attention necessary to enable the educational program to achieve concrete results. 37 MLR 246.

175.04 DIVISION OF STANDARDS; CHIEF BOILER INSPECTOR; RULES

NOTE: Second paragraph superseded by section 296.28.

175.05 OATH; CHAIRMAN

HISTORY. 1887 c 115 s 5; 1893 c 6 s 1, 7, 9, 10; 1913 c 400 s 1; 1913 c 518 s 2; 1919 c 394; 1921 c 81 s 3; 1949 c 739 s 19; 1951 c 713 s 16.

175.08 OFFICE

HISTORY. 1887 c 115 s 1; 1893 c 6 s 1, 7; 1913 c 518 s 1; 1921 c 81 s 6.

175.14 TRAVELING EXPENSES

HISTORY. 1887 c 115 s 5; 1893 c 6 s 1, 7, 8, 9; 1913 c 518 s 2; 1921 c 81 s 12.

175.20 ENFORCEMENT

The Taft-Hartley Act and union political contributions and expenditures. 33 MLR 1.

175.30 COPIES OF SETTLEMENT

HISTORY. 1909 c 235; 1913 c 416 s 2; 1919 c 359 s 1.

175.36 DESTRUCTION OF FILES AND RECORDS

HISTORY. 1939 c 149 s 1; 1953 c 609 s 1.

CHAPTER 176

WORKMEN'S COMPENSATION

NOTE: Germany adopted an Industrial Accident Insurance Act in 1884, and England in 1897 (60, 61 Victoria, Chapter 37). In the United States all early acts were declared unconstitutional except Maryland, Laws 1902, Chapter 139. Congress, 35 Statutes 556, (1908) adopted compensation for federal employees the constitutionality of which was upheld. In 1911 ten states, California (Laws 1911, Chapter 379); Illinois (Laws 1911, Chapter 314); Kansas (Laws 1911, Chapter 218); Massachusetts (Laws 1911, Chapter 751); New Hampshire (Laws 1911, Chapter 163); New Jersey (Laws 1911, Chapter 95); Nevada (Laws 1911, Chapter 183); Ohio (Laws 1911, Chapter 524); Washington (Laws 1911, Chapter 74); and Wisconsin (Laws 1911, Chapter 50); enacted laws the constitutionality of which was sustained.

Laws 1887, Chapter 13 applies to railroads only. This was the first Minnesota statutory change in the common law as it relates to employers' liability for injuries to employees.

Laws 1913, Chapter 467, the original workmen's compensation act, was entitled: "An act prescribing the liability of an employer to make compensation by way of damages for injuries due to accident received by an employee arising out of and in the course of employment, modifying common law and statutory remedies in such cases; establishing an alternative elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder in certain cases."

Part one of the alternative elective schedule, now entirely abandoned, merely modified the common law rules applicable to employers and employees who did not accept the provisions of Part Two. Part Two is the basis of our present law. The elective features evidenced by Part One were abolished by Laws 1937, Chapter 64, Section 1, and compulsory insurance provided.

The law was amended at every session of the legislature since 1921. Compensation insurance was provided by Laws 1921, Chapter 82; proceedings in district court were superseded by proceedings before the industrial commission, Laws 1921, Chapter 82; occupational diseases were first recognized by Laws 1921, Chapter 82, Section 67, and the law was completely revised by Laws 1943, Chapter 633; the power to settle claims was transferred from the district court to the industrial commission by Laws 1935, Chapter 313, Section 1; the state was included in the definition of "employer," Laws 1921, Chapter 82, and the state compensation revolving fund was created by Laws 1933, Chapter 161, Section 1.

The entire law was completely revised by Laws 1953, Chapter 755, and is coded in Minnesota Statutes 1953 as sections 176.011 to 176.669.

At present each of the 48 states and six territories have compensation laws.

Workmen's compensation is social insurance against a particular hazard of modern life. It differs fundamentally from tort liability. Benefits are a matter of right irrespective of need. Limitations such as "scope of employment," "proximate causation," "assumption of risk," do not apply. The basis is status, not contract. "*Economic realty" rather than "common law control" test governs the coverage.* The theory upheld in Billmayer v Sanford, 177 M 465, 225 NW 426, has been succeeded by that stated in Fisher v Manske, 208 M 410, 294 NW 477.

Benefits are based on "reduction in earning capacity," one of the factors being "reduction in physical ability."

Cross references:

(1) Awards against insolvent insurers, sections 79.28-79.32;
(2) Compensation as a preferred claim, sequestration cases, section 316.05, insolvency cases, section 577.08;
(3) Compensation insurance board and bureau, sections 79.01-79.23;
(4) Employees of public institutions, tuberculosis, sections 251.04-251.045;
(5) Firemen working outside of limits, sections 438.08-438.10;
(6) Physicians to report occupational diseases, section 144.34;
(7) Rejected compensation risks, sections 79.24-79.27;
(8) Vocational rehabilitation of disabled persons, sections 120.32-120.35.

For Rules of Practice before the Industrial Commission apply to the Department of Labor and Industry, Room 137, State Office Building, St. Paul 1, Minnesota.

176.01 Repealed 1953 c 755 s 83.

Annotations under repealed section.

The limitation that workmen are not covered by a compensation act except while engaged in, on, or about the premises where the services are being performed, or where the services require their presence as part of their service at the time of the injury and during hours of service of such workmen, is liberally construed in favor of the workmen. Kennedy v Thompson Lumber Co., 222 M 277, 26 NW(2d) 459.

The Workmen's Compensation Act is remedial and must be liberally construed. Thoresen v Schmahl, 222 M 304, 24 NW(2d) 273.

Where an employee dies as the result of being assigned to a task too heavy for his strength the case is compensable as an "accident." Kemling v Armour, 222 M 397, 24 NW(2d) 842.

An injury may "arise out of employment" even though there is no immediate causal connection therewith if it reasonably appears from all the facts that con-

ditions were such as to bring the injury and the employment within the purview of the Workmen's Compensation Act. Rhea v Overholt, 222 M 467, 25 NW(2d) 656.

A risk is deemed incidental to employment when it is connected with what an employee has to do in fulfilling his contract of service. Locke v Steele County, 223 M 464, 27 NW(2d) 285.

The employee of a firm engaged in threshing as a business is covered by the Workmen's Compensation Act; but this is not applicable to a farmer doing his own threshing, or threshing for others casually, or on an exchange work basis. Skreen v Rauk, 224 M 96, 27 NW(2d) 869.

Where employee without either express or implied instruction from his employer or any one representing the employer voluntarily leaves his employment to perform services exclusively for the benefit of a third person not in any way connected or associated with his employer and is injured while thus engaged, such injury is not incidental to his employment so as to render his employer liable therefor under the Workmen's Compensation Act. Ridler v Sears, Roebuck Co., 224 M 256, 28 NW(2d) 859.

On the particular feature of the Workmen's Compensation Act relating to the theory that to be entitled to compensation the workman must be engaged in, on, or about the premises where the services are being performed, or where services require their presence as a part of such service at the time of the injury and during the hours of service, is liberally construed in favor of the workman. Kennedy v Thompson, 223 M 277, 26 NW(2d) 459; Locke v Steele County, 223 M 464, 27 NW(2d) 285; Thoreson v Schmahl, 222 M 304, 24 NW(2d) 273, Lappinen v Union Ore Co., 224 M 395, 29 NW(2d) 8.

In an action for death by wrongful act the burden of proof on the part of the claimant is sustained by a fair preponderance of the evidence. Tillman v Stanley, 222 M 421, 24 NW(2d) 903; Liakos v Yellow Taxi, 225 M 34, 29 NW(2d) 481.

Findings of the industrial commission on fact questions will not be disturbed by the appellate court unless a consideration of the evidence and the permissable inferences require reasonable minds to adopt contrary conclusions; and in the instant case the record sustains the decision that disability from which the employee was suffering was not caused by and had no causal connection with the accidental injury he sustained more than two years before and for which he had received an award of compensation. Liakos v Yellow Taxi Co., 225 M 34, 29 NW(2d) 481.

The word "compensation" in workmen's compensation cases includes medical care, hospitalization and injury. Hanson v Hayes, 225 M 48, 29 NW(2d) 473.

Employee fell and injured his eye and received compensation from March until he returned to work on April 15, 1946. His further claim for compensation because of an alleged aggravation or a heart condition was properly disallowed, there being insufficient evidence to sustain it. Coy v Casanova Bar, 225 M 191, 30 NW(2d) 33.

Where employee is injured while performing some act for his personal comfort and convenience during employment, or while performing services for a third party during his employment, upon the express or implied instructions of his supervisor, the injuries thus sustained ordinarily are covered by the compensation act, even though not occurring on the premises where the employee ordinarily is required to perform his services. Ridler v Sears, Roebuck Co., 224 M 256, 28 NW(2d) 859.

The evidence warranted the industrial comission's finding that foot injury of an operator of a tractor and mower in the hay field did not arise out of and was not received in the course of employment. Eischen v Fairmont Canning Co., 225 M 295, 30 NW(2d) 586.

Whether an injury to a workman has arisen out of and in the course of his employment must be determined in the light of the board remedial purpose of compensation act, according to the varying circumstances of each case. A hazard which is common to the neighborhood may nevertheless become so localized and peculiar to the place and nature of the employment that an employee is necessarily exposed to a different and greater risk than if he had been pursuing his ordinary personal affairs,

and as a result any injury sustained therefrom is incidental to the employment and is compensable. Olson v Trinity Lodge, 226 M 141, 32 NW(2d) 255.

Injury causing loss of salesman's eye resulting from being struck by a piece of broken "coke" (Coca Cola) bottle thrown by a small boy without intention of striking salesman held to have arisen out of and in the course of his employment, where injury occurred while salesman was watching a ball game at a public playground while waiting to continue business negotiations with a sales prospect who was then umpiring the ball game, where the evidence showed that ball ground contained glass from broken "coke" bottles and that the broken glass constituted a special hazard, and where it appeared that youngsters frequently threw objects about. Fisher v Fisher, 226 M 171, 32 NW(2d) 424.

Where recitals in stipulation for settlement of a compensation claim showed clearly employee's permanent disability as well as an accident and an injury arising out of and in the course of employment was under consideration, the industrial commission did not abuse its discretion in refusing to vacate its order approving the stipulation on claimant's allegation or newly discovered evidence. Caddy v Maturi, 226 M 213, 32 NW(2d) 259.

Evidence held to support decision of industrial commission dismissing claim petition of injured employee as to respondent F, where it appears that there was no attempt to show an express contract between him and relator and where the only evidence even remotely suggesting an implied contract is found in the circumstances that F financed his son's venture in connection with the purchase of certain property used or to be used by the son as a home, in the remodeling of which property relator was injured. Amundsen v Poppe, 227 M 124, 34 NW(2d) 337.

A state university home economy department graduate student, injured while assisting the meat cook in the kitchen at a sanatorium operated by the county sanatorium commission during her internship course, required for her to be accepted by accredited hospital as a dietician, was an employee of the commission and not of the state. The petitioner was an employee within the meaning of the Workmen's Compensation Act when injured. She was an apprentice. Judd v Sanatorium Commission of Hennepin County, 227 M 303, 35 NW(2d) 430.

Fatal burns resulting when the employee reached the scene of the fire and attempted to extinguish the fire were called a compensable accident "arising out of and in the course of employment," so as to preclude maintenance of common law action against the employer. Fjeld v Marshall Coop., 227 M 274, 35 NW(2d) 448.

Injury to a waitress resulting from accidental tripping of a burglar alarm in the shape of a spring gun resulted from an "accident." An injury arises out of the nature, condition, or obligations or incidents of the employment. Breimhorst v Beckman, 227 M 409, 35 NW(2d) 719.

In the instant case the president of the corporation operating a liquor store owned no stock in the corporation but received a salary of $25 per week for his services as general manager in purchasing stock, supervising bartenders, and greeting customers. Under such circumstances he was an employee within the Workmen's Compensation Act, and his dependants were entitled to compensation for death resulting from injuries sustained while acting as a "bouncer." Delaney v Dan Delaney, Inc., 227 M 572, 36 NW(2d) 12.

Relator, employed as a driver of a package delivery truck, was assaulted and sustained injuries. Under the facts of the case, such injuries were inflicted upon him because of reasons personal to him and not directed against him as an employee or because of his employment; therefore injuries arising from such assault are not compensable. Goodland v L. S. Donaldson Co., 227 M 583, 36 NW(2d) 4.

Where a carpenter at the time he suffered collapse of a vertebral disc while lifting a staging told his foreman that he had such a pain in his right leg that he would have to quit and go home, and the foreman informed the employer that the carpenter had become disabled and stopped work; but nothing was said by the carpenter at the time that he had had an accident, and the forman knew as much about the occurrence as did the carpenter himself at the time of the injury, the industrial com-

mission properly held that requirement of Compensation Act as to knowledge or notice to the employer had been complied with. Miller v Peterson, 228 M 22, 38 NW(2d) 48.

If an employee as a voluntary accommodation to another, performs services outside the scope of his employment, he does not fall within the purpose and protection of the Workmen's Compensation Act. Stephan v Campbell, 228 M 74, 36 NW(2d) 401.

For an injury to arise "out of employment" there must be a causal connection between the injury and the employment, and the injury must have its origin in a risk connected with the employment and flow from that source. McBride v Preston Creamery, 228 M 93, 36 NW(2d) 404.

One, employed by a cemetery association the year round to perform services under its control and direction digging graves, cutting grass, shoveling snow, and the like, who was paid in the summer season upon an hourly basis and in the winter season at a stipulated sum for each grave dug and for each hour of snow shoveling, was an employee within the meaning of the Workmen's Compensation Act and not an independent contractor.

An accidental injury to a person so employed, caused by slipping and falling on a public street while he was on a special errand for his employer, arose out of and in the course of his employment.

Such an injury arose out of and in the course of the employment, notwithstanding the fact that the employee while on such an errand performed as an incident thereof an act for his own benefit, which had no causal connection with the happening of the accident. Oestreich v Lakeside Cemetery Ass'n, 229 M 209, 38 NW(2d) 193.

Where each partner owned 50 percent of the partnership assets, the partnership agreement called for withdrawal of a stated amount per month by each partner, major decisions being based on a joint agreement of the partners, the partnership relation did not create a "contract of hire" within the compensation statute. A partner is not an employee of a partnership. Pederson v Pederson, 229 M 460, 39 NW(2d) 893.

A student nurse taking nurses training at the University of Minnesota under the program of nurses training for members of the United States Cadet Nurses Corps authorized by 50 U.S.C.A. Appendix, sections 1451 to 1462, which was furnished without charge for tuition, fees, and other expenses, and who received from the university a monthly "stipend," and from affiliates, where she received practical training, board, room, and laundry, and who was at all times subject to full and final control and discipline by the university not only with respect to her conduct while pursuing classroom study at the university and taking practical training at the affiliates, but also as to her personal conduct and deportment, was an employee of the university and not of a hospital affiliate, where she contracted disease causing disability. Otten v State, 229 M 488, 40 NW(2d) 81.

Where a bookkeeper left her home at the special request of the employer to go to his office on Saturday, a day on which she did not ordinarily work, to perform special duty, and her husband drove her to the office, waited for her and drove her back to a point in front of her home, and in walking from the automobile to her house she fell on the sidewalk, such injuries were compensable as "arising out of and in the course of her employment." Bengston v Greening, 230 M 139, 41 NW(2d) 185.

An employee furnished to a company an instrumentality loaned by the owner thereof to another remains the employee of the owner of the instrumentality, and the lessor as employer is liable for compensation for the death of the employee where the lessor paid the man's wages and had a right to discharge him or substitute another driver at any time. Turner v Schumacher, 230 M 172, 41 NW(2d) 182.

Where an award or denial of compensation has been made through a misapprehension or misapplication of the controlling principle of law, the case may be remanded to the industrial commission for rehearing. Since relator, a sorority housemother, testified that at the time she sustained injuries she was on her way to a drug store to purchase bandages to replenish the supply she maintained as part of the

sorority's first aid kit, and that she intended after she had made such purchase to take a streetcar to attend religious services, if at the time of the accident, as a deviation from her own personal mission, the matron was acting for her employer her injuries arose out of and in the course of her employment, and in the absence of a specific finding as to whether she was on her way to the drug store for purposes of her employment, the case would be remanded to the commission for a rehearing. If the employment creates the necessity for an employee's errand, it is wholly immaterial whether such errand is beneficial or detrimental to the employer. Kaplan v Alpha Epsilon Phi, 230 M 547, 42 NW(2d) 342.

A coronary thrombosis caused by extreme physical exercise and excitement is an accidental injury. Sokness v City of Virginia, 231 M 215, 42 NW(2d) 551.

Where claimant was employed by a general contractor under a contract of hire to plaster a building and was not a partner of or joint adventurer with the contractor, and the claimant fell from scaffolding, the general contractor was liable. Williams v Wallwork, 231 M 244, 42 NW(2d) 710.

Where an employee, a resident of Minnesota and employed under a Minnesota contract of employment by an employer with its principal place of business in Minnesota, was injured while at work in North Dakota and was awarded compensation under the Workmen's Compensation Act of North Dakota, he has the right to secure recovery under the more liberal provisions of the Minnesota Workmen's Compensation Act, full credit being given for all payments so received by employee in the North Dakota proceedings. Cook v Minneapolis Bridge Co., 231 M 433, 43 NW(2d) 792.

The compensation laws are in derogation of the common law and are not supplemental, cumulative, amendatory, or declaratory of the common law but are wholly substitutional of the common law, and degenerate diseases which progress normally and exist independently of an accidental injury do not constitute a pre-existing disability within the Workmen's Compensation Act. Senske v Fairmont & Waseca Canning Co., 232 M 350, 45 NW(2d) 640.

A widow of an employee who dies as a result of a compensable accident, acquires at the time of her husband's death a fixed statutory right to weekly compensation benefits in an aggregate total of not to exceed $7,500 and this fixed statutory right continues unimpaired as long as she survives and does not remarry, and this award subject to the exercise by the industrial commission of a sound discretion in supervising the manner of payment becomes vested in the individual as a constitutionally protected property right. If the person to whom the award is made is an alien of a nation which is at war, the compensation rights vest in the federal custodian and thereafter the award must be made to him and the use of distribution of the award becomes subject to federal law. Todeva v Oliver Iron Mining Co., 232 M 422, 45 NW(2d) 782.

Where a cafe cook customarily worked from 4 a.m. until 1:30 p.m., returning again at 5 p.m., in the instant case went to the cafe at 4 p.m. for the sole purpose of making a hairdressing appointment and slipped and fell as she entered the cafe, the accident did not "arise out of and in the course of her employment" so as to preclude her under the Workmen's Compensation Act from bringing an action for damages for personal injuries. Yeager v Chapman, 233 M 1, 45 NW(2d) 776.

The findings of the commission are entitled to very great weight and the appellate court will not disturb them unless they are manifestly contrary to the evidence. Although the referee erred in not receiving in evidence an application made by the employee for benefits under a group insurance policy, it was not reversable error as the offer was made for impeachment purposes only and the reception of the exhibit would have added nothing to the evidence before the referee. Jurich v Cleveland-Cliffs Iron Co., 233 M 108, 46 NW(2d) 237.

Where a trustee of the Duluth firemen's relief association, organized under Minnesota Statutes, Chapter 69, sustained injuries and disability as the result of an accident which took place while he was returning from a special meeting which he had been instructed by the association to attend, such injuries were as a result of an accident arising out of and in the course of his employment, and hence were

covered by the Workmen's Compensation Act; and where by agreement he was to receive $10 per day out of which he was paid his board and lodging, that sum is construed to be his daily wage as a basis for computing compensation. Cosgriff v Duluth Firemen's Relief Ass'n, 233 M 233, 46 NW(2d) 250.

Res ipsa loquitur doctrine rests on inference and not on presumption. The application of such doctrine permits triers of fact in the absence of evidence of specific acts of negligence to reason from results back to cause, and to infer fault on the part of persons having control of the instrumentality from the failure of its operation to terminate in a safe and proper result when ordinarily a safe and proper result follows the exercise of care. Risberg v Duluth, Missabe & Iron Range Ry. Co., 233 M 396, 47 NW(2d) 113.

In proceedings based upon the death of an employee in an airplane crash, the evidence sustained the industrial commission's finding that the employee's trip had been for his own convenience and pleasure and not in the interest of his employer and therefor the industrial commission did not err in refusing compensation to the employee's widow. Dille v Aaron Carlson, 234 M 411, 48 NW(2d) 564.

As to compensation benefits to its employee, a partnership is to be treated as a separate employing entity and its insurer must bear the whole burden of compensation due to an employee of the partnership. Toenberg v Harvey, 235 M 61, 49 NW(2d) 578.

Prior to the enactment of Laws 1951, Chapter 508, an illegitimate child, although adopted by a person not its father, inherited from his natural father just as does a legitimate child. In this action there was no abuse of discretion by the industrial commission in dividing the benefits of its award equally between the widow and the natural child of the deceased employee. A child within the meaning of the Workmen's Compensation Act, is any child who is entitled by law to inherit. Minor children, under 16, are conclusively presumed to be wholly dependent. O'Dell v Hingeveld, 235 M 223, 50 NW(2d) 476.

The industrial commission entered a decision awarding compensation to the claimant, and the employer brought certiorari. The appellate court held the claimant to be an independent contractor, not an employee, and reversed the decision of the commission. In determining whether the relationship is one of the employee or independent contractor, the most important factor is the right of the employer to control the means and manner of performance. Other factors are mode of payment, furnishing of materials, or tools, control of the premises where the work is to be done, and the right of the employer to discharge the employee-contractor. Fahey v Terp, 235 M 432, 51 NW(2d) 273.

An injury is compensable and subjects the employee to coverage by the workmen's compensation act as his sole and exclusive remedy if by reason thereof he is entitled to receive any compensation under the act; and it is immaterial that such compensation may, to the exclusion of weekly disability benefit payments, consist of nothing more than money benefits in the form of the right to receive hospitalization or the right to receive medical treatment. The right to receive hospitalization and medical treatment, or the right to receive either of them, is a money benefit which of and by itself constitutes compensation within the meaning of the compensation act. Section 176.11, subdivision 3 (38) excludes from the compensation act only such accidentally caused permanent disfigurement which does not effect the workmen's employability and which is also not simultaneously accompanied by any injury or injuries which entitled him to any compensation under the Act. Frank v Anderson Bros., 236 M 81, 51 NW(2d) 805.

Section 176.11, subdivision 6, which provides that payments made to an injured employee as compensation under the Workmen's Compensation Act, prior to his death as the result of an accident arising out of and in the course of his employment, are to be deducted from compensation payments for his dependents and the provisions of section 176.01, subdivision 8 (1), are applicable to payments made under section 52 of the charter of the city of St. Paul. The said payments made under the charter to an injured workman are compensation payments and not salary. Credit should be given to the city for payments made under the charter to the extent of the

amount the injured workman would have received under the Compensation Act, and his dependents may recover the excess over that amount. Dillon v City of St. Paul, 236 M 273, 52 NW(2d) 726.

In a proceeding by the surviving widow and dependent children for compensation, evidence of the subjection of the employee to unusually severe exertion and strain which initiated a thrombus and resulting occlusion, with which there was evidence supporting the theory that a subsequent occlusion causing death was causally connected, justified a finding by the industrial commission that the employee's death was due to accidental injury arising out of and in the course of his employment. Simon v Village of Plainview, 237 M 136, 54 NW(2d) 32.

An injury which aggravates an existing infirmity is compensable, and this applies to an aggravation of cancer. Erickson v Knutson, 237 M 187, 54 NW(2d) 118.

In proceedings to recover compensation for the death of a truck driver who drowned while attempting to rescue a person observed in a position of peril on a lake near the highway, the question as to whether the employer, who was riding with the truck driver at the time, had extended the scope of employment of his employee by language used by him on that occasion was for the industrial commission, and its finding would not be disturbed if there was reasonable support for it in the record. Weidenbach v Miller, 237 M 278, 55 NW(2d) 289.

The right of control, and not necessarily the exercise of the right, is the test of the relationship of master and servant. As a basis for an inference that a right of control did exist, the industrial commission should reasonably take into consideration, (1) that the automobile was owned by the employer, (2) that by the very nature of motor vehicle driving it would have been impractical to exercise any direct supervision of the car's operation, (3) that it is the custom to permit a chauffeur, whenever convenience so dictates, to proceed unaccompanied by the owner, (4) that the employer could at all times terminate the employee's services by denying him the use of the car, (5) and that the employee in any event was required to deliver the vehicle to a specific destination at a certain time. Alecson v Kennedy Motor Sales, ... M ......, 55 NW(2d) 696.

Where an employee, a resident of Minnesota, employed under a Minnesota contract of employment, by an employer with its principal place of business in Minnesota, was injured while at work in North Dakota and was awarded compensation under the Workmen's Compensation Act of North Dakota, the employee has a right to seek recovery under the more liberal provisions of the Minnesota workmen's compensation act, full credit being given for all payments received by the employee in the North Dakota proceedings. Sorenson v Standard Construction Co., ... M ......, 55 NW(2d) 630; Cook v Minneapolis Bridge Co., 231 M 433, 43 NW(2d) 792.

Where an employer's business is localized in Minnesota and the employee's services at the time of the injury are referable to Minnesota business localization, the industrial commission has jurisdiction and it is immaterial that the employment contract was made in Illinois and the injuries sustained in Wisconsin. Alecson v Kennedy Motor Sales Co., ... M ......, 56 NW(2d) 696.

Where a regular employee of the city voluntarily agreed to act as an employee of a construction company in operating snow-plowing equipment rented to the company by the city as an accommodation to a company to clear the road over ice to an island on which the company was engaged in building a dock, and in which work the city had no interest, and such employee was removed from the city's payroll and placed on the company's payroll and paid by a company which had the right to control details of the snow-plowing work, the company and not the city was the employer liable for the workmen's compensation payable on account of the accidental death of such employee arising out of and in the course of such employment. Darvell v Lawrence, ... M ......, 57 NW(2d) 831.

The clause "arising out of and in the course of employment" is the language which the legislature used to express the connection between employment and injury required for an injury to be compensable. The words "arising out of" express the factor of origin, source, or contribution to the injury; while the words "in the course of" refer to the time and place of the accident. An accident, to give rise to a

compensable injury, must have occurred on what is referred to as the "working premises." The injuries sustained by an employee in falling on an icy public sidewalk 100 feet from the entrance of employer's building and opposite a vacant lot owned by the employer while the employee was on his way home from work, were not injuries "arising out of and in the course of employment." Sommers v Schuler Chocolates, ... M ......, 58 NW(2d) 194.

If employment is within the usual course of the employer's business, it is within the Workmen's Compensation Act even though the employment be casual. The evidence sustained the finding that claimant who was ordinarily engaged in baling and hauling flax straw, but who was specially hired by the seller to repossess a tractor sold under a mortgage, was the employee of the seller, and the fact that he took the wrong road and was injured when the tractor slipped off the road, did not affect the validity of his employment. Altermatt v Altermatt, ... M ......, 58 NW(2d) 256.

Where the manager of a lumber company customarily used or was expected to use his automobile at his place of business and his employer knew, or should have known, of such customary use, the accidental death of said manager from carbon monoxide poisoning, while the manager was attempting to start his automobile preparatory to going to his work, arose out of and in the course of his employment. Borak v Westerman Lumber Co., ... M ......, 58 NW(2d) 567.

The industrial commission's findings are entitled to great weight and will not be disturbed upon review unless manifestly contrary to the evidence, and where the legislature failed to provide that aggression, willful misconduct, unlawful conduct, or willful intent to injure another, would constitute a defense in a workmen's compensation proceeding, the supreme court will not read such defense into the Workmen's Compensation Act. Petro v Martin Baking Co., ... M......, 58 NW(2d) 731.

Where, on certiorari to review a denial of compensation under the Workmen's Compensation Act, the evidence discloses several possible causes of the employee's condition, and where neither the pleadings nor the findings indicate what facts are alleged or found to be the cause of the condition, the cause is remanded for a hearing de novo with the suggestion that where the evidence indicates several possible causative conditions, the findings indicate which of these conclusions is found to be the true cause. Manthe v Employers Mutual Casualty Co., ... M ......, 58 NW(2d) 758.

The Workmen's Compensation Act provides more certain, effective, speedy, and inexpensive relief for injured workmen and affords more satisfactory treatment to workmen than was afforded by the common law rules of negligence; and places a more easily measurable burden upon industry. Du Pont v Frechette, 161 F(2d) 318.

176.011 DEFINITIONS

HISTORY. 1953 c 443 s 1; 1953 c 755 s 1.

NOTE: Supersedes section 176.01.

Deposit by industrial commission with state treasurer. 32 MLR 382.

Jurisdiction under state and federal Workmen's Compensation Acts over maritime injuries. 33 MLR 421.

Workmen's compensation; charitable corporations; exemption from coverage. 33 MLR 440.

Employment in the usual course of employer's trade or business. 33 MLR 554.

Right to recover compensation for death of working partner. 32 MLR 658.

Accidental injury from internal strain. 34 MLR 377.

Computation of award of emergency employee. 34 MLR 483.

Judicial review by means of extraordinary remedies in Minnesota. 33 MLR 570, 685, 700.

Workmen's compensation; extra territoriality. 35 MLR 298.

Effect upon third party's right against the employer arising from a compensable negligent injury to the employee. 35 MLR 423.

Insurer's right to recover the amount of compensation award from a third party tort-feasor on an implied contract of indemnity. 35 MLR 684.

Background and origin of American workmen's compensation. 35 MLR 525.

The requisite employment relationship. The theory and nature of workmen's compensation. 35 MLR 529.

The nature of compensable harm. 35 MLR 535.

Requisite connection with employment. 35 MLR 540.

Integration of a private pension plan to unemployment compensation, social security, and workmen's compensation. 35 MLR 610.

Insurer's right to recover amount of compensation award from third party tort-feasor on an implied contract of indemnity. 35 MLR 684.

Basic problems in the administration of workmen's compensation. 36 MLR 119.

Workmen's compensation; contributory negligence of employer of injured employee as a bar to an action against a third party tort-feasor. 36 MLR 549.

Genesis of a rate; workmen's compensation insurance. 36 MLR 948.

Insurer's right to recover the amount of compensation award from a third party tort-feasor by indemnification. 37 MLR 771.

Aliens; constitutional restraints on expulsion or exclusion. 37 MLR 440.

Forty years of American workmen's compensation. 35 MLR 525.

Basic problems in the administration of workmen's compensation. 36 MLR 119.

Measure of benefits, workmen's compensation. 36 MLR 121.

Claim administration in workmen's compensation. 36 MLR 130.

Three basic shortcomings in the Workmen's Compensation Act of 1952. 36 MLR 142.

Law of workmen's compensation. 38 MLR 93.

The law in effect at the time of the death of an employee governs in determining the maximum benefit to which his widow is entitled. Skjefstad v Red Wing Potteries, ... M ......, 60 NW(2d) 1.

Where a disputed claim as to the extent of liability was settled by a compromise agreement between the parties on a percentage basis for less than the maximum collectible compensation, the beneficiaries are not entitled to receive special compensation from the special fund. Skjefstad v Red Wing Potteries, ... M ......, 60 NW(2d) 1.

176.02 Repealed, 1953 c 755 s 83.

Superseded by sections 176.021, 176.041.

Annotations to superseded section.

176.02 EMPLOYER'S RIGHT TO ELECT ABOLISHED

Effect of award of workmen's compensation board on action for wrongful death; possible double liability. 32 MLR 849.

Assault by third party as an "injury arising out of employment." 32 MLR 852.

"Accidental injuries" from internal strain as applied to workmen's compensation. 34 MLR 377.

In order to establish the relationship of cause and effect arising out of and in the course of employment, proof must be such as to take the case out of the realm of speculation and conjecture; but, if the evidence furnishes reasonable basis for an inference that the injury was the cause of the death or ailment, it is sufficient. Tillman v Stanley, 221 M 421, 24 NW(2d) 903.

In an action for death by wrongful act the burden of proof on the part of the claimant is sustained by a fair preponderance of the evidence. Tillman v Stanley, 222 M 421, 24 NW(2d) 903; Liakos v Yellow Taxi, 225 M 34, 29 NW(2d) 481.

Where a fellow-employee and manager of a store at which claimant worked also owned and operated as partners a nearby store, and the claimant solely at the request of truckmen assisted them in unloading at the partnership store a deep freeze unit belonging to such partnership, and was injured, the injury to complainant was not compensable as arising out of and in the course of employment, nor as incidental thereto, although the manager of the store at which plaintiff worked was also assisting in the unloading. Ridler v Sears, 224 M 256, 28 NW(2d) 859.

Where employee without either express or implied instruction from his employer or anyone representing the employer voluntarily leaves his employment to perform services exclusively for the benefit of a third person not in any way connected or associated with his employer and is injured while thus engaged, such injury is not incidental to his employment so as to render his employer liable therefor under the Workmen's Compensation Act. Ridler v Sears, 224 M 256, 28 NW(2d) 859.

An injury is compensable whether it causes a disease or merely aggravates an existing infirmity. Pittman v Pillsbury Flour Mills, 224 M 517, 48 NW(2d) 735.

Where employee is injured while performing some act for his personal comfort and convenience during employment, or while performing services for a third party during his employment, upon the express or implied instructions of his supervisor, the injuries thus sustained ordinarily are covered by the compensation act, even though not occurring on the premises where the employee ordinarily is required to perform his services. Ridler v Sears, 225 M 256, 28 NW(2d) 859.

A person who maintains grounds to which the public is invited to witness hockey or baseball games is required to use the care and precaution of the ordinarily prudent person to protect spectators against danger, but he is not an insurer against the dangers incident to witnessing such games; and in the instant case the plaintiff assumed the risk of injury from a flying puck while attending a hockey game as a spectator where she was familiar with the general purpose of the game and with the surroundings in the arena where the game was played. Modec v City of Eveleth, 225 M 556, 29 NW(2d) 453.

The employee, a truck driver and helper around a bulk oil station, was fatally burned while trying to extinguish a fire in a gasoline tank car caused by static electricity generated by the pump and spout while the tank car was being filled. Under the facts of the case the employee was covered by the Workmen's Compensation Act; that liability under the Act is exclusive of other liability for the injury; and the court erred in submitting the case to the jury on the question of negligence. Fjeld v Marshall County Coop. Oil Ass'n, 227 M 274, 35 NW(2d) 448.

An injury arises out of the employment if it arises out of the nature, conditions, obligations or incidents of the employment. It expresses the factor of origin, source or contribution rather than cause in the sense of being proximate or direct, and where waitress in a restaurant was injured when in reaching for a towel she accidentally tripped the firing mechanism of a burglar alarm in shape of a spring gun, the injuries of the waitress arose out of her employment. Breimhorst v Beckman, 227 M 409, 35 NW(2d) 720.

Evidence that the employee undertook to assist a fellow workman in putting up a ceiling in the employer's temporary shack accupied by a fellow workman, that no one in authority had directed the employee to assist the fellow workman, and the work was done outside of regular hours, sustains the finding of the industrial commission that the injuries sustained did not arise out of or in the course of employment. Stephan v Campbell Co., 228 M 74, 36 NW(2d) 401.

Where the employee's employment required the use of his truck on a regular route, part of which consisted of a private road, injuries sustained by him while attempting to sand an icy hill on the private road preparatory to the performance of his next day's employment, arose out of and in the course of his employment and was compensible. McBride v Preston Creamery, 228 M 93, 36 NW(2d) 404.

In an action by an employee of defendant's tavern to recover damages under section 340.95 for injuries sustained when defendant's manager assaulted plaintiff, the employee's exclusive remedy is under the Workmen's Compensation Act which covers the relationship of master and servant to the exclusion of any liability in common law or otherwise and supersedes the civil damages section of the liquor control act. Fox v Swartz, 228 M 233, 36 NW(2d) 708.

Medical testimony sustained a finding of the industrial commission that no relation of cause and effect existed between a kick given to a 14-year-old employee by his 16-year-old "straw boss" when the employee lagged behind in his work of detasseling corn and a severe case of osteomyelitis in the left hip joint which employee developed within a few days thereafter. Roberts v DeKalb, 229 M 188, 38 NW(2d) 189.

Where a cafe cook customarily working from 4:00 a.m. to 1:30 p.m. went to the cafe at 4:00 p.m. for the sole purpose of making a hairdressing appointment with a beautician and slipped and fell as she entered the cafe, the accident did not "arise out of and in the course of her employment" so as to preclude the maintenance by her of an action for damages for personal injuries. Yeager v Chapman, 233 M 1, 45 NW(2d) 776.

Where deceased, employed by one employer for 18 years, was requested by such employer's foreman to work for a new employer on a temporary basis for at least the same wages, and it was made clear to him that such transfer was to be only with his consent and thereafter such employee transferred to the new employer and clearly manifested his knowledge of the new employer-employee relationship and his consent thereto, such evidence was sufficient to sustain a finding of the industrial commission that at the time of the employee's death, while performing services for the new employer, the latter was responsible therefor under the Compensation Act. Pocrnich v Snyder Mining Co., 233 M 81, 45 NW(2d) 794.

Claimant's rights are not founded on negligence of the employer but rest on the provisions of the statute. Graf v Montgomery Ward Co., 234 M 485, 49 NW(2d) 797.

The Workmen's Compensation Act is not intended to grant a gratuity or pay for services actually rendered. It is simply a method of shifting the laws from the individual to the persons who had benefited by his engaging in the occupation in which he was injured. Dillon v St. Paul, 236 M 273, 52 NW(2d) 726.

Where an employee made an unjustified accusation against a fellow employee who suffered from a heart condition, and two days later the employee who had been accused suffered a fatal heart attack after he had been the aggressor in an altercation with the fellow employee on the employee's premises, which altercation arose because of the accusations, the injury received by the employee in the altercation arose out of and in the course of the employer's employment. Petro v Martin Baking Co., ... M ......, 58 NW(2d) 731.

Where an employer provides a safe and reasonable means of ingress to and egress from his premises, and an employee, for his own convenience, chooses not to use it but instead finds a ladder and scales a ten-foot fence and is injured in so doing, such injuries are not caused by an accident arising out of the course of his employment. It is common knowledge that a ten-foot high fence located around a building under construction is there to prevent ingress and egress at places where the fence is located. Corcoran v Fitzgerald Bros., ... M ......, 58 NW(2d) 744.

176.021 APPLICATION TO EMPLOYERS AND EMPLOYEES

HISTORY. 1953 c 755 s 2.

NOTE: Supersedes section 176.02.

176.03 Repealed, 1953 c 755 s 83.

NOTE: Superseded by section 176.181.

176.031 EMPLOYER'S LIABILITY EXCLUSIVE

HISTORY. 1953 c 755 s 3.

NOTE: Supersedes section 176.04.

Where the injured employee was employed by the husband and wife, a co-partnership conducting a logging enterprise, each operation was conducted by a separate, distinct employing entity and the compensation statute had no application. The husband as owner of the logging enterprise was not liable for the payment of compensation. Toenberg v Harvey, 235 M 61, 49 NW(2d) 578.

176.04 Repealed, 1953 c 755 s 83.

NOTE: Superseded by section 176.031.

Annotations to repealed section 176.04.

176.04 LIABILITY OF EMPLOYER EXCLUSIVE

Where varying inferences may be drawn from testimony, the case is for the jury, a motion for directed verdict presents a question of law only; a verdict may be directed only where the court's manifest duty would clearly be to set aside a contrary verdict as not justified by the evidence or contrary to law. On motion for a directed verdict, the view most favorable to the adverse party must be taken. Olson v Evert, 224 M 528, 28 NW(2d) 753.

"Where a party places himself in a position to encounter known hazards, which the ordinarily prudent person would not do, he assumes the risk of injury therefrom. Such assumption of risk is but a phase of contributory negligence and is properly included within the scope of that term. Where plaintiff, a guest in defendant's car, remained seated therein after defendant driver of car had parked it in violation of Minnesota Statutes, Section 169.34 (13); where a police officer thereafter advised driver, in the hearing of plaintiff, that he might remain thus parked to assist a disabled car in front of him, but that he should be cautious in connection therewith; where rear lights on defendant's automobile may have been defective; and where such factors may all have contributed to a subsequent rear-end collision which injured plaintiff, it could not be held as a matter of law that plaintiff, by remaining seated in the car, assumed the risk of injury, particularly in view of her lack of knowledge as to the condition of the rear lights and as to whether defendant driver had complied with the police officer's instructions." Grabow v Hanson, 226 M 265, 32 NW(2d) 593.

Compulsory workmen's compensation provides a remedy which is an adequate substitute for common law or statutory action for damages for injuries sustained by an employee in his employment. Breimhorst v Beckman, 227 M 409, 35 NW(2d) 719.

In determining whether the facts and reasonable inferences to be drawn from them sustain the findings of the industrial commission, the evidence must be reviewed in the light most favorable to such findings; and, where a question of cause and effect is involved, the conclusion must be left to the industrial commission where the evidence is conflicting and will sustain a finding either way. The industrial commission is not bound or controlled by findings of fact made by a referee. An assignment of error is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection, where the assignment is based on mere assertion and is not supported by argument or authorities. Schmoll v Craig, 228 M 429, 37 NW(2d) 539.

Medical testimony supports the finding of the industrial commission that no relation of cause and effect existed between a kick given to an employee by his "straw boss" when employee got behind in his work of detasseling corn and a severe case

of osteomyelitis which employee developed within a few days thereafter. Roberts v De Kalb, 228 M 188, 38 NW(2d) 189.

Under compensation law the question of whether an individual is an employee is a question of fact. The "special errand rule" came into the law as an exception to the general rule that ordinarily, injuries resulting from travel to and from work are not compensable. Where a bookkeeper left her home at the special request of the employer to go to his office on Saturday, a day on which she did not ordinarily work to perform special duty and her husband drove her to the office, waited for her and drove her back to a point in front of her home and in walking from the automobile to her house she fell on the sidewalk, the injuries were compensable as "arising out of and in the course of her employment." Bengston v Greening, 230 M 139, 41 NW(2d) 185.

A motor carrier which leased its vehicle to another carrier but sent its employee with the vehicle as an operator is the employer of the operator whom he pays and has the right to discharge even though the provisions of the lease gave the lessee exclusive control over the vehicle and might direct the driver when and where to go, whom to carry, and what routes to take. Turner v Schumacher, 230 M 172, 41 NW(2d) 183.

Where an employee of a firm located in Minneapolis was killed in an airplane crash on his homebound trip from Chicago, in view of all the evidence in the case the employee's trip to Chicago was not in the interest of his employer, but for his own convenience and pleasure, and the industrial commission did not err in refusing compensation to the employee's widow. Dille v Aaron Carlson Co., 234 M 411, 48 NW(2d) 564.

Where an employee received burns which required five days' hospitalization but subsequent disfigurement did not affect his employment, the employee's sole remedy was under the Workmen's Compensation Act, and the employee could not maintain an action at law for permanent disfigurement. Frank v Anderson Bros., 236 M 81, 51 NW(2d) 805.

Where defendant placed an automobile in a parking lot in a highly congested area of the city on an extra windy day, and the hood of the automobile, which was allegedly unlatched or not latched securely, blew off, and pedestrian was injured when he ducked or stooped in an effort to get out of way of flying hood, and fell, in an action for resulting injuries evidence of negligence on the part of the defendant was sufficient for the jury; and where the pedestrian fell as he ducked or stooped, to avoid the hood, and was injured, the pedestrian was not guilty of contributory negligence. Swanson v La Fontaine, ... M ......, 57 NW(2d) 262.

An "act of God" as related to actions for negligently caused injuries, is one against which ordinary skill and foresight is not expected to provide. Every strong wind cannot legally be termed an "act of God." Swanson v La Fontaine, ... M ......, 57 NW(2d) 262.

A cafeteria employee receiving meals as part compensation, was poisoned by eating food furnished by employer, sustained compensable injury under the Workmen's Compensation Act and cannot maintain a common law action. State v Bender, 36 Ohio 111, 76 NE(2d) 891.

The principle that there can be no recovery in an action of tort for negligence for an injury due entirely to fright, terror, alarm, anxiety, or some other form of mental disturbance cannot be extended to cases arising under the Workmen's Compensation Act. Charon's Case, 321 Mass. 694, 75 NE(2d) 511.

176.041 APPLICATION; EXCEPTIONS

HISTORY. 1953 c 755 s 4.

NOTE: Supersedes sections 176.02 and 176.05.

176.05 Repealed, 1953 c 755 s 83.

NOTE: Superseded by sections 176.041, 176.051, 176.091.

176.05 APPLICATION

Repealed, 1953 c 755 s 8.

Annotations to repealed section 176.05.

Where it appears from the evidence that relator in response to an advertisement did a small paneling job for respondent R in his home, the work consuming a weeks time, and later did some remodeling work on other houses over a twelve weeks period, the work being interrupted at intervals during which time the relator did other jobs where the respondent R was remodeling a home and was not engaged in the regular trade business, profession, or occupation of buying and selling real estate on his own behalf, the employment of the relator was casual. Amundsen v Poppe, 227 M 124, 34 NW(2d) 337.

A company operating a quarry and connected by three miles of track with an interstate railway carrier was not engaged in interstate commerce as set forth in the federal safety appliance act. The matter of injuries to employees on the company's engine and cars is governed by the Minnesota workmen's compensation act. Risberg v D. M. & I. R. Ry., 233 M 396, 47 NW(2d) 113.

A resident of Minnesota employed under a Minnesota contract of employment by an employer with his principal place of business in Minnesota, injured while at work in North Dakota and awarded compensation under a North Dakota law, has a right to seek recovery under the more liberal provisions of the Minnesota act providing full credit is given for the payments received by the employee in the North Dakota proceedings. Sorenson v Standard Construction Co., ... M ......, 55 NW(2d) 630.

Where the employer and employee have a well-developed understanding over a substantial period of time that the latter shall periodically perform, in the usual course of the employer's business, a particular kind of service for the employer, the employment ceases to be casual. Where the employer's business is localized in more than one state it becomes jurisdictionally important to know to which of the various business localizations the employment is referable. Where an employer's business is localized in Minnesota, and the employee's services at the time of the injury are referable to the Minnesota business localization, the industrial commission has jurisdiction. It is immaterial that the employment contract was made in Illinois and the injuries sustained in Wisconsin. Alecson v Kennedy Motor Sales, ... M ......, 55 NW(2d) 696.

In a personal injury action by a servant against a master, there is no evidence that the injuries were due to unsafe working conditions to which the servant was exposed, and the injuries to plaintiff were due solely to the negligence of a fellow servant which did not involve a breach of any nondelegable duty, and the master was not liable. The evidence produced indicates a clear defense of assumption of risk since plaintiff was injured as a result of an ordinary and usual hazard of his employment involving a danger as obvious and apparent to the servant as it was to his employer. Palmer v Wiltse, ... M ......, 57 NW(2d) 812.

The real test of distinction between an independent contractor and an employee is the matter of control; and where the contractor failed to have a sufficient number of competent men on the job of rebuilding a store for a corporation, the president of the corporation asked a spectator to assist in setting beams in the basement, and the spectator knew of the shortage of help and was injured during the operation, the spectator assumed the risk. Nicholas v Hennepin Wheel Goods Co., ... M ......, 58 NW(2d) 572.

176.051 ASSUMPTION OF LIABILITY

HISTORY. 1953 c 755 s 5.

NOTE: Supersedes section 176.01.

176.06 Repealed, 1953 c 755 s 83.

NOTE: Superseded by section 176.061.

Annotations to repealed section 176.06.

176.06 LIABILITY OF OTHERS THAN EMPLOYER

Where an employee dies as the result of being assigned to a task too heavy for his strength the case is compensable as an "accident." Kemling v Armour, 222 M 397, 24 NW(2d) 842.

The employee of a firm engaged in threshing as a business is covered by the Workmen's Compensation Act; but this is not applicable to a farmer doing his own threshing, or threshing for others occasionally, or on an exchange work basis. Skreen v Rauk, 224 M 96, 27 NW(2d) 869.

There is ample evidence of negligence on the part of both defendants and of such negligence having contributed proximately to plaintiff's injury. This court takes judicial notice of the loss of purchasing power of the dollar, and a verdict of $40,000 for the injuries received by plaintiff is not evidence that the jury was influenced by passion or prejudice in finding such a verdict. Swanson v J. L. Shiely Co., 234 M 548, 48 NW(2d) 848.

Laws 1923, Chapter 279, amending Laws 1921, Chapter 82, Section 31, Minnesota Statutes, Section 176.06, deprives an employee, subject to the Workmen's Compensation Act of his tort action against a third party who is also subject to that Act, where his employer and the third party are "engaged in the due course of business, (a) in futherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof, ***." As interpreted by this court in the light of the purpose and intent of that act, the employee is barred of his tort action only if he is working with and subject to mutual hazards with the employees of the third party. If he is engaged in that part of the activities of his employer which does not expose him to hazards in common with the employees of the third party, he is not barred of his action in tort. Swanson v J. L. Shiely Co., 234 M 548, 48 NW(2d) 848.

Without determining whether the defense of the employer's contributory negligence may be asserted by a third party defendant under section 176.06, subdivision 2, when the facts clearly show that the employer will necessarily become entitled to all damages recoverable against such defendant, it is clear that such defense is not available to the third party defendant, irrespective of which party commences and maintains the action, as long as the beneficiaries of the compensation award have any real interest in the proceeds of the judgment which may be entered against the third party defendant. Nyquist v Batcher, 235 M 491, 51 NW(2d) 566.

In an action against a franchise retailer for personal injuries sustained when the plaintiff, while supervising the store opening for his employer, fell through an uncompleted freight chute, the evidence sustained the trial court's finding that the plaintiff was engaged, at the time of the injury, in a common enterprise with employees of the defendant, so as to be subject to the Workmen's Compensation Act section preventing the injured employee from recovering both compensation under the act and damages against a third party tort-feasor. Volding v Harnish, 236 M 71, 51 NW(2d) 658.

An essential element of negligence is the actor's knowledge, actual or imputed, of the facts out of which the duty arises. An act or omission is not negligence unless the actor had knowledge or notice that involved danger to another, but knowledge may be imputed where the actor should have anticipated from the facts shown to exist the inherent danger existing under the circumstances involved. Manteuffel v Hamm Brewing Co., ... M ......, 56 NW(2d) 110.

In fulfillment of the legislative intent the last paragraph of section 176.06, subdivision 1, should be interpreted and actually applied as if it read: "the provisions of subdivision 1 of this section shall apply only where the employer liable for compensation and the other party or parties legally liable for damages were both either insured or self-insured and were engaged in the due course of business on the same project, and their employees were working together in the performance of such projects in a manner which exposed them to the same or similar hazards on the premises where the injury was received and at the time thereof, and not otherwise." The employer who merely carries on a systematic inspection to insure that he is getting the quality of services for which he has obligated himself to pay under a

construction contract is not engaged in the same project as the contractor who performs the work. Crawford v Woodrich Construction Co., 236 M 547, 57 NW(2d) 648.

The evidence sustained the finding of the industrial commission that the owner and driver of trailer-type tractor, leased to a partnership under contract giving the partnership the exclusive control of the tractor, was an employee of the partnership and not an independent contractor at the time of death while operating the tractor-trailer under specific instructions of the partnership as to the route to be followed and in furtherance of its business, regardless of whether the employer-employee relationship would have terminated upon arrival at destination. Hansen v Adent, ... M ......, 57 NW(2d) 681.

The receipts of workmen's compensation payments by an injured employee bars his action for damages against a third party only where: (1) both the injured worker's employer and third party are insured or self-insured; (2) the employer and the third party were engaged in the due course of business on the same project; and (3) where their employees were working together in the performance of such project in a manner which exposed them to the same or similar hazards on the premises where the injury was received and at the time thereof. Urbanski v Merchants Motor Freight, ... M ......, 57 NW(2d) 686.

Where under the workmen's compensation law the wages upon which the compensation is based includes gratuities received in the course of employment from others than the employer, subsistence payments to a veteran trainee are "gratuities" in determining the "wages" of an injured workman. Wood Mercantile Co. v Cole, 213 Ark. 68, 209 SW(2d) 290.

In an action by a subcontractor's employee, who had received workmen's compensation from the subcontractor's insurer against the general contractor for personal injuries sustained when the general contractor's truck struck a temporary scaffold on which the subcontractor's employee was working, refusal to submit to the jury the issue of alleged negligence of the fellow-employee who erected the scaffold and placed a ladder in the center of the roadway, and who according to the general contractor's evidence declined to remove the ladder and undertook to guide the truck past the obstruction, was error. E. I. DuPont Co. v Frechette, 161 F(2d) 318.

176.061 THIRD PARTY LIABILITY

HISTORY. 1953 c 755 s 6.

Supersedes section 176.06.

176.07 Repealed, 1953 c 755 s 83.

Superseded by section 176.071.

Annotations to repealed section 176.07.

176.07 JOINT EMPLOYERS SHALL CONTRIBUTE

There may be contribution between tort-feasors where one seeking a contribution was not guilty of intentional wrong and where the ground of the original common liability was simple negligence in a lawful undertaking. "Common liability" exists immediately after the acts of the tort-feasors which gives rise to a cause of action against them. The parties seeking contribution need not make payment pursuant to a judgment; but may settle by a fair and provident payment and then seek contribution from other joint tort-feasors for their fair share of the settlement price. Employers Mutual Casualty Co. v Chicago, St. Paul & Omaha Railway, 235 M 304, 50 NW(2d) 689.

176.071 JOINT EMPLOYERS; CONTRIBUTION

HISTORY. 1953 c 755 s 7.

Supersedes section 176.07.

176.08 Repealed, 1953 c 755 s 83.

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN

HISTORY. 1953 c 755 s 8.

Supersedes section 176.09.

176.09 Repealed, 1953 c 755 s 83.

Superseded by section 176.081.

176.091 MINOR EMPLOYEES

HISTORY. 1953 c 755 s 9.

Supersedes repealed sections 176.05 and 176.10.

176.10 Repealed, 1953 c 755 s 83.

Superseded by section 176.091

176.101 SCHEDULE OF COMPENSATION

HISTORY. 1953 c 755 s 10.

Supersedes section 176.11.

176.11 Repealed, 1953 c 755 s 83.

Superseded by 176.101.

Annotations to repealed section 176.11.

176.11 SCHEDULE OF COMPENSATION

In construing section 176.11, subdivision 3, clause (4), which provides that compensation for a permanent partial disability is 66⅔ percent of the difference between the employee's wage before the injury and his wage thereafter it is necessary for the industrial commission to determine as a fact the duration and extent of partial disability. Peters v Archer-Daniels, 223 M 168, 26 NW(2d) 29.

Section 176.11, subdivision 3 (38), by necessary implication excludes from the coverage of the Workmen's Compensation Act disfigurement which does not materially affect employability; consequently plaintiff's tort action for such disfigurement survived the enactment of the Compensation Act. Lloyd v Minnesota Valley Canning Co., 224 M 305, 28 NW(2d) 697.

Disability of the hand and lower forearm or of the hand and wrist movement is compensable for the percentage of 175 weeks equal to the percentage of the disability. Lappinen v Union Ore Co., 224 M 395, 29 NW(2d) 11.

Where there is no showing of long, continued, and settled construction of a word by the industrial commission, such as the word "compensation" in the instant case, but two decisions of the commission are cited, neither of which involved the construction in question, but one of which contained a dictum as to the meaning of the word, a practical construction of the word has not been established as a matter of law. Practical construction of a word is a fact which must be made to appear by the record, and the courts do not take judicial notice of it. Hanson v Hayes, 225 M 48, 29 NW(2d) 473.

The evidence sustains the finding of the industrial commission that on May 1, 1944, the employee was tendered the same work as he performed prior to an operation resulting from an industrial accident and that he was physically able to perform the necessary labor required by the employer in the work so pending; the deci-

sion of the commission is affirmed and the writ of certiorari discharged. Slettum v Northern Pump, 225 M 432, 30 NW(2d) 708.

A state university home economy department graduate student, injured while assisting the meat cook in the kitchen at a sanatorium operated by the county sanatorium commission during her internship course, required for her to be accepted by accredited hospital as a dietician, was an employee of the commission and not of the state. The petitioner was an employee within the meaning of the Workmen's Compensation Act when injured. She was an apprentice. Judd v Sanatorium Commission of Hennepin County, 227 M 303, 35 NW(2d) 430.

If reasonably stable employment is not available for an employee by reason of certain injuries which have crippled him physically or neurologically, evidence of that fact through the testimony of an experienced employment supervisor is both material and relevant in determining whether the employee's disability is of such character that he has no reasonable likelihood while such disability continues of being able to obtain and pursue an income-yielding occupation with reasonable continuity. Lee v Minneapolis St. Ry. Co., 230 M 315, 41 NW(2d) 434.

When the compensation installments become due and payable the right to them becomes vested in the beneficiary absolutely, but as to future payments the right is not vested absolutely but in a defeasible sense. Although no interest was payable on the accrued compensation installments while the president's freezing order prevented disbursement under the award, once the custodian was vested with the right to receive the compensation installments which had accrued he was entitled not only to the accrued principal but also to receive interest thereon during the time the payment was withheld. Todeva v Oliver Iron Mining Co., 232 M 422, 45 NW(2d) 782.

Where the industrial commission determined the percentage of disability applicable respectively to each of the employee's feet and ankles and measured his compensation under section 176.11, subdivision 3, (17), without determining whether the combination of such disabilities resulted in total permanent disability under section 176.11, subdivisions 4 and 5, and where substantial evidence was presented on this issue by the employee, the employer, and the insurer, the case is remanded to the industrial commission for further proceedings and a specific finding thereon. Berg v Sadler, 235 M 214, 50 NW(2d) 266.

Where the evidence disclosed that as a result of a compensable spinal injury sustained by employee he was unable to use his hands or legs in any occupation for which he had either the capacity or training, where it was the opinion of a qualified medical expert that employee was permanently and "totally disabled insofar as earning a living" by reason of special injury, and where there was other competent evidence to support the finding, the industrial commission's finding of total and permanent disability was sustained by the evidence. Castle v City of Stillwater, 235 M 502, 51 NW(2d) 370.

An injury is compensable and subjects the employee to coverage by the Workmen's Compensation Act as his sole and exclusive remedy if by reason thereof he is entitled to receive any compensation under the act; and it is immaterial that such compensation may, to the exclusion of weekly disability benefit payments, consist of nothing more than money benefits in the form of the right to receive hospitalization or the right to receive medical treatment. The right to receive hospitalization and medical treatment, or the right to receive either of them, is a money benefit which of and by itself constitutes compensation within the meaning of the Compensation Act. Section 176.11, subdivision 3 (38) excludes from the Compensation Act only such accidentally caused permanent disfigurement which does not effect the workmen's employability and which is also not simultaneously accompanied by any injury or injuries which entitled him to any compensation under the Act. Frank v Anderson Bros., 236 M 81, 51 NW(2d) 805.

Subdivision 6 requires that all payments made as recompense for injury and consequent loss of wage to an injured employee shall be included as payments previously made as compensation whether or not payments are made pursuant to the compensation act or pursuant to other authority. Dillon v City of St. Paul, 236 M 273, 52 NW(2d) 726.

An injury which aggravates an existing infirmity is compensable. Where the medical testimony was conflicting as to whether injury sustained by compensation claimant in the course of employment aggravated an existing cancerous growth, necessitating amputation of leg, and evidence would support decision either way, the finding of industrial commission that injury was compensable is not to be disturbed on appeal. Erickson v Knutson, 237 M 187, 54 NW(2d) 118.

176.111 DEPENDENTS, ALLOWANCES

HISTORY. 1953 c 755 s 11.

Supersedes section 176.12.

A finding which awards compensation for temporary total disability but limits the amount of recovery to a period of 26 weeks and further orders such additional medical treatment or supervision after that period as may be reasonably necessary to relieve the relator from the effects of said accident does not constitute a finding that the disability giving rise to such further medical treatment or supervision continued after the 26-week period. Stephen v Miles Construction Co., ... M ......, 60 NW(2d) 801.

176.12 Repealed, 1953 c 755 s 83.

Superseded by section 176.111.

Annotations to repealed section 176.12.

176.12 DEPENDENTS AND ALLOWANCES

In carrying out the mandate of the supreme court in Johnson v Munsingwear, 222 M 540, 25 NW(2d) 308, the industrial commission was correct in applying the language of section 176.12, as the proper measure of compensation due a dependent child under the age of 16 whose mother met death in a compensation accident and whose father still survived, taking into consideration that the mother only partially contributed to the support of the instant dependent. An award of $14.40 per week to each child is approved. Johnson v Munsingwear, 224 M 551, 29 NW(2d) 823.

When a child over 18 alleged to be dependent under the provisions of section 176.12, subdivision 2, has proved his physical and mental incapacity to earn, he has brought himself within the prima facie provision for dependency, which is fully rebutted in the instant case by a showing that in fact he received no contributions from the deceased employee. The adult son, living with his mother, who was separated from the father, and who received nothing of consequence in the way of support from the father, was not a "dependent" within the provisions of section 176.12, subdivisions 3 and 4. Jannetta v Milwaukee Fuel Co., 225 M 318, 30 NW(2d) 683.

Once an award of compensation has been made to the dependent of a workman who has died as a result of a compensable accident, the dependent's right to compensation both as to accrued and future installments, subject to the supervision of the manner of payment, is vested in the individual as a constitutionally protected property right. Todeva v Oliver Iron Mining Co., 232 M 422, 45 NW(2d) 782.

A wife is conclusively presumed to be dependent upon her husband unless it be shown that she was voluntarily living apart from him at the time of his injury or death. "Voluntarily," under the Workmen's Compensation Act, means the free and unconditional act of the wife uninfluenced by extraneous causes. Where there was no legal separation or estrangement of husband and wife their separation at the time of the husband's death because of his inability to provide adequate residence or economic support for the wife, was not voluntary as required to bar the wife's recovery of compensation for her husband's death. Prickett v Jack Roth Construction Co., 233 M 462, 47 NW(2d) 120.

The amount of benefits to which an employee's dependents are entitled under the provisions of section 176.12, subdivision 19, is governed by the law in effect at the time of the employee's death. Where it is proved that an apparently healthy employee was injured in the course of his employment; but cancer developed at the

point of injury; that subsequently he became totally disabled and later died of cancer; and it was the opinion of qualified medical experts that the injuries either initiated the cancer or aggravated an existing cancer, the industrial commission's finding that the employee's disability and death resulted from his injuries was justified by the evidence. Notwithstanding the lack of adequate medical knowledge relating to cancer, in the instant case it cannot be said that the industrial commission's finding rests upon speculation and conjecture. Pittman v Pillsbury Flour Mills, 234 M 517, 48 NW(2d) 735.

Prior to the enactment of Laws 1951, Chapter 508, an illegitimate child, although adopted by a person not its father, inherited from his natural father just as does a legitimate child. In this action there was no abuse of discretion by the industrial commission in dividing the benefits of its award equally between the widow and the natural child of the deceased employee. A child within the meaning of the workmen's compensation act, is any child who is entitled by law to inherit. Minor children, under 16, are conclusively presumed to be wholly dependent. O'Dell v Hingeveld, 235 M 223, 50 NW(2d) 476.

Without determining whether the defense of the employer's contributory negligence may be asserted by a third party defendant under section 176.06, subdivision 2, when the facts clearly show that the employer will necessarily become entitled to all damages recoverable against such defendant, it is clear that such defense is not available to the third party defendant, irrespective of which party commences and maintains the action, as long as the beneficiaries of the compensation award have any real interest in the proceeds of the judgment which may be entered against the third party defendant. Nyquist v Batcher, 235 M 491, 51 NW(2d) 566.

176.121 COMMENCEMENT OF COMPENSATION

HISTORY. 1953 c 755 s 12.

Supersedes section 176.14.

176.13 INCREASE OF PREVIOUS DISABILITY; SPECIAL COMPENSATION FUND

HISTORY. 1913 c 467 s 15; 1919 c 358 s 1; 1921 c 82 s 16; 1923 c 300 s 5; 1933 c 75; Ex1933 c 21 s 1; 1935 c 311 s 1; Ex1936 c 43 s 1; 1941 c 384; 1945 c 106; 1947 c 90 s 1; 1947 c 247 s 1; 1949 c 705 s 1; 1951 c 457 s 7; 1953 c 112 s 1.

Effect of award on workmen's compensation board on action for wrongful death; possible double liability. 32 MLR 849.

In construing the 1941 amendment providing that employees then receiving, or who might thereafter become entitled to receive, compensation for permanent, total disability, should be paid from a special fund, the word "compensation" is used identically as in defining compensation for wages lost on account of an accident for which $10,000 compensation is paid. Loew v Hagerle, 222 M 258, 24 NW(2d) 278.

The provision of the 1941 amendment to section 176.13 was satisfied where maximum awards to certain employees were past due before they petitioned for the benefit from such fund, though employer's and insurance carrier's insolvency rendered payments of the whole amount impossible. Thoresen v Schmahl, 222 M 304, 24 NW(2d) 273.

In construing section 176.11, subdivision 3, clause (4), which provides that compensation for a permanent partial disability is 66⅔ percent of the difference between the employee's wage before the injury and his wage thereafter, it is necessary for the industrial commission to determine as a fact the duration and extent of partial disability. Peters v Archer-Daniels, 223 M 168, 26 NW(2d) 29.

On the particular feature of the Workmen's Compensation Act relating to the theory that to be entitled to compensation the workman must be engaged in, on, or about the premises where the services are being performed, or where services require their presence as a part of such service at the time of the injury and during the hours of service, is liberally construed in favor of the workman. Kennedy v

Thompson, 223 M 277, 26 NW(2d) 459; Locke v Steele, 223 M 464, 27 NW(2d) 285; Thoresen v Schmahl, 222 M 304, 24 NW(2d) 273; Lappinen v Union Ore Co., 224 M 395, 29 NW(2d) 8.

The constitutional prohibition against special legislation does not prevent the legislature, with whom the responsibility of classification primarily rests, from dividing a subject into classes, and a classification made pursuant to a public purpose, which has a rational basis upon any conceivable state of the facts, although the court does not perceive all the facts justifying the classification, will be held proper if;

(a) the classification uniformly, without discrimination, applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation;

(b) the distinctions which separate those who are included within the classification from those who are excluded are not manifestly arbitrary or fanciful, but are genuine and substantial so as to provide a natural and reasonable basis in the necessity or circumstances of the members of the classification to justify different legislation adapted to their peculiar conditions and needs; and

(c) if the classification is germane or relevant to the purpose of the law, i.e., there must be an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefor which the law purports to provide. Loew v Hagerle Bros., 226 M 485, 33 NW(2d) 599.

Where a statute authorizing payment of compensation from special compensation fund to employees who have been totally and permanently disabled for a period of 20 years prior to the statute, but whose weekly compensation terminated subsequent to July 1, 1939, and prior to Jan. 1, 1940, was applicable only to one individual, the statute violated the constitutional provisions against special legislation. Although one alone may constitute a class as well as a thousand, the fewer there are in the class the more closely will the courts scrutinize an act to see if its classification constitutes an evasion of the constitution. Loew v Hagerle Bros., 226 M 485, 33 NW(2d) 598.

The special compensation fund belongs to industry and is a public fund only in the sense that the public welfare is highly involved with its proper administration and the injured workmen's right to total disability benefits from the special fund is not based upon any direct financial obligation of the state. Senske v Fairmont & Waseca Canning Co., 232 M 350, 45 NW(2d) 640.

Whether the total disability benefits are to be paid out of the special compensation funds rests solely in the sound discretion of the industrial commission and the state treasurer by virtue of his duty as custodian of the funds has no right to resist the disbursements and invasions which have no basis in law. Senske v Fairmont & Waseca Canning Co., 232 M 350, 45 NW(2d) 640.

The opinions of the attorney general to the industrial commission are entitled to the highest respect but cannot control or become a material factor in the exercise of the commission's discretion as to allowance or denial of disability benefits. Senske v Fairmont & Waseca Canning Co., 232 M 350, 45 NW(2d) 640.

176.135 TREATMENT; APPLIANCES; SUPPLIES

HISTORY. 1953 c 439 s 1; 1953 c 755 s 13.

Supersedes section 176.15.

A finding which awards compensation for temporary total disability but limits the amount of recovery to a period of 26 weeks and further orders such additional medical treatment or supervision after that period as may be reasonably necessary to relieve the relator from the effects of said accident does not constitute a finding that the disability giving rise to such further medical treatment or supervision continued after the 26-week period. Stephen v Miles Construction Co., ... M ......, 60 NW(2d) 801.

176.14 Repealed, 1953 c 755 s 83.

Annotations to supersede section 176.14.

176.14 WHEN COMPENSATION BEGINS

The fact that an employee may or may not receive compensation for the first week of disability has no bearing on the requirement to give notice to the employer of the injury, since the notice provision is for the benefit of the employer to obtain knowledge of the injury, while the waiting period is to prevent malingering by an employee. Rinne v W. C. Griffis, 234 M 146, 47 NW(2d) 872.

176.141 NOTICE OF INJURY

HISTORY. 1953 c 755 s 14.

Supersedes section 176.16.

176.145 SERVICE OF NOTICE, FORM

HISTORY. 1953 c 755 s 15.

Supersedes section 176.17.

176.15 Repealed, 1953 c 755 s 83.

Superseded by section 176.135.

Annotations to repealed section 176.15.

176.15 MEDICAL AND SURGICAL TREATMENT

Evidence that on May 25, 1945, employee, while working for his employer, sustained a fall and immediately thereafter experienced severe pain in his back; that on the same day he reported the accident and on the next day called on physicians of his employer as directed, to whom he described the accident and the pains resulting therefrom; that such pains were recurrent intermittently thereafter until Aug. 27, 1948, at which time other physicians diagnosed his disability as a ruptured disc, requiring surgery, which was furnished; and that in the opinions of medical experts such fall was the cause of such ruptured disc, and was sufficient to sustain commission's finding that his disability was due to an accident arising out of and in the course of employment, even though employer's physicians made no record of employee's statement that his pain was in the region of his back where the disc was ultimately located. Mattila v Oliver Iron Mining Co., 233 M 125, 45 NW(2d) 82.

In determining whether a relationship is one of employee or independent contractor, the most important factor is the right of the employer to control the means and manner of performance. Other factors to be considered are mode of payment, furnishing of materials or tools, control of the premises where the work is to be done and the right of the employer to discharge the employee. Under the evidence the appellate court holds that the decision of the commission that respondent was an employee of relator on the date of the accident, is affirmed. Graf v Montgomery Ward & Co., 234 M 485, 49 NW(2d) 797.

Where there was competent medical testimony that further medical treatment would relieve but not cure the employee from the effects of a compensable injury, a finding that "employee may require further medical supervision or treatment" was justified, and order of the commission directing employer and insurer to afford said "employee such further medical supervision or treatment as may be reasonably necessary to cure or relieve from the effects of said accident" was authorized. Castle v City of Stillwater, 235 M 502, 51 NW(2d) 370.

176.151 TIME LIMITATION

HISTORY. 1953 c 755 s 16.

Supersedes repealed section 176.18.

176.155 EXAMINATIONS

HISTORY. 1953 c 755 s 17.

Supersedes section 176.19.

176.16 Repealed, 1953 c 755 s 83.

Superseded by section 176.141.

Annotations relating to repealed section 176.16.

176.16 NOTICE OF INJURY

Where an employee in the course of his employment sustains an apparently trivial injury which does not result in present disability and which no person of ordinary prudence, similarly situated, would reasonably anticipate as likely to cause future disability, the time for giving notice of the occurrence of the injury to the employer, pursuant to section 176.16, runs from the time when it becomes reasonably apparent that such injury has resulted in, or is likely to cause, compensable disability. It is a question of fact to be resolved by the trier of fact whether an individual case comes within the latent or trivial injury rule. An employee who sustains injuries that are obviously serious and reasonably likely to cause disability may not gamble on the outcome in the hope that he will recover, and, when he loses the gamble, escape the consequences of his failure to give his employer the required notice. Bruggeman v Ford Motor Co., 225 M 427, 30 NW(2d) 711.

In reviewing an order or determination of an administrative board, the supreme court will go no further than to determine whether the evidence was such that the board might reasonably make the order or determination which it made; the determination of the facts rests with the tribunal to which the matter is referred, and the findings there made, unless clearly or, as sometimes expressed, manifestly against the evidence, are conclusive and final. Under the facts of this case, although the technical basis may have been ambiguous or entirely omitted from the findings, the evidence was sufficient to sustain the determination of the referee as affirmed by the industrial commission. Nelson v Reid and Wackman, 228 M 137, 36 NW(2d) 544.

The industrial commission did not err in holding that the statutory requirement as to knowledge or notice had been complied with. The claimant suffered a prolapse of vertebral disc while lifting a staging, and informed the foreman that he had a pain in right leg and went home. Although neither the claimant nor the foreman knew the manner or extent of the injury the employer was informed of the illness and such information was sufficient notice. Miller v Peterson, 229 M 22, 38 NW(2d) 48.

Knowledge of an accidental injury obtained by officers of a city exercising superior authority over other officers and employees is knowledge by the city of an accidental injury even though the employee had not given knowledge within ninety days after the occurrence of the accident. Sokness v City of Virginia, 231 M 215, 42 NW(2d) 551.

The purpose of section 176.16, providing that unless an employer shall have actual knowledge or notice of the occurrence of an injury to a workman within 90 days after the occurrence of the injury no compensation shall be allowed, is to permit the employer to make such investigation as is necessary to determine liability as to a claim. Actual knowledge, at its minimum, has been defined as information such as a reasonable man would usually act upon in the ordinary course of human affairs. Rinne v W. C. Griffis Co., 234 M 146, 47 NW(2d) 873.

176.161 ALIEN DEPENDENTS

HISTORY. 1953 c 755 s 18.

Supersedes section 176.20.

176.165 LUMP SUM PAYMENTS

HISTORY. 1953 c 755 s 19.

Supersedes repealed section 176.21.

176.17 Repealed, 1953 c 755 s 83.

Superseded by section 176.145.

176.171 PAYMENTS TO TRUSTEE

HISTORY. 1953 c 755 s 20.

Supersedes section 176.22.

176.175 RIGHT TO COMPENSATORY AWARD

HISTORY. 1953 c 755 s 21.

Supersedes section 176.23.

176.18 Repealed, 1953 c 755 s 83.

Superseded by section 176.151.

Annotation relating to repealed section 176.18.

176.18 LIMIT OF ACTIONS

Where about eight days after an employee sustained an accidental injury the employer filed with the industrial commission a written report of the accident and about two months after the accident occurred the employer filed with the commission a final receipt for compensation paid to the employee for temporary total disability caused by the injury, a proceeding commenced about 11 years after the filing of the final receipt to recover further compensation for permanent partial disability caused by the same injury is not barred under section 176.18 (1), requiring a proceeding to recover compensation to be commenced within two years after the filing by the employer of the report of the accident and within six years after the happening of the accident, for the reason that the proceeding to recover further compensation constitutes a reopening or continuation of a proceeding to recover compensation commenced by the filing of the final receipt within the statutory period. Lappinen v Union Ore Co., 224 M 395, 29 NW(2d) 11.

Where the alleged employers, in an employee's widow's compensation proceeding, appeared specially to object to the jurisdiction of the industrial commission over their persons, but the commission set the proceeding for hearing on the merits, special appearance would not be waived by hearing on the merits, and the alleged employers would have adequate remedy to review all matters involved by certiorari after determination on the merits, and a writ of prohibition to restrain the commission from proceeding with the hearing on the merits would not issue. State ex rel v Industrial Commission, 234 M 567, 48 NW(2d) 42.

176.181 INSURANCE

HISTORY. 1953 c 755 s 22.

Supersedes sections 176.03, 176.24.

176.185 POLICY OF INSURANCE

HISTORY. 1953 c 755 s 23.

Supersedes section 176.25.

176.19 Repealed, 1953 c 755 s 83.

Superseded by section 176.155.

176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYEES OR INSURERS REGARDING LIABILITY

HISTORY. 1953 c 755 s 24.

Supersedes section 176.255.

176.195 REVOCATION OF INSURER'S LICENSE

HISTORY. 1953 c 755 s 25.

Supersedes section 176.29.

176.20 Repealed, 1953 c 755 s 83.

Superseded by section 176.161.

176.201 DISCRIMINATORY RATES

HISTORY. 1953 c 755 s 27.

Supersedes repealed sections 176.26, 176.27, 176.28.

176.205 PERSON DEEMED EMPLOYEE

HISTORY. 1953 c 755 s 27.

Supersedes repealed section 176.30.

176.21 Repealed, 1953 c 755 s 83.

Superseded by section 176.165.

Annotations relating to repealed section 176.21.

176.21 PAYMENT IN LUMP SUM

Commutation, or payment in a lump sum, although authorized by statute, is a departure from the normal mode of periodic payment or disability benefits and should be allowed only with cautious regard for the protection of the public and the welfare of the employee. Senske v Fairmont Canning Co., 232 M 450, 45 NW(2d) 640.

176.211 ACTS OR OMISSIONS OF THIRD PERSONS

HISTORY. 1953 c 755 s 28.

Supersedes repealed section 176.30.

176.215 SUBCONTRACTOR'S FAILURE TO COMPLY WITH CHAPTER

HISTORY. 1953 c 755 s 29.

Supersedes repealed section 176.30.

176.22 Repealed, 1953 c 755 s 83.

Superseded by section 176.171.

176.221 PAYMENT OF COMPENSATION, COMMENCEMENT

HISTORY. 1953 c 755 s 30.

Supersedes repealed section 176.31.

176.225 ADDITIONAL AWARD AS PENALTY

HISTORY. 1953 c 755 s 31.

Supersedes repealed section 176.31.

176.23 Repealed, 1953 c 755 s 83.

Superseded by section 176.175.

176.231 REPORT OF DEATH OR INJURY TO COMMISSION

HISTORY. 1953 c 755 s 32.

Supersedes repealed section 176.32.

176.235 NOTICE TO INJURED EMPLOYEE OF HIS RIGHTS AND DUTIES

HISTORY. 1953 c 755 s 33.

Supersedes repealed section 176.33.

176.24 Repealed, 1953 c 755 s 83.

Superseded by section 176.181.

176.241 NOTICE TO COMMISSION OF INTENTION TO DISCONTINUE COMPENSATION PAYMENTS

HISTORY. 1953 c 755 s 34.

Supersedes repealed section 176.34.

176.245 RECEIPTS FOR PAYMENT OF COMPENSATION, FILING

HISTORY. 1953 c 755 s 35.

Supersedes repealed section 176.34.

176.25 Repealed, 1953 c 755 s 83.

Superseded by section 176.185.

176.251 DUTIES OF INDUSTRIAL COMMISSION

HISTORY. 1953 c 755 s 36.

Supersedes repealed section 176.34.

176.253 INSURER, EMPLOYER; PERFORMANCE

HISTORY. 1953 c 755 s 37.

Supersedes repealed section 176.34.

176.255 Repealed, 1953 c 755 s 83.

Superseded by section 176.191.

Annotations relating to repealed section 176.255.

176.255 DISPUTE AS TO PAYMENT OF COMPENSATION BENEFITS

Where a workmen's compensation insurer, through a mistake of facts, paid benefits and expenses to an injured workman, which benefits and expenses should have been paid by another workmen's compensation insurer under its contract of

insurance, there was under the facts of the case, no basis for estoppel or the shifting of liability. A workmen's compensation insurer, in the absence of prejudice to the employee, is not estopped by the voluntary payment of compensation or the furnishing of hospital or medical care to urge the defense that the policy did not cover the employment. The industrial commission has authority to order a workmen's compensation insurer, which was liable to make payments of benefits and expenses to an injured employee, to reimburse another compensation insurer for the payment of benefits and expenses which it had made to the injured employee under a mistake of facts. Toenberg v Harvey, 235 M 61, 49 NW(2d) 578.

176.26 Repealed, 1953 c 755 s 83.

Superseded by section 176.201.

176.261 EMPLOYEES OF INDUSTRIAL COMMISSION MAY ACT FOR AND ADVISE A PARTY TO A PROCEEDING

HISTORY. 1953 c 755 s 38.

Supersedes repealed section 176.35.

176.265 REPORT TO LEGISLATURE

HISTORY. 1953 c 755 s 39.

Supersedes repealed section 176.35.

176.27 Repealed, 1953 c 755 s 83.

Superseded by section 176.201.

176.271 INITIATION OF PROCEEDINGS

HISTORY. 1953 c 755 s 40.

Supersedes repealed sections 176.36, 176.37.

176.275 FILING PAPERS

HISTORY. 1953 c 755 s 41.

Supersedes repealed section 176.38.

176.28 Repealed, 1953 c 755 s 83.

Superseded by section 176.201.

176.281 ORDERS, DECISIONS, AND AWARDS OF REFEREES OR COMMISSIONERS; FILING; SERVICE

HISTORY. 1953 c 755 s 42.

Supersedes repealed section 176.39.

176.285 SERVICE OF PAPERS AND NOTICES

HISTORY. 1953 c 755 s 43.

Supersedes repealed section 176.40.

176.29 Repealed, 1953 c 755 s 83.

Superseded by section 176.195.

176.291 DISPUTES AND DEFAULTS; PROCEDURE

HISTORY. 1953 c 755 s 44.

Supersedes repealed section 176.41.

176.295 NONRESIDENT EMPLOYEES; FOREIGN CORPORATIONS

HISTORY. 1953 c 755 s 45.

Supersedes repealed section 176.42.

176.30 Repealed, 1953 c 755 s 83.

Superseded by sections 176.205, 176.211, 176.215.

Annotations to repealed section 176.30.

176.30 WHO LIABLE AS EMPLOYERS; CONTRACTORS; SUB-CONTRACTORS

One employed by a cemetery association the year round engaged in digging graves, cutting grass, shoveling snow, and the like, was paid a stipulated sum for each grave dug and for each hour of snow shoveling, was an employee within the meaning of the workmen's compensation act and not an independent contractor. An accidental injury to the claimant caused by slipping and falling in a public street while on a special errand for his employer was compensable. Oestreich v Lakeside, 229 M 209, 38 NW(2d) 193.

Where an uncle lived with his niece for 20 years doing work around the house and assisting in raising the children, enabling her to earn money from employment, the niece has an insurable interest in his life. Clayton v Industrial Life, 162 Pa. Super. 77, 56 At(2d) 292.

A cafeteria employee receiving meals as part compensation, was poisoned by eating food furnished by employer, sustained compensable injury under the workmen's compensation act and cannot maintain a common law action. State v Bender, 36 Ohio 111, 76 NE(2d) 891.

176.301 DETERMINATION OF ISSUES

HISTORY. 1953 c 755 s 46.

Supersedes repealed section 176.43.

176.305 PETITIONS FILED WITH INDUSTRIAL COMMISSION

HISTORY. 1953 c 755 s 47.

Supersedes repealed section 176.44.

176.31 Repealed, 1953 c 755 s 83.

Superseded by sections 176.221, 176.225.

176.311 REASSIGNMENT OF PETITION FOR HEARING

HISTORY. 1953 c 755 s 48.

Supersedes repealed section 176.45.

176.32 Repealed, 1953 c 755 s 83.

Superseded by section 176.231.

176.321 ANSWER TO PETITION

HISTORY. 1953 c 755 s 49.

Supersedes repealed section 176.46.

176.33 Repealed, 1953 c 755 s 83.

Superseded by section 176.235.

176.331 AWARD BY DEFAULT

HISTORY. 1953 c 755 s 50.

Supersedes repealed section 176.48.

176.34 Repealed, 1953 c 755 s 83.

Superseded by sections 176.241, 176.245, 176.251, 176.253.

176.341 HEARING ON PETITION

HISTORY. 1953 c 755 s 51.

Supersedes repealed section 176.47.

176.35 Repealed, 1953 c 755 s 83.

Superseded by sections 176.261, 176.265.

Annotations to repealed section 176.35.

176.35 COMMISSION MAY ADVISE; REPORT TO LEGISLATURE

In proceedings to recover compensation for the death of a truck driver who drowned while attempting to rescue a person observed in a position of peril on a lake near the highway, the question as to whether the employer, who was riding with the truck driver at the time, had extended the scope of employment of his employee by language used by him on that occasion was for the industrial commission, and its finding would not be disturbed if there was reasonable support for it in the record. Weidenbach v Miller, ... M ......, 55 NW(2d) 289.

176.351 TESTIMONIAL POWERS

HISTORY. 1953 c 755 s 52.

Supersedes repealed section 176.49.

176.36 Repealed, 1953 c 755 s 83.

Superseded by section 176.271.

176.361 INTERVENTION

HISTORY. 1953 c 755 s 53.

Supersedes repealed section 176.50.

176.37 Repealed, 1953 c 755 s 83.

Superseded by section 176.271.

176.371 AWARD OR DISALLOWANCE OF COMPENSATION

HISTORY. 1953 c 755 s 54.

Supersedes repealed section 176.50.

176.38 Repealed, 1953 c 755 s 83.

Superseded by section 176.275.

176.381 REFERENCE OF QUESTIONS OF FACT

HISTORY. 1953 c 755 s 55.

Supersedes repealed section 176.51.

176.39 Repealed, 1953 c 755 s 83.

Superseded by section 176.281.

176.391 INVESTIGATIONS

HISTORY. 1953 c 755 s 56.

Supersedes repealed section 176.52.

176.40 Repealed, 1953 c 755 s 83.

Superseded by section 176.285.

176.401 HEARINGS PUBLIC

HISTORY. 1953 c 755 s 57.

Supersedes repealed section 176.53.

176.41 Repealed, 1953 c 755 s 83.

Superseded by section 176.291.

176.411 RULES OF EVIDENCE, PLEADING, AND PROCEDURE

HISTORY. 1953 c 755 s 58.

Supersedes repealed sections 176.54, 176.55.

176.42 Repealed, 1953 c 755 s 83.

Superseded by section 176.295.

176.421 APPEALS TO INDUSTRIAL COMMISSION

HISTORY. 1953 c 755 s 59.

Supersedes repealed section 176.56.

176.43 Repealed, 1953 c 755 s 83.

Superseded by section 176.301.

Annotations under repealed section 176.43.

176.43 DETERMINATION OF ISSUES; REFERENCE; APPEALS TO SUPREME COURT

The industrial commission may for cause set aside a stipulation in a compensation proceeding. Lappinen v Union Ore, 224 M 395, 29 NW(2d) 8.

If reasonably stable employment is not available for an employee by reason of certain injuries which have crippled him physically or neurologically, evidence of that fact through the testimony of an experienced employment supervisor is both material and relevant in determining whether the employee's disability is of such character that he has no reasonable likelihood while such disability continues of be-

ing able to obtain and pursue an income-yielding occupation with reasonable continuity. Lee v Minneapolis Street Ry. Co., 230 M 315, 41 NW(2d) 434.

Where notice of the employee's widow's compensation proceeding against three persons, individually and as partners, and a corporation as the alleged employers was served by mail, and the alleged employers appeared specially and objected to the jurisdiction of the industrial commission on the grounds that two persons were nonresidents, one person was not a partner, and the corporation was not in existence at the time of the injury, questions as to who composed the partnership, and whether or not service had been properly made, were factual and should be determined by the commission in the first instance. State ex rel v Industrial Commission, 234 M 567, 48 NW(2d) 42.

176.431 APPEAL BASED ON ERROR OF LAW BY COMMISSIONER OR REFEREE

HISTORY. 1953 c 755 s 60.

Supersedes repealed section 176.57.

176.44 Repealed, 1943 c 755 s 83.

Superseded by section 176.305.

176.441 APPEAL BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE

HISTORY. 1953 c 755 s 61.

Supersedes repealed section 176.58.

176.45 Repealed, 1953 c 755 s 83.

Superseded by section 176.311.

176.451 DEFAULTS

HISTORY. 1953 c 755 s 62.

Supersedes repealed section 176.59.

176.46 Repealed, 1953 c 755 s 83.

Superseded by section 176.321.

176.461 SETTING ASIDE AWARD

HISTORY. 1953 c 755 s 63.

Supersedes repealed section 176.60.

176.47 Repealed, 1953 c 755 s 83.

Superseded by section 176.341.

176.471 REVIEW BY SUPREME COURT ON CERTIORARI

HISTORY. 1953 c 755 s 64.

Supersedes repealed section 176.61.

Where the alleged employers, in an employee's widow's compensation proceeding, appeared specially to object to the jurisdiction of the industrial commission over their persons, but the commission set the proceeding for hearing on the merits, special appearance would not be waived by hearing on the merits, and the alleged employers would have adequate remedy to review all matters involved by certiorari after determination on the merits, and a writ of prohibition to restrain the commis-

sion from proceeding with the hearing on the merits would not issue. State ex rel v Industrial Commission, 234 M 567, 48 NW(2d) 42.

176.48 Repealed, 1953 c 755 s 83.

Superseded by section 176.331.

176.481 ORIGINAL JURISDICTION OF SUPREME COURT

HISTORY. 1953 c 755 s 65.

Supersedes repealed section 176.62.

176.49 Repealed, 1953 c 755 s 83.

Superseded by section 176.351.

176.491 STAY OF PROCEEDINGS PENDING DISPOSITION OF CASE

HISTORY. 1953 c 755 s 66.

Supersedes repealed section 176.63.

176.50 Repealed, 1953 c 755 s 83.

Superseded by sections 176.361, 176.371.

Annotations to repealed section 176.50.

176.50 AWARD; INTERVENTION

The finding of the industrial commission that the employee at the time the accident occurred was acting as a shop steward of an employee's union and was crossing a public street for the purpose of reaching a telephone, on property not owned by the employer, to call the union business agent, was incomplete because it did not find for what purpose the call was being made and did not sustain the conclusion that the injury was not compensable. A decision of the industrial commission must contain a sufficient statement of the facts to form a basis for the conclusion of law. Kennedy v Thompson, 223 M 277, 26 NW(2d) 459.

When a claim is made setting forth a set of facts, and the proofs failed to establish those facts, and the employee would not be entitled to compensation under his proposed theory; but the proofs do establish a different situation entitling the employee to compensation, or to greater compensation than claimed, the industrial commission must order litigation of the issues arising from the facts thus developed at the hearing. Lappinen v Union Ore, 224 M 395, 29 NW(2d) 8.

If reasonably stable employment is not available for an employee by reason of certain injuries which have crippled him physically or neurologically, evidence of that fact through the testimony of an experienced employment supervisor is both material and relevant in determining whether the employee's disability is of such character that he has no reasonable likelihood while such disability continues of being able to obtain and pursue an income-yielding occupation with reasonable continuity. Lee v Minneapolis Street Railway Co., 230 M 315, 41 NW(2d) 434.

Under the compensation act the industrial commission may apply equitable principles to situations with which they have to deal. Toenberg v Harvey, 235 M 61, 49 NW(2d) 578.

176.501 ATTORNEY GENERAL ACTS FOR COMMISSION

HISTORY. 1953 c 755 s 67.

Supersedes repealed section 176.64.

176.51 Repealed, 1953 c 755 s 83.

Superseded by section 176.381.

176.511 COSTS

HISTORY. 1953 c 755 s 68.

Supersedes repealed section 176.65.

176.52 Repealed, 1953 c 755 s 83.

Superseded by section 176.391.

176.521 SETTLEMENT OF CLAIMS

HISTORY. 1953 c 755 s 69.

Supersedes repealed section 176.69.

176.53 Repealed, 1953 c 755 s 83.

Superseded by section 176.401.

176.531 AWARD OF COMPENSATION AGAINST A POLITICAL SUBDIVISION OR SCHOOL DISTRICT

HISTORY. 1953 c 755 s 70.

Supersedes repealed sections 179.70, 579.71.

176.54 Repealed, 1953 c 755 s 83.

Superseded by section 176.411.

Annotations to repealed section 176.54.

176.54 COMMISSION NOT BOUND BY RULES OF EVIDENCE

While the Workmen's Compensation Act is to be liberally construed to afford coverage of all cases reasonably within its purview, section 176.54 expressly requires all findings upon which any award is made to be based upon competent evidence. Lappinen v Union Ore Co., 224 M 395, 29 NW(2d) 11.

In a proceeding under the Workmen's Compensation Act, an examination of the widow's testimony on direct and redirect examination disclosed no testimony which would render a question as to whether the work decedent was doing when suffering heart attack was not any heavier than other work he had and it was proper for the referee to hold that the question was not proper. Simon v Village of Plainview, 237 M 136, 54 NW(2d) 32.

176.541 STATE DEPARTMENTS

HISTORY. 1953 c 755 s 71.

Supersedes repealed section 176.73.

176.55 Repealed, 1953 c 755 s 83.

Superseded by section 176.411.

176.551 REPORTS

HISTORY. 1953 c 755 s 72.

Supersedes repealed section 176.74.

176.56 Repealed, 1955 c 755 s 83.

Superseded by section 176.421.

Annotations to repealed section 175.56.

176.56 APPEAL

In determining whether facts and reasonable inferences to draw from them sustain findings of the industrial commission, evidence must be reviewed in the light most favorable to such findings. Miller v Peterson, 228 M 22, 38 NW(2d) 48.

Where the printed record showed a copy of the decision of the industrial commission filed by one commissioner affirming and one commissioner dissenting, but the original record showed the signature of two commissioners affirming and one commissioner assenting, the appellate court would not go beyond the original record in the matter to nullify the decision on that ground alone. Jurich v Cleveland-Cliff's Co., 233 M 108, 46 NW(2d) 237.

176.561 COMMISSION'S POWERS AND DUTIES AS TO STATE EMPLOYEES; PROCEDURE FOR DETERMINING LIABILITY

HISTORY. 1953 c 755 s 73.

Supersedes repealed section 176.75.

176.57 Repealed, 1953 c 755 s 83.

Superseded by section 176.431.

176.571 INVESTIGATION OF INJURIES TO STATE EMPLOYEES

HISTORY. 1953 c 755 s 74.

Supersedes repealed section 176.76.

176.58 Repealed, 1953 c 755 s 83.

Superseded by section 176.441.

Annotations to repealed section 176.58.

176.58 APPEAL BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE

The findings of the referee are aids to the commission but the commission is not bound or controlled thereby. Schmoll v Craig, 228 M 429, 37 NW(2d) 529.

176.581 FINDINGS AND FINAL ORDER

HISTORY. 1953 c 755 s 75.

Supersedes repealed section 176.77.

176.59 Repealed, 1953 c 755 s 83.

Superseded by section 176.451.

176.591 STATE COMPENSATION REVOLVING FUND

HISTORY. 1953 c 755 s 76.

Supersedes repealed section 176.78.

176.60 Repealed, 1953 c 755 s 83.

Superseded by section 176.461.

Annotations to repealed section 176.60.

176.60 NEW HEARING MAY BE GRANTED

Where an employee dies as the result of being assigned to a task too heavy for his strength the case is compensable as an "accident." Kemling v Armour 222 M 397, 24 NW(2d) 842.

The employee of a firm engaged in threshing as a business is covered by the Workmen's Compensation Act; but this is not applicable to a farmer doing his own threshing, or threshing for others occasionally, or on an exchange work basis. Skreen v Rauk, 224 M 96, 27 NW(2d) 869.

Where on a motion for a rehearing on a claim of newly discovered evidence the suggested evidence consisted of self-serving declarations of the moving party and cumulative evidence, and there was no showing that the evidence could have been procured for use at the first trial by the exercise of reasonable diligence, the industrial commission properly refused a rehearing. Skreen v Rauk, 224 M 96, 27 NW(2d) 869.

Under M.S.A., Section 176.60 at any time after an award has been made by the industrial commission and before the same has been reduced to judgment, or a writ of certiorari to review the same has been issued by the supreme court, the industrial commission for cause may set aside such award and grant a new hearing, and its determination in this respect is final unless an abuse of discretion appears; and this even though the original award is based upon a stipulation for final settlement executed by the parties; but where, as in the instant case, there was no claim of fraud, deceit, or concealment, nor of the discovery of facts not known or contemplated at the time of the original award and no evidence was presented to indicate that the employee had suffered additional disability, the commission did not abuse its discretion in denying the motion to vacate. Bomersine v Armour & Co., 225 M 157, 30 NW(2d) 527.

The setting aside of an award of compensation and the granting of a new hearing under section 176.60, must be "for cause" and the industrial commission's determination in this respect is final unless an abuse of discretion clearly appears. *In the instant case there was no abuse of discretion.* Batchelder v N. W. Hanna Co., 225 M 250, 50 NW(2d) 530.

Where after settlement and rehearing is asked, the commission in the instant case was not in error in refusing to vacate its order of approval, the claimant's motion being based on an allegation of newly discovered evidence relating to the permanence of the disability. Caddy v Maturi, 226 M 213, 32 NW(2d) 259.

The grant of a new hearing in a compensation proceeding under the statute must be for cause, and the industrial commission's determination in refusing a petition to vacate original order denying compensation and reopen the case is final unless an abuse of discretion clearly appears. No abuse of discretion here appears. Graif v Alexander, 226 M 519, 33 NW(2d) 702.

Where a motion to reopen workmen's compensation proceedings for newly discovered evidence was supported by affidavit containing evidence which was merely cumulative, or in existence available and known to the parties at the time of the original hearing, denial of motion was not an abuse of privilege. Stephan v Campbell, 228 M 74, 36 NW(2d) 401.

The industrial commission may, in its discretion, set aside an award and grant a new hearing thereon for cause. Where the time to review the order of the industrial commission has expired, the appellate court may not determine the sufficiency of evidence to sustain award upon review of the commission denying petition for a new hearing. Where the petition to vacate the award and for new hearing discloses no claim of fraud, deceit, or concealment, and no showing of newly discovered evidence, the order of the commission denying such petition, does not constitute an abuse of discretion. Gartner v Hogstad, 231 M 419, 43 NW(2d) 798.

Where, as in the instant case, the award has not been reduced to judgment and a writ of certiorari to review has not been issued, the commission continues to have jurisdiction. The commission may set aside the award even though the award is based upon a stipulation for final settlement. Development of new facts

with reference to an injury unknown at the time the award was made are sufficient to justify a vacation thereof. Whether there exists sufficient cause to justify vacation rests in the sound discretion of the commission. Guptill v Conlon Construction Co., ... M ......, 58 NW(2d) 264.

176.601 PAYMENTS FROM STATE COMPENSATION REVOLVING FUND

HISTORY. 1953 c 755 s 77.

Supersedes repealed section 176.79.

176.61 Repealed, 1953 c 755 s 83.

Superseded by section 176.471.

Annotations to repealed section 176.61.

176.61 APPEAL TO SUPREME COURT

Where an employee dies as the result of being assigned to a task too heavy for his strength the case is compensable as an "accident." Kemling v Armour, 222 M 397, 24 NW(2d) 842.

A finding of the industrial commission upon a question of fact will not be disturbed on appeal unless the evidence and the inferences permissible therefrom require reasonable minds to adopt a contrary conclusion. Baker v MacGillis, 222 M 460, 25 NW(2d) 219.

The burden of determining the facts are on the industrial commission and the appellate court will not reverse the findings unless the record clearly shows that reasonable minds functioning judicially could arrive at only one conclusion contrary to that of the commission. Rhea v Overholt, 222 M 467, 25 NW(2d) 656.

An injury may "arise out of employment" even though there is no immediate causal connection therewith if it reasonably appears from all the facts that conditions were such as to bring the injury and the employment within the purview of the Workmen's Compensation Act. Rhea v Overholt, 222 H 467, 25 NW(2d) 656.

The employee of a firm engaged in threshing as a business is covered by the Workmen's Compensation Act; but this is not applicable to a farmer doing his own threshing, or threshing for others occasionally, or on an exchange work basis. Skreen v Rauk, 224 M 96, 27 NW(2d) 869.

Knowledge obtained by one of the members of the industrial commission in any way but not made a part of the record of the compensation proceedings, must be excluded. Lappinen v Union Ore, 224 M 395, 29 NW(2d) 8.

Where the findings of the commission were to the effect that the injury did not arise out of or in the course of employment, the supreme court must review the evidence in a light most favorable to the commission's findings to determine whether there may be a reasonable inference to sustain the findings. Eischen v Fairmont Canning Co., 225 M 295, 30 NW(2d) 586.

It is the supreme court's function to determine whether the findings have sufficient basis of inference reasonably to be drawn from the facts; and this though some other inference might appear preferable to the court. Fisher v Fisher, 226 M 171, 32 NW(2d) 424.

An assignment of error proceeding based on mere assertion and not supported by argument or authority is waived and will not be considered on appeal unless prejudicial error is obvious on more inspection. Schmoll v Craig, 228 M 429, 37 NW(2d) 539.

Hypothetical questions put to medical witnesses on direct examination in compensation proceedings which were not objected to at the time cannot be complained of for the first time on appeal. Roberts v De Kalb, 229 M 188, 38 NW(2d) 189.

The referee's findings based on conflicting testimony and affirmed by the industrial commission, will be affirmed by the supreme court if supported by sufficient competent evidence. Williams v Wallwork, 231 M 244, 42 NW(2d) 710.

The industrial commission may, in its discretion, set aside an award and grant a new hearing thereon for cause. Where the time to review the order of the industrial commission has expired, the appellate court may not determine the sufficiency of evidence to sustain award upon review of the commission denying petition for a new hearing. Where the petition to vacate the award and for new hearing discloses no claim of fraud, deceit, or concealment, and no showing of newly discovered evidence, the order of the commission denying such petition, does not constitute an abuse of discretion. Gartner v Hogstad, 231 M 419, 43 NW(2d) 798.

If after impartial consideration of evidence and of inferences which may fairly and reasonably be drawn therefrom reasonable minds might reach a different conclusion, findings of the industrial commission must stand. Graf v Montgomery Ward Co., 234 M 485, 49 NW(2d) 797.

The findings of the industrial commission in a compensation proceeding are entitled to great weight and will not be disturbed on appeal unless there are manifestly contrary to the evidence. Fahey v Terp, 235 M 432, 51 NW(2d) 273.

On certiorari to review an order of the industrial commission awarding compensation to claimant, it is not the function of the supreme court to re-try the case on appeal but it will only decide whether there is evidence to sustain the finding of the commission. In proceedings by dependents of an employee who died following a coronary occlusion occurring on July 2 at home after a similar occlusion had occurred while at work, the evidence established that there was a causal connection between both occlusions and the work which employee was doing on March 2. Simon v Village of Plainview, 237 M 136, 54 NW(2d) 32.

176.611 MAINTENANCE OF STATE COMPENSATION REVOLVING FUND

HISTORY. 1953 c 755 s 78.

Supersedes repealed section 176.81.

176.62 Repealed, 1953 c 755 s 83.

Superseded by section 176.481.

Annotations to repealed section 176.62.

176.62 SUPREME COURT TO HAVE ORIGINAL JURISDICTION

Where the evidence leads to only one conclusion and a reversal is required because of the incompleteness of the findings to support conclusions of law, the appellate court may remand the case with directions to make findings in accordance with the undisputed evidence, and direct the commission to make findings consistent with the opinion of the supreme court. Kennedy v Thompson, 223 M 277, 26 NW(2d) 459.

The supreme court could not reverse the industrial commission for applying a rule of evidence which would have been applied in a court of law. Simon v Village of Plainview, 237 M 136, 54 NW(2d) 32.

Where the opinion of medical experts are conflicting as to whether an injury has aggravated an existing infirmity, a question of fact arises, the determination of which by the industrial commission will not be disturbed unless consideration of the evidence and inferences permissible therefrom clearly require reasonable minds to adopt a contrary conclusion. Erickson v Knutson, 237 M 187, 54 NW(2d) 118.

176.621. DECLARATION OF POLICY; ADVISORY COUNCIL

HISTORY. 1953 c 755 s 79.

176.63 Repealed, 1953 c 755 s 83.

Superseded by section 176.491.

176.631 BUREAU OF WORKMEN'S REHABILITATION

HISTORY. 1953 c 755 s 80.

176.64 Repealed, 1953 c 755 s 83.

Superseded by section 176.501.

Annotations to repealed section 176.64.

176.64 ATTORNEY GENERAL TO APPEAR FOR COMMISSION

The opinions of the attorney general to the industrial commission are entitled to the highest respect but cannot control or become a material factor in the exercise of the commission's discretion as to allowance or denial of disability benefits. Senske v Fairmont Canning Co., 232 M 350, 45 NW(2d) 640.

176.641 ACCIDENTS OR INJURIES ARISING PRIOR TO EFFECTIVE DATE

HISTORY. 1953 c 755 s 81.

176.65 Repealed, 1953 c 755 s 83.

Superseded by section 176.511.

Annotations to repealed section 176.65.

176.65 COSTS; REIMBURSEMENTS; ATTORNEY'S FEES; CERTIORARI

Attorney's fees on appeal in an action to foreclose a mechanic's lien are not allowed in the absence of express litigation. Barrett v Hampe, 237 M 80, 53 NW(2d) 803.

Statutory provisions for attorneys' fees are strictly construed. Barrett v Hampe, 237 M 80, 53 NW(2d) 803.

176.651 SEVERABILITY

HISTORY. 1953 c 755 s 82.

176.66 OCCUPATIONAL DISEASES; HOW REGARDED

HISTORY. 1921 c 82 s 67; 1939 c 306 s 1; 1943 c 633 s 4; 1947 c 612 s 1; 1949 c 500 s 1-3.

Laws 1943, Chapter 633, is an important change in the field of occupational diseases. The law substitutes general coverage for schedule coverage. 31 MLR 47.

"Accidental injuries" from internal strain as applied to workmen's compensation. 34 MLR 377.

Under 50 U.S.C.A. Appendix, Sections 1451 to 1462, a student nurse who enrolls in an institution for the purpose of taking the nurses' course prescribed thereunder is an employee of such institution, even though during part of her training period the institution may assign her to other hospitals for specialized training.

Payment of compensation to an employee, while of importance in determining her actual employer, is not necessarily the sole controlling factor. Where the enrolling institution still continues to exercise authority and control over its employee assigned to and paid by another institution, held that such enrolling hospital remains her employer during such assignment. Anderson v Northwestern Hospital, 229 M 546, 40 NW(2d) 443; Otten v State, 229 M 488, 40 NW(2d) 81.

A student nurse at the state university under a program of nurses' training for members of the United States Cadet Nurse Corp authorized by federal statute, which was furnished without charge for tuition fees and other expenses, and who received from the University a monthly stipend, and from the hospital affiliates where she had received practical training, board, room, and laundry and who was at all times subject to full control by the University, was an "employee" of the University and was not an employee of the affiliate, where she contracted disease causing disability. Otten v State, 229 M 448, 40 NW(2d) 81.

An occupational disease for which compensation is sought must have been contracted within 12 months of the date of the disability. If the cost of relator's breakdown was an infection in 1940 and this later resulted in her disability in February 1948, the infection occurred at a time when tuberculosis was not covered under the occupational-disease law passed in 1943. Peterson v State, 234 M 81, 47 NW(2d) 760.

Under section 176.66, subdivision 3, which provides that neither the employee nor his dependents are entitled to compensation for the occupational disease known as silicosis unless such disease is contracted within three years previous to the date of disablement, it is held that silicosis is "contracted" within the meaning of the statute when it first manifests itself so as to interfere with the functions of the body. Yaeger v Delano Granite Works, 236 M 128, 52 NW(2d) 116.

Where defendant directed the plaintiff to enter a silo for the purpose of pitching out silage, with knowledge of possible presence of carbon dioxide gas therein, defendant was guilty of negligence either in maintaining an unsafe place in which employee was to work, or in directing his employee to work under conditions known to be perilous. An employer must exercise reasonable care in furnishing his employee with a reasonably safe place in which to work. Where the employee inquired and the employer answered that the silo was a reasonably safe place in which to work, the issue of contributory negligence and assumption of risk was for the jury. Baumgarten v Holslin, 236 M 325, 52 NW(2d) 763.

An injury which aggravates an existing infirmity is compensable. Where the medical testimony was conflicting as to whether injury sustained by compensation claimant in the course of employment aggravated an existing cancerous growth, necessitating amputation of leg, and evidence would support decision either way, the finding of industrial commission that injury was compensable is not to be disturbed on appeal. Erickson v Knutson, 237 M 187, 54 NW(2d) 118.

Where a workman worked in an area where woodticks were prevelant during the entire period, where he contacted Rocky Mountain Spotted Fever which resulted in his death, and during this time he had not been in a tick area except when working for his employer, his death is held to be compensable as arising from the source of his employment. Southern Colorado Power Co. v Industrial Commission, 118 Colo 186, 193 P(2d) 885.

176.661 OCCUPATIONAL DISEASE AGGRAVATED

HISTORY. 1943 c 633 s 7; 1949 c 500 s 4.

176.662 EVIDENCE; PRESUMPTION

HISTORY. 1943 c 633 s 8; 1947 c 612 s 2; 1949 c 500 s 5.

176.663 EMPLOYEE MAY WAIVE FULL COMPENSATION

HISTORY. 1943 c 633 s 9.

176.664 NOTICE, TIME LIMIT FOR SERVICE

HISTORY. 1943 c 633 s 10; 1947 c 612 s 3; 1949 c 500 s 6; 1951 c 454 s 1.

176.665 HEARINGS

HISTORY. 1943 c 633 s 11; 1947 c 612 s 4.

176.666 INVESTIGATIONS

HISTORY. 1953 c 633 s 12.

176.667 EMPLOYEES; MEDICAL EXAMINATION

HISTORY. 1943 c 633 s 13; 1947 c 612 s 5; 1949 c 500 s 7.

176.668 REGULAR INSPECTION

HISTORY. 1943 c 633 s 14.

176.669 EXPENSES, RULES

HISTORY. 1943 c 633 s 15, 16.

176.67-176.79 Repealed, 1953 c 755 s 83.

176.80 Obsolete.

176.81 Repealed, 1953 c 755 s 83.

CHAPTER 177

MINIMUM WAGES

177.01 DUTIES OF MINIMUM WAGE COMMISSION TRANSFERRED

Minimum wage and overtime. 34 MLR 683.

177.02 DEFINITIONS

HISTORY. 1913 c 547 s 2, 20; 1937 c 79 s 1; 1951 c 453 s 1, 2.

Employees covered by a minimum wage law include clerks, stenographers, typists, dictaphone operators, and others within the definition of section 177.02, subdivision 8. OAG Nov. 21, 1950 (845-C).

177.03 INVESTIGATION; WAGES OF WOMEN AND MINORS

The term "worker" and "employee" used in section 177.03 includes clerks, students, typists, and dictaphone operators. OAG Nov. 21, 1950 (845-C).

177.06 NOTICES OF PUBLIC HEARINGS

HISTORY. 1913 c 547 s 5; 1951 c 453 s 3.

A general order may be made by the commission affecting all occupations, finding facts respecting the weekly or monthly cost of the necessary comforts and conditions of reasonable life for women and minors. No order need be made in an occupation to which the order fixing minimum wages should apply until the commission shall find that in a single occupation or group of occupations at least one-sixth of the women and minors are receiving less than the minimum wages based upon cost of living of such limited group. OAG Dec. 13, 1946 (845-C).

177.07 WAGES, ORDERS

HISTORY. 1913 c 547 s 6; 1923 c 153 s 1; 1939 c 186 s 1; 1951 c 453 s 4.