CHAPTER 176

WORKMEN'S COMPENSATION ACT

176.01 DEFINITIONS.

Subd. 8, amended by L. 1947 c. 197 ss. 1, 2.

To extend the doctrine of imputed contributory negligence to cases of bailor and bailee and driver and guest involves a change in existing law, which is not warranted. The modern trend of the law is rather to limit the effect of the doctrine. Note that the railway labor act and workmen's compensation, and other Minnesota acts abolish the defense. Christensen v Hennepin Transportation Co., 215 M 414, 10 NW(2d) 406.

Minnesota industrial commission has no jurisdiction where the employer's business is localized in South Dakota, where the contract of employment was made, and where the injury occurred. DeRosier v Craig, 217 M 296, 14 NW(2d) 286.

The purpose of the workmen's compensation act is to include only workers as distinguished from executive officers. Only those are employees who perform a service for hire and to whom some employer directly pays wages. Bendix v Bendix, 217 M 439, 14 NW(2d) 464.

Where employers of a state institution were authorized to shoot pigeons, infesting grounds of an institution, even outside regular working hours, fatal injury sustained by an employee resulting from accidental discharge of a shotgun during his time off during which he intended to shoot pigeons "arose out of and in the course of employment." Salisbury v State, 220 M 517, 20 NW(2d) 349.

It is not the province of a court of review to go into an extended discussion of the evidence to prove or demonstrate the absolute correctness of the authorized triers of fact. The duty of the reviewing court is fully performed when it has considered all the evidence and from it determined that the evidence reasonably supports the findings. The burden is always on the claimant to show cause of death or injury. Saari v Dunwoody Mine, 221 M 95, 21 NW(2d) 94.

Evidence sustains the finding that decedent had been authorized to entertain customers and prospective customers of the elevator company during office hours on hunting and fishing excursions and the fatal accident occurred while he was so engaged; and hence was covered by the compensation act. Ohlsen v Dill Co., 222 M 10, 23 NW(2d) 15.

Where the evidence is conflicting or where different inferences may be drawn therefrom and reasonable minds may arrive at different conclusions in connection therewith, the fact determination of the industrial commission will not be disturbed on appeal. Ohlsen v Dill Co., 222 M 10, 23 NW(2d) 15.

The raising of fur-bearing animals if carried on extensively and as a separate and distinct commercial enterprise, is not farming within the meaning of the workmen's compensation act. 1944 OAG 32, June 26, 1944 (92-B-1).

Application of workmen's compensation act to maritime torts. 7 MLR 49.

Workmen's compensation and the conflict of laws. 11 MLR 329, 20 MLR 19.

Personal injuries arising out of and in the course of employment. 15 MLR 792.

Recovery of workmen's compensation where neither the injury nor contract of employment occurred in the state of suit. 28 MLR 335.

Injury from recreational activities as arising out of the course of employment. 28 MLR 414.

Subd. 8. "EMPLOYEE" OR "WORKMAN."

An implied contract of employment existed between the Salvation Army and an inmate of its "Men's Social Service Department," who over a period of years was assigned regular work at regular hours in the processing of waste materials, and who received his board, lodging, clothing, and a small weekly cash grant. Schneider v Salvation Army, 217 M 450, 14 NW(2d) 467.

A servant is a person employed to perform service for another subject to the employer's right of control with respect to his physical conduct or the details in the performance of the service. An independent contractor is one who undertakes to do a specific piece of work without submitting himself to the control of the contractee as to details of the work, or who renders service in the course of an independent employment, representing the contractee only as to the result of the work and not the means by which it is accomplished. In the instant case the deceased was an employee. Korthuis v Soderling, 218 M 342, 16 NW(2d) 285.

An employee is not within the course of his employment or exposed to hazard arising out of it who leaves his place of employment and solely to satisfy his own desires goes in quest of coffee for himself, crosses a street, and, in doing so, is run down by a passing automobile. Callaghan v Brown, 218 M 440, 16 NW(2d) 317.

Johnson, operator of a small factory, contracted with the Nelson corporation to manufacture spreader ties at a fixed price per thousand, the Nelson Company furnishing the machinery, dies, and material. Johnson hired, paid and controlled all employees. He had similar contracts with other manufacturers. The plaintiff Sayre was injured while employed on the machine. He was the servant of Johnson, and the Nelson Company is in no way liable. Sayre v Johnson, 218 M 586, 17 NW(2d) 76.

Only those are employees who perform service for hire and to whom the employer directly pays wages. In the instant case the relator being an officer of the corporation and exercising some control over the corporate functions, was not an employee of the respondent. Korovilas v Bon Ton Co. 219 M 294, 17 NW(2d) 502.

One hired and paid by an employee to help in performing the employer's work with the latter's consent and subject to his control as to the details of the work, is an employee of the employer. Larson v Le Mere, 220 M 25, 18 NW(2d) 696.

Where employee, who had a preexisting progressive arthritic condition of the lower portion of his back, which at some uncertain and undetermined time in the future might cause him to become incapacitated, was injured by falling on his back, and such arthritic condition was aggravated and accelerated by reason of this injury, industrial commission erred in prematurely terminating compensation payments. Enkel v Northwest Airlines, 221 M 532, 22 NW(2d) 635.

Where a workman had employment with several employers, all independent of each other, his employment with each terminated when he left an employer's premises and did not begin again until he reached the premises of another employer. The workmens compensation act does not cover going to or coming from work except in certain cases not here involved. Anderson v Massachusetts Co. 221 M 593, 22 NW(2d) 680.

Subd. 9. ACCIDENT.

Injury to an employee's heart muscles caused by exertion and excitement greater than is usual and customary in the performance of his duties is an accidental injury within the meaning of the workmens compensation act. Hiber v City of St. Paul, 219 M 87, 16 NW(2d) 878.

"Parkinson's syndrome," a progressive and incurable disease, was not caused, accelerated or aggravated by the accidental injury, and the employer and insurance carrier are not liable for payments in excess of those required for permanent partial disability. Ginsberg v Byers, 219 M 230, 17 NW(2d) 354.

Evidence sustains findings that employee suffered no disabling traumatic neurosis defined as "a condition of the functional nervous system where a patient develops symptoms following an accident for which we are unable to find any organic cause." Zobitz v City of Ely, 219 M 413, 18 NW(2d) 126.

An allegation in a claim petition that the deceased died from myocarditis is not at variance with proofs that he died of coronary sclerosis, because the word "myocarditis" is used as including coronary sclerosis. Ogren v City of Duluth, 219 M 556, 18 NW(2d) 555.

Subd. 11. PERSONAL INJURIES ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT.

An employee is not engaged in his employer's business while riding home after work in an automobile owned by the employer where the employer has not undertaken to furnish such transportation as an incident of the employment. Hardware Mutual v Ozmun, 217 M 280, 14 NW(2d) 351.

Employee was injured when she lost her balance while standing on a chair to close a window. The accident happened when she was off duty. The accident does not appear to have had its origin in a risk connected with the employment, and it did not flow from that source as a rational sequence. The injury did not arise out of respondent's employment. Brusven v Ballord, 217 M 502, 14 NW(2d) 861.

If the evidence as a whole provides a reasonable basis for an inference that an employee's death arose out of and in the course of his employment, direct proof is unnecessary. Such inference must be based, not on mere conjecture and speculation, but on known facts consistent with the theory that he so died. In determining whether or not the facts and the reasonable inferences to be drawn from them sustain the findings of the industrial commission that an employee's death arose out of and in the course of his employment, the evidence must be reviewed in the light most favorable to such findings. Burke v Nelson Co., 219 M 381, 18 NW(2d) 121.

The provisions of section 176.66, as amended, so far as the section relates to the creation of a medical board and describe its functions, denies the guarantee of the due process clauses of both the state and federal constitutions, and is held to be unconstitutional. Hunter v Zenith Dredge Co., 220 M 318, 19 NW(2d) 796.

The evidence establishes that the injuries sustained by the employee acting in his capacity as shop steward of a union while crossing a public street for the purpose of reaching a telephone on property not owned or controlled by his employer to telephone the business agent of the union in order to avert a threatened work stoppage, was one arising out of and in the course of his employment where it appeared that such call would have been in the interest of both the employer and the employee. Kennedy v Thompson Lumber Co., 223 M 277, 26 NW(2d) 459.

Where employee was directed to commence her afternoon service at 1:00 P. M. each day following her lunch hour, and as part of such service, her duties required her to be on the street in order to pick up the mail, which subjected her to "street risks," the coverage of the compensation act extended to her for injuries sustained by her at a place where and during the time when such services were required of her. Locke v Steele County, 223 M 464, 27 NW(2d) 286.

Where a city fireman was killed while on an authorized run made out of the city limits, he was engaged in his line of duty, and workmen's compensation insurance is recoverable. OAG Aug. 14, 1945 (688-P).

Related purpose doctrine; recovery of damages for negligence from third party also. 27 MLR 586.

Injury from recreational activities as arising out of the course of employment. 28 MLR 415.

Subd. 13. FARM LABORERS, COMMERCIAL THRESHERMEN, AND COMMERCIAL BALERS.

Commercial threshermen.

Where there is evidence that a farmer for many years had engaged in the business of threshing for other farmers for which he was paid in money, the evidence supports a finding that the farmer was engaged in the business of commercial

threshing within the meaning of section 176.01, subd. 13. Skeen v Rank, 224 M —, 27 NW(2d) 869.

Subd. 15. OCCUPATIONAL DISEASE.

Evidence that employee suffered injury to his heart resulting in death as the result of excessive strain immediately preceding death, caused by the type of work he was then performing, sustains the finding of the industrial commission that death was caused by an "accident" arising out of and in the course of his employment. Kemling v Armour, 222 M 397, 24 NW(2d) 842.

Finding by the commission that deceased died of diseased conditions which were not caused, aggravated or accelerated by nitrous fumes inhaled while employed as a welder, is sustained. The death was not accidental. Tillman v Stanley Iron Works, 222 M 421, 24 NW(2d) 904.

176.02 EMPLOYERS RIGHT TO ELECT ABOLISHED.

Injuries sustained by a hotel chambermaid with fixed hours of work and board and room received as part of her compensation, when she lost her balance while standing on a chair to close the window in her room at a time when she was not on duty or subject to call, did not arise out of her employment within the meaning of the workmen's compensation law. Brusven v Ballord, 217 M 502, 14 NW(2d) 861.

Verdict for plaintiff based on mere possibility, speculation, or conjecture cannot be upheld. Huntley v Ziegler, 219 M 95, 17 NW(2d) 290.

Where an employee, as a result of his employer's breach of statutory duty, contracted silicosis more than three years prior to the effective date of L. 1943, c. 633, and died as a result thereof after said date, employee's personal representative may maintain an action for the wrongful death of the employee. Foley v Western Alloyed Steel, 219 M 571, 18 NW(2d) 541.

The obligation to pay interest arises as a matter of law impliedly from the contractual duty to make compensation payments at the stipulated times required by the statute. The interest owes its existence to the fact that the principal is unpaid. Bourdeaux v Gilbert Motor, 220 M 538, 20 NW(2d) 393.

Workmen's compensation is a liability arising out of the contract of employment, and the compensation act becomes a part of every such contract. Under that contract, an obligation arises to commence payment of compensation at the time and in the manner prescribed by the act; and the general statute imposing interest on debt applies to delay in compensation payments; and laches is not a defense. Bourdeaux v Gilbert, 220 M 538, 20 NW(2d) 393.

Under Minnesota law, if a servant wholly departs from the master's business for a purpose exclusively his own, the master is not liable for the servant's acts; but where the servant is, notwithstanding the deviation, engaged in the master's business within the scope of his employment, it is immaterial that he joined with the master's business some private business of his own. National Battery Co. v Levy, 126 F(2d) 33.

Nervous shock due to fright; necessity of proving impact. 15 MLR 346; 19 MLR 136.

"Personal injuries arising out of and in the course of employment." 15 MLR 792.

Mental anguish; recovery for physical injury consequent thereon where there is no impact. 16 MLR 860.

Violation of orders as affecting scope of employment. 20 MLR 841.

Rights of employer as subrogee; malpractice of physician or surgeon; minimizing or aggravating injury. 24 MLR 301.

Governmental responsibility for torts; description of place of accident. 26 MLR 709.

Injury from recreational activities as arising out of the scope of employment. 28 MLR 415.

176.03 EMPLOYERS SHALL BE INSURED; EXCEPTIONS.

Jury properly found that employee's injury was caused by negligent piling of the bags of sugar which fell upon him. Ryan v Twin City Wholesale, 210 M 21, 297 NW 705.

Dependents of deceased W.P.A. worker, fatally injured in line of duty, who accept compensation for his death pursuant to federal statute, are not precluded thereby from bringing action against a third party whose negligence is alleged to have been the cause of decedent's death. Wagner v City of Duluth, 211 M 252, 300 NW 820.

Defendant was not entitled to a directed verdict on the ground that plaintiff's sole remedy was under the workmens compensation act, because he failed to show that he was insured or self-insured. Anderson v Hegna, 212 M 147, 2 NW(2d) 820.

Section 176.05, imposing upon an employer an assumption of liability to farm laborers and domestics under the act whenever he obtains compensation insurance coverage for such laborers or domestics and limiting such employee to that remedy when and while so covered, makes the church who had insured the housekeeper liable under the act. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

Workmen's compensation in this state is a liability arising out of the contract of employment, and the compensation act becomes a part of every such contract. Under that contract, an obligation arises to commence payment of compensation at the time and in the manner prescribed by the act. Bourdeaux v Gilbert, 220 M 538, 20 NW(2d) 393.

Plaintiff was employed outside the United States under a contract that adequate compensation insurance be carried. The insurance policy secured provided that if employee were injured under circumstances that would render the employer liable under the New York law if the injury occurred in New York while at work in New York, insurer was to be compensated as under the New York law. Plaintiff contracted malaria while employed in Africa. Plaintiff cannot recover by summary judgment under the contract or under the New York Compensation Act. Lund v Johnson, Drake, Piper, 64 F. Supp. 456.

176.04 LIABILITY OF EMPLOYER EXCLUSIVE.

Railroad's duty under state law to maintain crossing extended solely to the public did not relieve the railroad of its duty to its employees under federal employee's liability act, to remedy defect existing by reason of plank protruding above grounds. Chicago, Great Western v Peeler, 140 F(2d) 865.

Workmen's compensation and the conflict of laws. 11 MLR 329.

Application of state workmen's compensation laws to public employees and officers. 17 MLR 162.

Negligence is not the basis for the employer's liability to pay compensation. The liability is in the nature of a contractual obligation created by statute. For that reason the employer is relieved from liability for damages in an ordinary negligence action. Sandy v Walter Butler Co., 221 M 215, 21 NW(2d) 613.

Plaintiff was guilty of contributory negligence as a matter of law, since he was thoroughly familiar with the physical location where the accident to him occurred, and, although having a safe route to walk, he chose the more dangerous one. Veaasen v Pillsbury, 223 M 396, 27 NW(2d) 414.

The village is liable for workmen's compensation when the village fire department responds to a town fire outside the village limits. The farmer is not liable. OAG June 6, 1947 (688-P).

Proximate cause in relation to the workmen's compensation acts. 3 MLR 123, 7 MLR 431.

Exclusiveness of remedy. 5 MLR 241.

Effect of act upon parent's common law action for injury to minor child. 9 MLR 80.

Liability of co-employers for injury to joint employee. 11 MLR 81.

Federal employers' liability act; assumption of risk. 15 MLR 327.

Assumption of risk; simple tool doctrine. 18 MLR 435.

Application of full faith and credit clause. 23 MLR 866.

Federal employers' liability act; amendment abolishing assumption of risk. 25 MLR 253.

Collateral negligence. 25 MLR 399.

Government responsibility for torts; place of accident. 26 MLR 709.

Contributory negligence and the landowner cases. 29 MLR 61.

176.05 APPLICATION.

See, Annotations under section 176.04

Charitable institutions, as such, are not exempted from the operation of workmen's compensation act. Schneider v Salvation Army, 217 M 448, 14 NW(2d) 467.

Common law action for damages for ailment not among diseases enumerated in act. 9 MLR 389.

Casual employment. 10 MLR 626.

When is a workman engaged in interstate commerce? 16 MLR 869.

Conflict of laws. 20 MLR 19.

Domestic servants. 21 MLR 227.

Inclusion of employees engaged in interstate motor transportation under state workmen's compensation act in absence of federal legislation on the subject. 22 MLR 912.

Recovery when neither injury nor contract of employment occurred in state of suit. 28 MLR 335.

176.06 LIABILITY OF OTHERS THAN EMPLOYER.

The conduct of plaintiff, a "chicken picker" in a hatchery engaged in processing farm products for market, was not, at the time plaintiff was injured, such as to classify her employer as one engaged in a "common enterprise" or the "accomplishment of the same or related purposes" with defendant, an independent contractor doing repair work for plaintiff's employer. Gleason v Geary, 214 M 503, 8 NW(2d) 808.

Where an employee, as a result of employer's breach of statutory duty, contracted silicosis more than three years prior to the effective date of L. 1943 c. 633, and died as a result thereof after said date, employee's personal representative may maintain an action for the wrongful death of the employee, because the statute is substitutionary of the rights of employees and their dependents at the time of its enactment and because the statute provides no substitutionary right in the case mentioned for the reason that it does not cover cases of death occurring after its effective date resulting from silicosis contracted more than three years prior thereto. Foley v Western Alloyed Steel, 219 M 571, 18 NW(2d) 541.

Evidence establishes as a matter of law that transverse myelitis from which plaintiff was suffering was not caused by inhaling carbon tetrachloride vapors while an invitee in defendant's machine shop, where it appeared as a matter of law that concentration of vapor to which plaintiff was exposed was harmless. Physician's testimony that plaintiff was allergic to carbon tetrachloride must be rejected in absence of any basis for such opinion. DeVere v Parten, 222 M 211, 23 NW(2d) 584.

No inference of negligence arises from the happening of an auto accident. When a passenger is injured when the auto is overturned after it struck loose gravel the

burden is upon the passenger to show negligence. Liggett & Myers v DeParcq, 66 F(2d) 679.

Construction placed upon Minnesota Compensation Act by the state supreme court is binding upon the federal court in considering such statute. Phillips v Miller, 84 F(2d) 148.

Electric company engaged on the same building as Pittsburgh Plate Glass Company was not engaged in the "same or related business" so as to confine an electric company employee, who sustained injuries while assisting plate glass company employees in unloading glass, to damages recoverable under the workmen's compensation act and deny him the right to damages assessed by jury in law action for personal injuries. Pittsburgh v Carey, 98 F(2d) 533.

The purpose of the workmen's compensation act is to provide more certain, effective, speedy, and inexpensive relief for injured workmen than was offered by the common-law rules of negligence, and measurably to place upon industry the burden of the economic loss resulting from the deaths and injuries of workmen. By L. 1937, c. 64, the act was non-elective. Dupont v Fuchette, 161 F(2d) 330.

L. 1923, c. 279, made it clear that, as against a third party, subject to the act, whose business was unrelated to that of the employer, an injured employee might maintain an action for common-law negligence in an unlimited amount, regardless of the fact that he had received compensation from his employer. Dupont v Fuchette, 161 F(2d) 330.

Right of employer who has paid death claim to sue for wrongful death. 6 MLR 593.

Right of employee, where injury is caused by third party. 15 MLR 257.

Allowance of compensation as bar to action against attending physician for malpractice. 16 MLR 113.

Who is proper party to sue a third party tortfeasor? 17 MLR 828.

Contributory negligence of employer as defense in suit against third party. 17 MLR 829.

Related purpose doctrine; recovery of damages for negligence from third party also. 20 MLR 323; 27 MLR 585.

Rights of employer as subrogee; minimizing or aggravating injury; malpractice. 24 MLR 301.

Effect of workmen's compensation upon wrongful death act; splitting cause of action; subrogation. 24 MLR 719.

Right of employer to sue third party tortfeasor. 26 MLR 768.

Related purpose doctrine; recovery of damages for negligence from third party also. 27 MLR 585.

176.09 LEGAL SERVICES AN ENFORCEABLE LIEN; APPROVAL.

The court properly entertained a summary proceeding to compel restoration of money retained under a contract void because lacking the required written approval of the judge of the district court as to the fee charge of the attorneys. Sarja v Pittsburgh Steel, 154 M 217, 191 NW 742.

Validity of statute limiting attorney's fees in compensation cases. 9 MLR 674.

176.11 SCHEDULE OF COMPENSATION.

Subd. 1, amended by L. 1947 c. 611 s. 1.

Subd. 3, amended by L. 1947 c. 611 s. 2.

Subd. 4, amended by L. 1947 c. 611 s. 3.

1. **Generally**
2. **Temporary total and permanent partial disability**

3. **Permanent total disability**
4. **Death resulting from injury**
5. **Double disabilities**
6. **"Necessity" for retraining**
7. **Disfigurement**
8. **Freezing; heatstroke; hernia; lightning; poisoning**
9. **Injuries to eyes**
10. **Injury to thumb or finger**
11. **Injuries to hand or arm**
12. **Injuries to foot or leg**

1. Generally

By accepting appropriation made by L. 1941 c. 527 s. 85 relator is barred from claiming compensation under L. 1941 c. 479; but application may be made to the commission to amend its order so that relator may receive the $960 appropriated, but no more. Wolner v State Department, 213 M 96, 5 NW(2d) 67.

Since the acquired disease, "Parkinson's syndrome" was not caused, accelerated, or aggravated by the accident, the employer and his insurer are held only for the partial liability appraised to cover the accidental damage. Ginsberg v Byers, 219 M 230, 17 NW(2d) 354.

Evidence supports finding employee suffered no disabling traumatic neurosis. Zobitz v City of Ely, 219 M 411, 18 NW(2d) 126.

Effect of labor conditions on amount of award for partial incapacity; interpretation of "is able to earn" and similar phrases. 13 MLR 620.

Mitigation of the award by the amount of actual recovery under compensation laws of another state. 20 MLR 576.

Effect of inability of injured employee to obtain work on permanent total disability. 22 MLR 752.

3. Permanent total disability

Where an employee sustains an injury which "of itself" causes permanent partial disability, but when combined with a prior disability causes permanent total disability, and the liability for such permanent total disability is apportioned under section 176.13 by assigning to the employer liability only for such permanent partial disability and to the special compensation fund liability for the remainder of the permanent total disability, the compensation to be allowed for the permanent partial disability is to be determined exclusively by the formula prescribed by section 176.11 (c) (44), without apportioning the compensation in the same manner as the liability for the permanent total disability was apportioned. Peters v Archer-Daniels-Midland Co., 223 M 168, 26 NW(2d) 29.

12. Injuries to foot or leg

Where injury to employee's leg necessitates successive amputations, is complicated by infection permeating his whole system, and results in his total permanent disability, his right to compensation is measured by such disability and is not limited to the compensation fixed by statute for the sole loss of the use of the leg. Olson v Griffin Wheel, 218 M 48, 15 NW(2d) 511.

176.12 DEPENDENTS AND ALLOWANCES.

1. **Generally**
2. **Widow or wife**
3. **Children or orphans**
4. **Brothers or sisters**

1. Generally

Apportionment of award between surviving parent and children; right of child to portion of award. 11 MLR 288.

Survivability of awards for permanent disability. 11 MLR 598.

Partial dependents; deduction of cost of support. 15 MLR 363.

Proximate causes. 16 MLR 829.

Suicide induced by insanity. 20 MLR 823.

Recovery where neither injury nor contract of employment occurred in the state of suit. 28 MLR 335.

2. Widow or wife

"In case of remarriage of a widow without dependent children she shall receive a lump-sum settlement equal to one-half of the amount of the compensation remaining unpaid, without deduction for interest, but not to exceed two full years' compensation," the industrial commission has the power to deduct the lump sum payments from the lump sum settlement upon remarriage to determine the net amount of the award. Olson v National Tea Company, 212 M 215, 3 NW(2d) 225.

3. Children or orphans

The provision that children between the ages of 16 and 18 years shall be considered prima facie dependents creates a rebuttable presumption of total dependency, which is rebutted in the instant case, and an award of partial dependency should be made. Johnson v Munsingwear, 222 M 540, 25 NW(2d) 309.

The conclusive presumption of total dependency created by the statute in the case of children under the age of 16 years is a substantive rule of law establishing liability and is not rebuttable by evidence. Johnson v Munsingwear, 222 M 540, 25 NW(2d) 309.

176.13 DISABILITY OR DEATH RESULTING FROM ACCIDENT; INCREASE OF PREVIOUS DISABILITY; SPECIAL COMPENSATION FUND.

Amended by L. 1947 c. 90 s. 1, and L. 1947 c. 247 s. 1.

A previous disability resulting in amputation of all but the upper three or four inches of the left forearm, combined with subsequent injury causing a 75 per cent limitation of motion of the right arm and hand, amounts to total disability, as a matter of law, within meaning of section 176.11, entitling relator, an unskilled laborer, to compensation from the special fund set up by section 176.13. Green v Schmahl, 202 M 254, 278 NW 157.

The accident caused the partial injury for which applicant was compensated. It did not cause, accelerate, or aggravate the disease of Parkinson's disease with which applicant was afflicted. Ginsberg v Byers, 219 M 233, 17 NW(2d) 354.

Claimant did not suffer a condition of the functional nervous system or traumatic neurosis as the result of the accident. He suffers only partial disability. Zobitz v City of Ely, 219 M 411, 18 NW(2d) 126.

Workmen's compensation act is highly remedial and, as such, must be liberally construed. The requirement of section 176.13 is satisfied even though the injured employee may not have received all of such award if paymnt of the entire $10,000 is made impossible by insolvency of insurance carrier and failure of employer. Thoreson v Schmahl, 222 M 304, 24 NW(2d) 273.

Receipt of medical, surgical, and nursing benefits by a permanently totally disabled employee who, previous to the enactment of L. 1941, c. 384, had received the full amount of compensation payments allowed under the workmen's compensation act, did not make him eligible for participation in the special fund made available by the 1941 act. Lowe v Hagerle, 222 M 258, 24 NW(2d) 278.

Where an employee sustains an industrial injury which "of itself" would cause only permanent partial disability, but when combined with a prior disability causes permanent total disability, the employer is liable only "for the permanent partial disability caused by the subsequent injury." Peters v Archer-Daniels-Midland Co., 223 M 168, 26 NW(2d) 29.

Compensation for loss of entire hand without deduction for fingers previously lost; compensation for total disability caused by combined results of the accident in question and a previous injury. 8 MLR 345.

Dependents have separate cause of action in case of employee's death. Finding against employee in his life time not binding as to his dependents after his death. 12 MLR 770.

Res gestae; spontaneous exclamations. 22 MLR 391.

Constitutionality of requirement that employer pay $1,000 into state treasury where deceased employee leaves no dependents. 23 MLR 555.

Injuries occasioned by union activity as "arising out of employment." 25 MLR 808.

176.16 NOTICE OF INJURY.

The statute does not require written notice of death or injury where the employer has actual knowledge. Actual knowledge by an officer or agent standing in the employer's place for the time being is actual knowledge of the employer. Markoff v Emeralite Co. 190 M 555, 252 NW 439; State ex rel v District Court, 131 M 352, 155 NW 103; Ogren v City of Duluth, 219 M 555, 18 NW(2d) 535.

Judicial notice is taken of the fact that bursitis or synovitis is not one of the ordinary diseases of life to which all members of the general public are equally exposed. Hunter v Zenith Dredge Co., 220 M 318, 19 NW(2d) 557.

176.17 SERVICE AND FORM OF NOTICE.

Employer and carrier did not receive notice or knowledge within the statutory time. Utgaard v Helmerson, 202 M 637, 279 NW 748.

Claimant gave proper notice to employer. Paul v Thornton, 206 M 74, 287 NW 856.

176.18 LIMIT OF ACTIONS.

Compensation is a liability based on the contract of employment and the law becomes a part of every employment contract, and the obligation to pay compensation commences at the time and in the manner prescribed. Bourdeaux v Gilbert Motor Co., 220 M 538, 20 NW(2d) 393.

The filing of an accident report by the employer and the furnishing of medical treatment by him do not constitute a "proceeding" before the industrial commission; and the filing with the commission, eight years after the accident, of a medical report by the physician to whom the employer sent the employee did not constitute a waiver as against the defense of the statute of limitations. Mohrlant v Lampland, 222 M 58, 23 NW(2d) 172.

Limitation of actions and power of industrial commission to grant rehearings. 23 MLR 994.

176.19 EXAMINATION AND VERIFICATION OF INJURY.

Provisions of the act creating the medical board having been found unconstitutional, and the evidence supporting a finding contrary to that imposed upon the commission by the medical board, the supreme court set aside the finding of the commission. Hunter v Zenith Dredge Co., 220 M 318, 19 NW(2d) 795.

Insurance; total and permanent disability; chronic alcoholism as a self-inflicted injury. 31 MLR 499.

176.20 COMPENSATION TO ALIEN DEPENDENTS.

Position of aliens under the modern compensation laws. 11 MLR 57.

Discrimination against non-resident aliens. 11 MLR 85.

The alien's right to work. 22 MLR 137.

176.24 EMPLOYER TO INSURE EMPLOYEES; EXCEPTIONS.

The compulsory insurance feature of the workmen's compensation act means continuous and uninterrupted coverage during the policy year; and if the insurer exercises the right of cancelation and later reinstates the policy during the policy year, there must be a lapse of coverage. Annala v Bergman, 213 M 173, 6 NW(2d) 37.

The employee's immediate employer was an independent contractor and he was not an employee of the company with which the independent contractor had contracted. Sayre v Johnson, 218 M 590, 17 NW(2d) 76.

176.25 WHO MAY INSURE; POLICIES.

The relator being an officer, and to some extent in control of the corporation, was not classed as an employee even if he did draw wages. Korovilas v Bon Ton Co., 219 M 294, 17 NW(2d) 502.

Where an employee inhaled poisonous fumes of carbon tetrachloride, felt a burning sensation and became afflicted with asthma, a verdict and judgment against the employer involving an implied finding that there was no accident within Minnesota workmen's compensation law was not res judicata that the injury was not caused by accident within policy insuring employer against liability for injuries so caused, and a finding that the injury was caused by accident was warranted. Globe Indemnity v Banner Grain Co., 90 F(2d) 774.

176.30 WHO LIABLE AS EMPLOYERS; CONTRACTORS; SUBCONTRACTORS.

Evidence that injured employee was the helper of another employee assisting him in performing work for employer with employer's consent and subject to employer's control as to means and manner of performance of the work supports findings that an employer-employee relation existed. Bergstrom v Brebmer, 214 M 326, 8 NW(2d) 328.

Johnson owned his factory, and had been in business since 1926. He hired and discharged his own employees and fixed their wages. He manufactured goods for others besides the Nelson Company. His employees worked on machines owned by him, as well as those leased to him by the Nelson Company. He is clearly an independent contractor, and his employee, the relator Sayre, was in no respect an employee of the Nelson Company. Sayre v Johnson, 218 M 590, 17 NW(2d) 76.

A servant is a person employed to perform service for another subject to the employer's right of control with respect to his physical conduct or the details in the performance of the service. An independent contractor is one who undertakes to do specific piece of work without submitting himself to the control of the contractee as to details of the work, or who renders service in the course of an independent employment, representing the contractee only as to the result of the work and not the means by which it is accomplished. In the instant case deceased was an employee and not an independent contractor. Korthuis v Soderling, 218 M 342, 16 NW(2d) 285; Larson v LaMere, 220 M 25, 18 NW(2d) 696.

Related purpose doctrine; right of employee where injury is caused by third party. 15 MLR 257.

Partnership; member of a partnership is not a third party under the workmen's compensation act. 31 MLR 503.

176.31 PENALTIES FOR UNREASONABLE DELAY.

When an employee suspends payments of compensation and it is subsequently found by the referee that these payments should have been continued and no appeal

is taken from the decision of the referee, laches is no defense in a proceeding by employee to recover interest, as in such a case he is entitled to interest as a matter of right. Bourdeaux v Gilbert, 220 M 538, 20 NW(2d) 393.

176.34 EMPLOYER TO NOTIFY COMMISSION OF DISCONTINUANCE OF PAYMENTS.

The compensation act becomes a part of every contract of employment; and where no appeal is taken from the referee's decision that the employer should have continued the payments, the employee was entitled to interest, and laches was no defense. Bourdeaux v Gilbert Motors, 220 M 538, 20 NW(2d) 393.

When once acquired by the filing of a claim petition, the jurisdiction of the industrial commission attaches and continues until severed by judgment or certiorari. Bourdeaux v Gilbert Motors, 220 M 538, 20 NW(2d) 393.

176.45 REHEARING.

Where an employee dies while attempting to enforce his claim under the workmen's compensation act, the dependent widow need not start a new proceeding to urge her rights but may have her name substituted for that of her husband in the proceedings begun by him. Facts of case construed so as to prevent more than one proceeding. Gustafson v Ziesmer, 213 M 254, 6 NW(2d) 452.

Granting a new hearing rests in the discretion of the industrial commission, and its action is final, unless an abuse of discretion clearly appears. Ginsberg v Byers, 219 M 230, 17 NW(2d) 354.

176.50 AWARD; INTERVENTION.

Where the members of the industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v Mpls. Moline, 214 M 564, 9 NW(2d) 6.

Where there is a factual basis for a medical expert's opinion that an employee sustained injury to his heart muscles as the result of attacks of angina pectoris and the expert states that his opinion is "speculative," the opinion affords evidentiary basis for a finding of such injury where it appears from the expert's testimony as a whole that he based his opinion upon the factual basis and regarded it as speculative only in the sense that it was incapable of demonstration. Hiber v City of St. Paul, 219 M 87, 16 NW(2d) 878.

If the evidence as a whole provides a reasonable basis for an inference that an employee's death arose out of and in the course of his employment, direct proof is unnecessary; provided, however, that such inference is based not on mere conjecture and speculation but on known facts consistent with the theory that he so died. Burke v Nelson, 219 M 381, 18 NW(2d) 121.

Where upon circumstantial evidence in civil cases, there is a reasonable basis for diverse inferences, the choice of an inference made by the fact-finding body is to be sustained, unless (1) the conflicting inferences stand in equilibrium so that minds cannot prefer one over another, or unless (2) the choice of inference is otherwise based as mere conjecture and speculation, or unless (3) the inference is manifestly and undeniably contrary to the weight of the evidence as a whole. Burke v Nelson, 219 M 381, 18 NW(2d) 121.

The burden of proof is on the claimant. Conflicts in medical testimony must be resolved by the triers of fact. Where evidence is in conflict, findings of the commission reasonably supported by the evidence are conclusive on review by the supreme court. Saari v Dunwoody Iron Co., 221 M 95, 21 NW(2d) 94.

Conclusiveness of findings in proceeding by employee against employer in subsequent controversy between insurer and employer. 7 MLR 427.

Conflict of laws as they relate to workmen's compensation; effect of previous award. 20 MLR 19, 41.

176.51 REFEREE.

The director of employment and security, as the final administrative authority, has the power to review the evidence and make his own independent findings of fact and render a decision thereon, despite the fact that the findings contained in the prior administrative determination of the appeal tribunal had support in evidence. Chellson v State Division of Employment and Security, 214 M 332, 8 NW(2d) 42.

On appeal to the industrial commission from the findings of its referee, the rule of Olson v Carlton, 178 M 34, 225 NW 921, governs, and the commission is free to make new findings on the evidence taken before the referee. Simpson v Fairmaid Hat Co., 221 M 528, 22 NW(2d) 923.

176.54 COMMISSION NOT BOUND BY RULES OF EVIDENCE.

Where facts are in dispute, a question calling upon a witness for an opinion or conclusion based on all the evidence, without assuming the truth of any of it, is objectionable and elicits no competent evidence. Evidence was insufficient to sustain finding that employee suffered only partial disability subsequent to September 19, 1941. Report of neutral physician ordered by industrial commission and all subsequent competent evidence established the existence of employee's total disability and compelled a finding to such effect. Baker v MacGillis Gibbs Co., 216 M 469, 13 NW(2d) 457.

Where a physician testified that he had formed an opinion based on part of the medical history given by the patient at the time of examination, which was made solely to qualify him as an expert, but later qualified himself to give an opinion without taking such history into consideration, his opinion then given was competent. Olson v Trinity Lodge, 217 M 162, 14 NW(2d) 103.

Where there is factual basis for a medical expert's opinion that an employee sustained injury to his heart muscles as the result of attacks of angina pectoris and the expert states that his opinion is "speculative," the opinion affords evidentiary basis for a finding of such injury where it appears from the expert's testimony as a whole that he based his opinion upon the factual basis and regarded it as speculative only in the sense that it was incapable of demonstration. Hiber v City of St. Paul, 219 M 87, 16 NW(2d) 878.

Where, upon circumstantial evidence in civil cases, there is a reasonable basis for diverse inferences, the choice of an inference made by the fact-finding body is to be sustained unless (1) the conflicting inferences stand in equilibrium so that reasonable minds cannot prefer one over another, or unless (2) the choice of inference is otherwise based on mere conjecture and speculation, or unless (3) the inference adopted is manifestly and undeniably contrary to the weight of the evidence as a whole. Clearly, it is not necessary that the evidence in support of the inference adopted must outweigh other reasonable inferences so as to demonstrate their impossibility. Burke v Nelson, 219 M 381, 18 NW(2d) 121.

When the evidence offered by the employer is sufficient to overcome a presumption that a disease claimed to have caused death was due to the nature of the employee's employment and there is evidence of the employee that it was, giving the employee's dependent the benefit of such presumption is harmless error, because the presumption disappeared from the case when the evidence sufficient to overcome it was received. Ogren v City of Duluth, 219 M 555, 18 NW(2d) 535.

A valid rule adopted and promulgated by the commission, limiting the number of medical experts to be heard was not violated and in the instant case there was no abuse of discretion. Saari v Dunwoody, 221 M 95, 21 NW(2d) 94.

Award based entirely upon hearsay evidence. 9 MLR 576.

Rules of evidence in removal proceedings. 20 MLR 746.

Hearsay evidence; res gestae; spontaneous exclamations. 22 MLR 391.

Evidence before administrative tribunals. 23 MLR 68.

176.56 APPEAL.

The finding of the commission that where, as in the instant case, the injury to the employee while at work and caused by falling as the result of an epileptic fit, arose out of the employment, is sustained upon review. Where members of the industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v Mpls.-Moline, 214 M 569, 9 NW(2d) 6.

The industrial commission on appeal from the findings of a referee may, on the basis of evidence taken before the referee, make such new findings as the evidence in the commission's judgment may require. Simpson v Gold, 221 M 528, 22 NW(2d) 923.

176.57 APPEAL BASED ON ERROR.

When it appears that the industrial commission on appeal from the findings of the referee considered an exhibit excluded by the referee, there is no basis for claiming error. Injury occurring by an employee in moving furniture from one office to another arose out of and in the usual course of employer's business. Byhardt v Ballord, 209 M 392, 296 NW 504.

Where members of the industrial commission were equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v Mpls.-Moline, 214 M 564, 9 NW(2d) 6.

176.60 NEW HEARING MAY BE GRANTED.

Amended by L. 1947 c. 100 s. 1.

Once the industrial commission has acquired jurisdiction by the filing of a claim petition or the occurrence of any other act constituting a "proceeding," its jurisdiction attaches and continues until it is cut off by judgment or certiorari. Rasmussen v City of St. Paul, 215 M 458, 10 NW(2d) 419.

Granting a new hearing rests in the discretion of the industrial commission, and its action is final, unless an abuse of discretion clearly appears. Ginsberg v Byers, 219 M 230, 17 NW(2d) 354.

When it was found that the employer failed to perform his duty to make payments, it follows, a fortiori, that he retained and used money which properly belonged to the employee. For the failure to make these payments and for the use of the money, we believe it is a reasonable implication of the statutory obligation to make the payments at stipulated times that employee is entitled to interest. There is no showing of laches. Bourdeaux v Gilbert Motors, 220 M 538, 20 NW(2d) 395.

Although there is a provision in the act limiting the time within which an action may be commenced, once the industrial commission has acquired jurisdiction by the filing of a claim petition, its jurisdiction attaches and continues until it is cut off by judgment or certiorari. Bourdeaux v Gilbert Motors Co., 220 M 538, 20 NW(2d) 395.

Power of industrial commission to grant rehearings. 23 MLR 994.

176.61 APPEAL TO SUPREME COURT.

1. **Determinations of law and fact**
2. **Review on certiorari**
3. **Findings of fact**
4. **Specific fact questions**

1. Determinations of law and fact

Where employee's testimony is positive but inconsistent and impeded by contradiction, the industrial commission is not bound to accept it as true. Erickson v Erickson, 212 M 119, 2 NW(2d) 824.

Where there is conflict of medical testimony whether an accident caused aggravation or acceleration of a disease in existence at the time of the injury, the determination of the commission is final unless reasonable minds could not find as it did. Swanson v Amer. Hoist Co., 214 M 323, 8 NW(2d) 24.

Where members of industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation, affirmance of referee's decision accrues by operation of law. Nelson v Cr'y Pckge., 215 M 25, 9 NW(2d) 320.

Where facts are in dispute, a question calling upon a medical expert witness for an opinion based upon all the evidence, without assuming the truth of any of it, is objectionable and elicits no competent evidence. Baker v McGilles Gibbs Co., 216 M 469, 13 NW(2d) 457.

Whether employee at the time of his injury had disobeyed instructions limiting the sphere of his employment, presented a fact question for the commission, the determination of which cannot be disturbed on review, there being reasonable evidence to sustain the finding. Tucker v Newman, 217 M 473, 14 NW(2d) 767.

Where there is no evidence to sustain a finding of the industrial commission which the commission is obliged to base upon the report of the medical board, and where the undisputed evidence presented for review indicates clear support for a contrary finding, the supreme court must set aside the finding as contrary to such undisputed evidence. Hunter v Zenith Dredge Co., 220 M 318, 19 NW(2d) 796.

2. Review on Certiorari

Where the evidence is conflicting, it is the duty of the triers thereof to determine the facts. On appeal to the supreme court or review by certiorari, the appellate court is required to view the evidence in the light most favorable to the party whose claims the triers of fact believe; and the findings of the industrial commission will not be disturbed on review by certiorari unless the evidence clearly requires a contrary conclusion. Kundiger v Waldorf Paper Co., 218 M 168, 15 NW(2d) 486; Hiber v City of St. Paul, 219 M 93, 16 NW(2d) 878; Burke v B. F. Nelson Co., 219 M 381, 18 NW(2d) 121; Zobitz v City of Ely, 219 M 411, 18 NW(2d) 126; Ogren v City of Duluth, 219 M 555, 18 NW(2d) 535.

Any party who would be prejudiced by a reversal or modification of an order, award, or judgment, is an adverse party on whom a writ of certiorari or notice of appeal must be served. In the instant case there is sufficient evidence to support the finding of the commission, and such finding will not be set aside even if the evidence might be construed to sustain a contrary finding. Larson v Le Mere, 220 M 25, 18 NW(2d) 699.

On certiorari to the industrial commission, the question in the supreme court is whether the evidence reasonably supports the findings of the commission. Simpson v Gold, 221 M 529, 22 NW(2d) 923.

Review by certiorari. 23 MLR 994.

3. Findings of Fact

Findings of the industrial commission on fact questions will not be disturbed by the appellate court unless considerations of the evidence and permissible inferences require reasonable minds to adopt contrary conclusions. Tillman v Stanley Iron Works, 222 M 421, 24 NW(2d) 904.

4. Specific Fact Questions

The corporation in the instant case is largely a fiction of law. The relator was in fact the corporate enterprise. He was owner of one-half of the stock; sole manager of the business; and handled the finances as he pleased. No one could discharge him. His claim for compensation was properly denied. Korovilas v Bon Ton Co., 219 M 294, 17 NW(2d) 502.

176.62 SUPREME COURT TO HAVE ORIGINAL JURISDICTION.

The test of relationship is right of control. A servant is a person employed to perform a service for another, subject to the employer's right of control with respect to his physical conduct or the details in the performance of the service. An independent contractor is one who undertakes to do a specific piece of work without submitting himself to the control of the contractee as to details of the work, or renders service in the course of an independent employment, representing the contractee only as to the result of the work and not the means by which it is accomplished. Waters v Pioneer Fuel Co., 52 M 474, 55 NW 52; Korthuis v Soderling, 218 M 342, 16 NW(2d) 285; Sayre v Johnson, 218 M 590, 17 NW(2d) 76; Larson v Le Mere, 220 M 25, 18 NW(2d) 697.

Some months after accepting an award from a referee, claimant was obliged to submit to a surgical operation and it was found his condition was serious and the serious situation was caused by the injury. The commission should have reopened the case and granted a new hearing. Leland v St. Olaf Church, 213 M 34, 4 NW(2d) 769.

Workmen's compensation act is highly remedial and is not to be construed so as to exclude an employee from the benefits thereof unless it clearly appears that he does not come within the protection of the act, and upon the record the commission erred in denying the relator compensation. Kiley v Sward-Kemp Co., 214 M 548, 9 NW(2d) 237.

Where injury to employee's leg necessitates repeated amputations, is complicated by infection permeating the whole system, his right of compensation is measured by such disability, and is not limited to the compensation fixed by statute for the sole loss of the use of the leg. Olson v Griffin Wheel Co., 218 M 48, 15 NW(2d) 511.

Allegation in claim petition that deceased died from myocarditis is not at variance with proofs that he died of coronary sclerosis, because myocarditis includes coronary sclerosis. Ogren v City of Duluth, 219 M 556, 18 NW(2d) 535.

Where the evidence is in conflict, findings of the industrial commission reasonably supported by evidence are conclusive in review by the supreme court. The rule applies where there are conflicts in medical opinions. Saari v Dunwoody Mining Co., 221 M 95, 21 NW(2d) 94.

On appeal to the commission from the findings of the referee, the commission is free to make new findings on the evidence before the referee; but on certiorari to the commission the question in the supreme court is whether the evidence reasonably supports the findings of the commission. Simpson v Gold, 221 M 528, 22 NW(2d) 923.

176.65 COSTS; REIMBURSEMENTS; ATTORNEY'S FEES; CERTIORARI.

Successful party awarded $100 attorney fee plus taxable costs. Gustafson v Ziesmer, 213 M 253, 6 NW(2d) 452; Bergstrom v Brehmer, 214 M 326, 8 NW(2d) 328; Kiley v Sward-Kemp Co., 214 M 548, 9 NW(2d) 237.

Successful party allowed $250 attorney's fees plus supreme court costs. Burke v B. F. Nelson Co., 218 M 388, 18 NW(2d) 121; Hunter v Zenith Dredge Co., 220 M 318, 19 NW(2d) 803.

Relator is granted $250 as attorney's fees exclusive of statutory costs and disbursements. Bourdeaux v Gilbert, 220 M 538, 20 NW(2d) 396.

176.66. OCCUPATIONAL DISEASES, HOW REGARDED.

Subdivision 2, amended by L. 1947 c. 612 s. 1.

NOTE: See present occupational disease act, L. 1943, c. 633.

An allegation in a claim petition that the deceased died from myocarditis is not at variance with proofs that he died of coronary sclerosis because the word "myocarditis" is used as including coronary sclerosis. Ogren v City of Duluth, 219 M 556, 18 NW(2d) 535.

Where an employee, as a result of his employer's breach of statutory duty, contracted silicosis more than three years prior to the effective date of L. 1943, c. 633, and died as a result thereof after said date, employee's personal representative may maintain an action for the wrongful death of the employee. Foley v Western Alloyed Steel Co., 219 M 571, 18 NW(2d) 541.

Under L. 1933, c. 633, s. 3, evidence is sufficient to establish an occupational disease if it discloses that the disease for which claim is made is a natural incident of a particular occupation to which there is attached a hazard which distinguishes it from the usual run of occupations. It is not necessary to establish that such a disease arises solely out of the particular occupation in which the employee is engaged. Hunter v Zenith Dredge Co., 220 M 318, 19 NW(2d) 796.

Employer's liability to pay compensation is in the nature of a contractual obligation created by statute which becomes part of the contract of employment and is not based on negligence and employer is relieved by statute from liability for damages in an ordinary negligence action. Employer's liability arises whether the injury is accidental or occupational, if it arises out of and in the course of his employment. Sandy v Butler, 221 M 215, 21 NW(2d) 612.

Where no causal connection is established between prior skin trouble that employee may have had and the acute dermatitis found by the referee to have arisen out of and in the course of her employment, decision of commission reversing the referee because of the prior skin trouble is unsupported. Within the rule stated in Hertz v Watab, 180 M 177, 230 NW 481, this case is remanded to the commission with directions. Simpson v Gold, 221 M 529, 22 NW(2d) 923.

L. 1947, c. 616, and L. 1947, c. 569, are not inconsistent. L. 1947, c. 569, is permissive. The industrial commission passes on the right of an employee to qualify under these sections. The acts do not apply to employees of state institutions in general, but only those described in the acts. OAG June 4, 1947 (611-a-8).

In appraising state aid, the federal government dispensation of disability compensation should be taken into consideration. OAG Oct. 31, 1945 (310-S).

Misrepresentation to secure employment as a bar to recovery for injuries received in course of employment. 15 MLR 123.

Occupational diseases. 22 MLR 77.

Minnesota labor relations acts. 28 MLR 64.

176.661 OCCUPATIONAL DISEASE AGGRAVATED.

Findings of the industrial commission on fact questions will not be disturbed by the appellate court unless consideration of the evidence and permissible inferences require reasonable minds to adopt contrary conclusions. Finding by the commission that deceased died of diseased conditions which were not caused, aggravated or accelerated by nitrous fumes inhaled while employed as a welder, is sustained. Tillman v Stanley Iron Works, 222 M 421, 24 NW(2d) 904.

176.662 PRESUMPTIONS.

Amended by L. 1947 c. 612 s. 2.

In the case of a fireman coronary sclerosis is an occupational disease. Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378.

Employee found to have acquired the disease of mercury and wood alcohol poisoning in a doctor's office. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

A city fireman who died of coronary sclerosis was held to have died by occupational disease. Ogren v City of Duluth, 219 M 555, 18 NW(2d) 535.

Silicosis as an occupational disease. Foley v Western Alloyed Steel Co., 219 M 571, 18 NW(2d) 541.

176.664 MUST SERVE NOTICE WITHIN 90 DAYS.

Amended by L. 1947 c. 612 s. 3.

176.665 HEARINGS; MEDICAL BOARD.

Amended by L. 1947 c. 612 s. 4.

Under the provisions of section 176.66 as modified by section 176.665, which requires a medical board to determine certain occupational disease questions under the workmen's compensation law and provides that said board report and file with the industrial commission findings based thereon, which shall be binding on the commission, there is no requirement that a transcript of the evidence upon which the board's findings are based be filed with said report. In consequence, there is no method by which it can be determined, upon review whether said finding is arbitrary and oppressive or whether it has sufficient foundation in fact. By virtue thereof, a claimant is denied the guarantee of the due process clauses of both the state and federal constitutions. As far as section 176.66, as amended, relates to the creation and describes the functions of the medical board, the law must be held unconstitutional. Hunter v Zenith Dredge Co., 220 M 318, 19 NW(2d) 796.

176.667 EMPLOYEES TO SUBMIT TO MEDICAL EXAMINATION.

Amended by L. 1947 c. 612 s. 5.

176.67 NOT RETROACTIVE.

Law in force at time of injury governs as to compensation. Eberle v Miller, 170 M 207, 212 NW 190.

Dependent widow's compensation is controlled by law in force at time of husband's death. Warner v Zaiser, 184 M 598, 239 NW 761; Roos v City of Mankato, 199 M 284, 271 NW 582.

176.73 APPLICATION OF WORKMEN'S COMPENSATION ACT TO STATE EMPLOYEES.

Rights of public officers and employees under workmen's compensation act. 17 MLR 162.