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**ADMINISTRATIVE LAW — JUDICIAL REVIEW OF
DECISION OF STATE INDUSTRIAL ACCIDENT
COMMISSION BASED ON FINDING OF FACT
BY MEDICAL BOARD RELATING TO
OCCUPATIONAL DISEASE**

***Johnstown Coal & Coke Co. v. Dishong*¹
*Dishong v. Davis Coal & Coke Co.***

By MARK D. COPLIN*

Claimant Dishong, worked in Davis' mines for 28 years as a coal loader, motor brakeman, and motorman. He left Davis in 1945 and started work for Johnstown as a coal loader, but in 1947 he noticed shortness of breath and pains in his chest and was forced to quit in June, 1949, because of difficulty in breathing. In May, 1950, claimant learned for the first time that he had silicosis, whereupon he filed a claim for compensation against both former employers. It was shown before the Medical Board that claimant came in contact with coal and sand dust while working for Davis, and that while in the employ of Johnstown he came in contact with sand dust only a few minutes each day when he passed along the haulage way. The Medical Board found the claimant had contracted silicosis while working for Davis, but that it was possible that further developments of the disease may have occurred as a result of his exposure

¹ 84 A. 2d 847 (Md., 1951). Reh. den. Jan. 8, 1952.

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to sand dust while working for Johnstown. The Commission dismissed the claim against Davis² and ordered Johnstown to pay compensation, whereupon Johnstown appealed to the Circuit Court for Garrett County and, following an adverse ruling, to the Court of Appeals. *Held*, affirming the Commission, that the finding by the Medical Board that claimant was injuriously exposed to sand dust while employed by Johnstown, "supported by inferences which may be fairly drawn from the evidence," is final and not subject to judicial review.

The Legislature has provided for administrative finality of findings of fact by the State Industrial Accident Commission in cases involving an occupational disease,³ insofar as is possible. In view of the clear legislative intent, it is important to note the limitations, if any, upon this administrative finality, and whether in any case the court may upset the Commission's determination in an occupa-

² Md. Code (1947 Supp.), Art. 101, Sec. 23, provided that an employer should not be liable for any compensation for silicosis or asbestosis unless disablement or death resulted "within three (3) years . . . after the last injurious exposure to such disease in such employment . . ." This time was extended to five years by Md. Laws, 1951, Ch. 290; Md. Code (1951), Art. 101, Sec. 22(d), which might have preserved the claim for compensation against Davis, but for the fact that the claim was disposed of prior to June 1, 1951, the effective date of the statute. Since claimant was not disabled until more than four years after leaving Davis' employ, his claim against Davis was barred by the three year statute of limitations.

However, Davis' liability would have been eliminated in any event by that part of Art. 101, Sec. 23, *supra*, which limits liability in the case of silicosis or asbestosis to "the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease during a period of sixty (60) days or more. . . ." This provision is substantially reenacted by Md. Laws, 1951, Ch. 290; Md. Code (1951), Art. 101, Sec. 22(b). Only if it were found that claimant had not been "injuriously exposed" while employed by Johnstown could claimant recover from Davis, and it was apparently to meet this eventuality that claimant joined Davis in this appeal.

³ "In any hearing held by the State Industrial Accident Commission to determine any controversial question in any case involving an occupational disease, no finding of fact by the Commission shall be subject to be reviewed or set aside, reversed or modified; but the findings of fact by the Commission shall be final and not subject to review or modification by the Court or be submitted to a jury."

Johnstown Coal & Coke Co. v. Dishong, *supra*, n. 1, 849; Md. Code (1951), Art. 101, Sec. 23, 57. Bethlehem-Sparrows Point Shipyard, Inc. v. Bishop, 189 Md. 147, 154, 55 A. 2d 507 (1947), says that "finality, in so far as the legislature can make final the decision of an administrative tribunal, attaches to the decision of the Commission, (but) not to the decision of the Medical Board." See also Consolidation Coal Co. v. Porter, 192 Md. 494, 64 A. 2d 715 (1949); Kelly-Springfield Tire Co. v. Roland, 79 A. 2d 153 (1951). Md. Code (1951), Art. 95A, Sec. 6(h), provides a somewhat similar rule regarding findings of fact by the Unemployment Compensation Board which, if supported by evidence, in the absence of fraud, are conclusive on the court. See Steamship Association v. Maryland Unemployment Compensation Board, 190 Md. 215, 57 A. 2d 818 (1948); Brown v. Md. Unemp. Comp. Board, 189 Md. 233, 55 A. 2d 696 (1947); Tucker v. American Smelting & Refining Co., 189 Md. 250, 252, 55 A. 2d 692 (1947).

tional disease proceeding. Although the Commission was affirmed in the instant case, the Court of Appeals admonished that the statute in question

“ . . . cannot override the basic principle that the Legislature cannot divest the courts of their inherent power to review the actions of administrative agencies which are illegal, arbitrary, or unreasonable and which impair personal or property rights. There is an implied limitation upon the authority of the State Industrial Accident Commission that its findings shall be supported by legally sufficient evidence, for a finding unsupported by any evidence is beyond the power of an administrative agency as a denial of due process of law. *Heaps v. Cobb*, 185 Md. 372, 379, 380, 45 A. 2d 73.

“ . . . The decision of the Commission, under the authority conferred upon it by statute in cases involving occupational diseases, is conclusive in the field of inferences from evidentiary facts, unless it appears that there is no reasonable basis for its conclusions and therefore the decision exceeds its power.

“ . . . this Court has no authority to set aside an award of the Commission merely because the Court might weigh or appraise the evidence differently. Where the findings of the Commission are supported by inferences which may be fairly drawn from the evidence, even though the evidence may be susceptible of opposing inferences, the Court will not reject those findings.”⁴

It thus appears that at least in occupational disease cases, a finding of fact by the Commission, supported by “legally sufficient” evidence, or by reasonable “inferences from evidentiary facts” may not be reviewed by the courts. There seems to be no requirement that evidence be “substantial,” as is so often stated in the cases, and the Commission’s finding apparently carries at least the weight of a jury verdict, if not more.⁵

⁴ *Supra*, n. 1, 850, 851.

⁵ The Maryland rule in at least this phase of administrative law probably differs from and is less liberal toward judicial review than the rule applicable to most federal agencies under their respective statutes and the Federal Administrative Procedure Act, Sec. 10(e), 5 U. S. C. A., Sec. 1009(e), which requires that agency action be supported by “substantial evidence”. Thus, in *O’Leary v. Brown-Pacific-Maxon*, 340 U. S. 504, 508 (1951), it was held that findings of the deputy commissioner under the Longshoremen’s and Harbor Workers’ Compensation Act were subject to the Administrative Procedure Act which, under the interpretation of *Universal Camera Corp.*

Findings in an occupational disease case have reached the Court of Appeals in a somewhat similar, if less extreme case than that now under discussion. In *Bethlehem-Sparrows Point Shipyard, Inc. v. Bishop*,⁶ the Medical Board found from evidence that the employee did not die as a result of occupational disease, but from coronary thrombosis brought on by arteriosclerosis. Two physicians testified that decedent, who had been exposed to lead fumes while on the job, probably died as a result of lead poisoning. The Commission reversed the Medical Board and granted an award. On appeal, the Court of Appeals affirmed, stating that there was substantial evidence to support the finding of the Commission, and that the statutory finality⁷ does not attach to the decision of the Medical Board. The court's language in the instant case indicates that the Commission's finding of death by lead poisoning would have been sustained even if the evidence were not so "substantial."

Support for this approach is found in numerous state compensation cases, some of which are relied upon by the Maryland court in the instant decision. In *Van Domelon v. Town of Vanden Broeck*,⁸ claimant was employed in Wisconsin to drive a team and help remove snow from a town road. The town "pathmaster" was present when claimant had a heart attack, and knew that claimant had quit work; and he even stayed with claimant for two weeks during his illness. The town treasurer and supervisor knew that claimant had taken ill while working on the road, and the town chairman knew that claimant was sick, but not that he had become ill on the job until two months later. The Wisconsin Commission denied an award because claimant had not given notice of injury within 30 days as required by statute, although the town knew through its officers within the statutory period that claimant was disabled. The Commission was affirmed on the ground that knowledge of claimant's disability was not knowledge of the occurrence of a compensable injury, and the court stated that:

v. Labor Board, 340 U. S. 474 (1951), requires that "findings are to be accepted unless they are unsupported by *substantial evidence on the record considered as a whole*. (Emphasis supplied.) The Maryland court in the instant case does not lay down such a broad evidential requirement. That compensation commission's finding is entitled to the weight of a jury verdict, see *Hunter v. American Steel & Wire Co.*, 293 Pa. 103, 141 A. 635, 636 (1928).

⁶ *Supra*, n. 3.

⁷ *Ibid.*, 154.

⁸ 212 Wis. 22, 249 N. W. 60, 92 A. L. R. 501 (1933).

“ . . . in the field of inferences from evidentiary facts the Commission’s action is final and controlling under the authority conferred upon it by law, unless it appears that there is no reasonable basis for its conclusions under the facts and circumstances before it, and that therefore its action is without or in excess of its powers.”⁹

In *Harvey Coal Corp. v. Pappas*, a claimant, who had been in perfect health, was injured in a mine by falling slate, and shortly thereafter his eyesight became seriously affected and in a few months he was totally blind. An award by the Kentucky Commission was upheld, although seven or eight physicians testified that the injury could not have caused the blindness because claimant had an advanced optic atrophy so shortly after the accident, and only two or three physicians testified that the injury could and probably did cause the blindness.¹⁰ As the opinion reasons,

“ . . . the question before this court is, not whether the award is sustained by the evidence, but rather whether there was any evidence tending to support the award. This court will not consider the question whether the findings of the board are palpably or flagrantly against the evidence. We will only determine that there is evidence to support the findings, or that there is not any evidence to support the findings. It is not our province to weigh the evidence in such cases.

“It makes no difference how much the evidence may preponderate against the claimant so far as the courts are concerned, if the Compensation Board made an award on the claimant’s evidence. The finding of facts by the Workmen’s Compensation Board is conclusive, where there is any evidence to support the finding. The evidence must amount to something of relevant consequence, and it must not consist of mere vague, uncertain, or irrelevant matter, not carrying the quality of proof or having fitness to induce conviction.

“When the claimant produces evidence which would authorize the Compensation Board to make an award, if no other evidence was introduced, courts are not

⁹ *Ibid.*, 62, 504.

¹⁰ 230 Ky. 108, 18 S. W. 2d 958, 73 A. L. R. 473 (1929).

authorized to set aside that award, however much the evidence introduced by the employer may preponderate against the claimant. . . ."¹¹

In *Harford Accident & Indemnity Co. v. Industrial Accident Commission of California*,¹² claimant, a newspaper carrier, arranged with a milk truck driver to carry him and his papers over the route in return for assistance to the driver. One morning, before completing his deliveries, the newsboy reached for a bottle of milk for the driver, slipped, and fell beneath the wheels of the truck and was injured. The Commission made an award against the newspaper company, although the accident occurred on a street which was on the milk route and not on the paper route, and the newspaper argued that claimant was not acting within the scope of his employment when injured. The California court stated:

" . . . this court will not annul an award of the Commission where there is substantial evidence to support the Commission's finding and order. . . . And if the findings are supported by inferences which may fairly be drawn from the evidence, even though the evidence be susceptible of opposing inferences the reviewing court will not disturb the award."¹³

Whether "any" evidence¹⁴ will suffice, or whether evidence must be "legally sufficient,"¹⁵ as in the instant case, in order to satisfy the minimum requirement that the Commission's finding be supported by evidence¹⁶ is not always clear; but it seems that courts using the former terminology must certainly intend to include the latter by implication. Perhaps a simpler way of expressing the rule is that in

¹¹ *Ibid.*, 959, 474-5.

¹² 202 Cal. 688, 262 P. 309, 58 A. L. R. 1392 (1927).

¹³ *Ibid.*, 310, 1395.

¹⁴ *Supra*, n. 11; Wisconsin Labor R. Board v. Fred Rueping Leather Co., 228 Wis. 473, 279 N. W. 673, 682 (1938).

¹⁵ *Supra*, n. 1, 850; Foster v. Goodpaster, 290 Ky. 410, 161 S. W. 2d 626, 140 A. L. R. 1044 (1942).

¹⁶ This would seem to meet the constitutional requirements of due process, assuming due notice and proper opportunity to be heard. *Supra*, n. 1, 850; Crowell v. Benson, 285 U. S. 22, 47; Thomas v. Pennsylvania R.R. Co., 162 Md. 509, 514-515, 160 A. 793 (1932). However, in cases involving the impairment of property rights such as by action of a zoning board, the courts may guard more jealously their right to review administrative action in order to determine whether the board acted on *substantial evidence*, or was guilty of an arbitrary or unlawful exercise of discretion. See Heath v. Mayor and C. C. of Baltimore, 187 Md. 296, 304, 49 A. 2d 799 (1946); Heaps v. Cobb, 185 Md. 372, 379, 45 A. 2d 73 (1945).

cases involving occupational disease, the reviewing court is precluded from examining questions of fact, but may only rule on questions of law, such as whether the evidence before the Commission was legally sufficient to support its decision.¹⁷

In the instant case, there was evidence only of "minimal"¹⁸ exposure of claimant to sand dust while in Johnstown's employ, where claimant came in contact with sand dust "for a few minutes as he passed along the haulage way to and from work" for four years and three months. This is contrasted with the 28 years claimant spent in Davis' mines, during which the Medical Board found he had first contracted the disease. The Board said, however, that exposure of claimant while working for Johnstown "could not be said to be non-existent," and this was sufficient evidence to support the award.

The rationale behind giving finality to the acts of administrative agencies which are specially created to administer particular legislative programs is, of course, that such agencies are best equipped to deal with the problems delegated to them. Conversely, the courts generally are not as well suited to the expeditious handling of an administrative program, such as Workmen's Compensation, and therefore they should not ordinarily be allowed to substitute their judgment for that of the agency, except as to questions of law which are within the peculiar province of the courts.¹⁹

Such reasoning applies with particular force in cases involving occupational disease where the Commission is

¹⁷ *Supra*, n. 1, 850, that sufficiency of evidence is a question of law. The court may always review questions of law. Thus, where the Commission granted an award in an occupational disease case without finding affirmatively, as required by Md. Code (1951), Art. 101, Sec. 22(c), that the condition complained of was "characteristic of and peculiar to the trade, occupation, process, or employment, etc.," the commission was reversed on grounds that it had "either misconstrued the legal effect of Section 23, or made a finding that had no substantial evidence to support it." *Kelly-Springfield Tire Co. v. Roland*, 79 A. 2d 153, 157 (1951). And where there was no evidence that claimant sustained permanent disability from silicosis within the statutory three year period of limitations after his last injurious exposure (Md. Code (1947 Supp.), Art. 101, Sec. 23), but the commission found that the employer knew of claimant's silicotic condition when it first arose within the three year period and was therefore estopped by its failure to tell him that he was suffering with silicosis, it was held that the finding "is based upon an erroneous conception of law, and is clearly reviewable." *Gower v. Davis Coal & Coke Co.*, 78 A. 2d 195, 199 (1951). Sec. 23 referred to above is now Sec. 22 in the 1951 Code.

¹⁸ *Supra*, n. 1, 850.

¹⁹ See Oppenheimer, *Administrative Law in Maryland*, 2 Md. L. Rev. 185 (1938), 208, and particularly at 209.

aided by the findings of the Medical Board, which is composed of medical experts,²⁰ although it is true that Medical Board findings are not binding on the Commission. However, even in cases not heard by the Board, or where the Board is reversed, it is apparent that effective investigation, adjudication and settlement of industrial accident claims requires that the Commission's actions be final insofar as is possible.²¹ The instant decision supports this policy.

²⁰ *Supra*, n. 1, 850.

²¹ "The object of the Workmen's Compensation Act is to furnish a prompt, continuous and expert method for dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task." *Supra*, n. 1, 850; *Crowell v. Benson*, 285 U. S. 22, 46 (1932).

It should be observed, however, that the same statutory rule of administrative finality does not apply to findings of the Maryland Commission in cases involving an accidental personal injury as distinguished from an occupational disease. "The statutory burden of proof that the commission's decision was incorrect is a burden of persuasion, which may be sustained by satisfying the jury from the same evidence on which the commission made its decision." *Paul Const. Co. v. Powell*, 88 A. 2d 837, 845 (Md., 1952). "Whatever incongruity there may be in review by a jury of the presumptively correct decision of an administrative body supposed to be 'informed by experience', only the legislature can correct. Apparently only in Maryland, Ohio, Oregon, and Oklahoma are such administrative decisions reviewable by a jury. . . ." *Ibid.*
