McDonald, 166 Tenn. 25 (1933); Hawkins v. National Life & Acc. Ins. Co., 164 Tenn. 36 (1931).
60. Employer's Liability Assur. Corp. v. Warren, 172 Tenn. 403, 413 (1938). *See* Thornton v. R.C.A. Service Co., 188 Tenn. 644, 649 (1949); Carter v. Hodges, 175 Tenn. 96, 105 (1939).
61. See Martin v. Free Service Tire Co., 189 Tenn. 327 (1949).
62. 265 S.W.2d 549 (Tenn. 1954).
63. 264 S.W.2d 567 (Tenn. 1954).

his hotel from a lumber yard which he had visited, the employee stopped his car and crossed the street to inspect some fishing equipment. While crossing the street to return to his car he was struck by an automobile. The court found that he had not returned to the point at which his deviation had begun, and held that he was not entitled to compensation. A distinction between these two cases might be found in the duties of the employments; in the latter case, the employee was required to return to his hotel and was in a street which was part of the route to be followed. The court's determination that he was not in the course of his employment seems to establish an arbitrary rule that no deviation is completed until the employee fully regains his former position.[64]

Just as an employee can deviate from a travel route, he can become temporarily detached from his employment while on his employer's premises by undertaking a purely personal task.[65] But just as reasonable incidents of a journey do not constitute deviations,[66] acts of personal ministration such as eating, drinking, washing, or seeking fresh air are not detachments from the course of employment.[67] The rule may be applied when an employee leaves the premises in order to eat lunch, if the meal is contemplated as part of the employment.[68]

In *Kingsport Silk Mills v. Cox*,[69] the Supreme Court recognized and applied the "mutual benefit" rule, whereby an injury suffered by an employee while performing an act for the mutual benefit of himself and his employer is compensable, notwithstanding the personal aspect of the act. In *Tallent v. Lyle & Son*,[70] the rule was applied to an employee's making repairs on his car while waiting to transport fellow employees to work, on the ground that the employer had an interest in the use the employee was making of his automobile. Although transportation was part of the contract of hire, the court indicated that the same result would be reached apart from that fact.[71]

Two other factors have been found to affect the course of employment. Disobedience of an employer's orders may place outside the employment acts which otherwise might be considered part of an employee's duties; and an emergency may extend the course of employment to acts obviously not contemplated by the contract of hire. A claimant who loosened chains on freight cars voluntarily and

64. See Sanders and Bowman, *Labor Law and Workmen's Compensation—1954 Tennessee Survey*, 7 VAND. L. REV. 861, 872 (1954).
65. Hinton Laundry Co. v. De Lozier, 143 Tenn. 399 (1920).
66. See note 60 *supra*.
67. Shockley v. Morristown Produce & Ice Co., 158 Tenn. 148 (1928); Patten Hotel Co. v. Milner, 145 Tenn. 632 (1921); Tennessee Chemical Co. v. Smith, 145 Tenn. 532 (1921); Johnson Coffee Co. v. McDonald, 143 Tenn. 505 (1920).
68. *See* Toombs v. Liberty Mut. Ins. Co., 173 Tenn. 38, 41 (1938); Johnson Coffee Co. v. McDonald, 143 Tenn. 505, 510-511 (1920).
69. 161 Tenn. 470 (1930).
70. 187 Tenn. 482 (1948).
71. Tallent v. Lyle & Son, *supra* note 70 at 486.

against positive instructions was found not entitled to compensation for the injury he suffered while doing so.[72] Similarly, a claimant was found to be outside the course of his employment when he went up to an electrical transformer after being told to keep away.[73] But because of the existence of an emergency, a bookkeeper who suffered a hernia while helping remove a concrete mixer which was blocking the entrance to his office, and a stock room clerk injured while repairing his employer's trucks have been found entitled to compensation.[74]

2. *Arising Out Of*

In determining whether an injury "arises out of" the employment, Tennessee courts have relied upon the general rule that an injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.[75] Decisions reached by application of this rule are consistent with those reached in a majority of other jurisdictions in allowing compensation for injuries resulting from an "act of God" and injuries caused by risks containing both personal and employment elements.[76] Thus, death caused by a sunstroke, and death resulting from the aggravation of a pre-existing physical infirmity by the conditions of work, have been found to "arise out of" employment.[77] In *Tapp v. Tapp*[78] it was held that injuries received in an idiopathic fall or seizure are compensable if the fall or seizure brings the employee into contact with a hazard of the employment.

Two doctrines of recent origin, adopted in a minority of jurisdictions, have not yet been approved by the Tennessee courts. One of these would find a causal connection between assaults by fellow employees and the conditions under which work is performed in the friction and strain of the working environment, even though the immediate cause is a personal feeling of animosity.[79] It seems that the Tennessee rule will continue to be that injuries received in a quarrel with a co-worker are not caused by the conditions of work unless the

72. Leonard v. Cranberry Furnace, 150 Tenn. 346 (1924).
73. Home Ice Co. v. Franzina, 161 Tenn. 395 (1930).
74. Roehl v. Graw, 161 Tenn. 461 (1930); Templeton v. Wilson, 174 Tenn. 65 (1939); *cf.* Johnson v. Copeland, 158 S.W.2d 986 (1942).
75. Davis v. Wabash Screen Door Co., 185 Tenn. 169 (1947).
76. See 1 LARSON, *op. cit. supra* note 44, §§ 8, 12.
77. T. J. Moss Tie Co. v. Rollins, 191 Tenn. 577 (1950); Davis v. Wabash Screen Door Co., 185 Tenn. 169 (1947); McCann Steel Co. v. Carney, 192 Tenn. 94 (1950); Lucey Boiler & Mfg. Corp. v. Hicks, 188 Tenn. 700 (1948); Cambria Coal Co. v. Ault, 166 Tenn. 567 (1933). *But cf.* Wilhart v. Warlick Construction Co., 195 Tenn. 344 (1953).
78. 192 Tenn. 1 (1950). *Cf.* Workman v. General Shoe Corp., 265 S.W.2d 883 (Tenn. 1954), 7 VAND. L. REV. 869 (1954).
79. Hartford Acc. & Ind. Co. v. Cardillo, 112 F.2d 11 (D. C. Cir. 1940). See 1 LARSON, *op. cit. supra* note 44, § 11.16 (a).

subject matter of the quarrel has some connection with the work; but if a connection is found, it will not be affected by the existence of personal ill-will. In several cases where the conditions of work were the obvious cause of personal animosity, resulting quarrels have been found to have no connection with the employment;[80] but assaults resulting from the exercise of authority by a superior, the performance of an employer's orders, and disagreement over the everyday performance of work, have been found to have a work-connection despite personal feelings.[81] In *Jim Reed Chevrolet Co. v. Watson*,[82] the requisite connection was found when two porters who were required to remain on their employer's premises all night acquired the habit of carrying pistols, and one accused the other of stealing his weapon. The court held that although the porters were not night-watchmen, and their employer neither instructed them to carry pistols nor knew that they did so, the subject matter of their quarrel was connected with the conditions of their work because their all-night hours of employment made it natural for them to carry pistols.

In cases where an employee was injured in an assault by a person not a fellow employee, a similar rule has been applied—no causal connection found when the reason for the assault was personal to the employee.[83] But where an employee was injured by the horseplay of a fellow employee, his injury was said to have arisen out of his employment.[84]

The "positional risk" doctrine would allow compensation for injuries resulting from risks neither employment-connected nor personal to the employee, on the theory that an injury "arises out of" employment if an employee's duties require him to be in a place of danger.[85] A majority of jurisdictions seem to have adopted this dictrine by allowing compensation in "street risk" cases, where the dangers of the street are found to be risks of the employment if an employee's duties require him to be on the street.[86] Despite an early tendency to require more than the ordinary risks of the street,[87] the Tennessee courts have also found that compensation should be awarded in such cases;[88] but they have not followed the doctrine in cases involving other hazards. In an early case the Supreme Court affirmed an

80. Kinkead v. Holliston Mills, 170 Tenn. 684 (1936); Forbess v. Starnes, 169 Tenn. 594 (1936).
81. Turner v. Bluff City Lumber Co., 189 Tenn. 621 (1950); United States Fidelity & Guaranty Co. v. Barnes, 182 Tenn. 400 (1945); Early-Stratton Co. v. Rollison, 156 Tenn. 256 (1927).
82. 194 Tenn. 617 (1952).
83. McConnell v. Lancaster Bros., 163 Tenn. 194 (1931); Chamber of Commerce v. Turner, 158 Tenn. 323 (1928).
84. Borden Mills Co., Inc. v. McGaha, 161 Tenn. 376 (1930).
85. See 1 LARSON, *op. cit. supra* note 44, § 10.
86. See 1 LARSON, *op. cit. supra* note 44, at 77 n.27.
87. Porter v. Traveler's Ins. Co., 163 Tenn. 526 (1931).
88. Tullahoma v. Ward, 173 Tenn. 91 (1938).