

It Was No Accident That . . .

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I. INTRODUCTION

The most significant development in workmen's compensation law during the survey period was the definitive re-entrenchment of a conservative definition of "compensable accident."¹ In *Houchins v. J. Pierponts*,² the Indiana Court of Appeals, while having a plethora of cases from which to cite for the definition of "accident," chose one of the earliest cases defining accident as "any unlooked for mishap or untoward event not expected or designed."³ This was the signal that the court, after experiencing much difficulty in defining the term "accident,"⁴ had returned to the simple definition contained in the historical underpinnings of this term of art.

This Article will discuss the various cases that have developed the distinct definitions of "accident," and suggest that the conservative approach adopted by the *Houchins* court is the best resolution of the problem.

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¹IND. CODE § 22-3-2-2 (1982) provides that the Workmen's Compensation Act applies to "personal injury or death by accident arising out of and in the course of the employment."

²*Houchins v. J. Pierponts*, 469 N.E.2d 786 (Ind. Ct. App. 1984).

³*Haskell and Barker Car Co. v. Brown*, 67 Ind. App. 178, 187, 112 N.E. 555, 557 (1917). This is the first reported case since the initial adoption of the Act two years earlier to define the term "accident." Cases adhering to this definition of accident are numerous. See, e.g., *Estey Piano Corp. v. Steffen*, 164 Ind. App. 239, 328 N.E.2d 240 (1975); *Pearson v. Rogers Galvanizing Co.*, 115 Ind. App. 426, 59 N.E.2d 364 (1945); *American Maize Products Co. v. Nichiporchick*, 108 Ind. App. 502, 29 N.E.2d 801 (1940); *Indian Creek Coal and Mining Co., v. Calvert*, 68 Ind. App. 474, 119 N.E. 519 (1918).

⁴Upon reviewing the decisions of the supreme court and the court of appeals concerning the definition of the word "accident" as used in workmen's compensation law, one finds that nearly all decisions rendered were not unanimous, and most contain dissenting or concurring opinions. This has made it difficult to reconcile the case law. Judge Buchanan summarized this state of confusion in his concurring opinion in *Estey Piano Corp. v. Steffen*, 164 Ind. App. 239, 250, 328 N.E.2d 240, 247 (1975), stating:

My analysis of the cases interpreting an "accident arising out of and in the course of employment" leads me to the conclusion that the word "accident" . . . has been elasticized to the breaking point. In the search for extension of employer's liability for accident connected injuries, the law on this subject has become hopelessly conflicting and confused . . . and would appear to have gone far beyond the original intent of the framers of the Workmen's Compensation Act.

II. UNEXPECTED CAUSE V. UNEXPECTED RESULT

Early in the courts' interpretation of the Workmen's Compensation Act,⁵ it was determined that an "accident" within the meaning of the Act required some kind of "unexpected event."⁶ Differing views, however, were developed regarding whether the event required was an unexpected *cause* or an unexpected *result*.

Most decisions followed the unexpected cause theory. The unexpected cause theory requires some type of increased risk such as a fall, slip, trip, unusual exertion, malfunction of machine, automobile accident, or similar unique situation presenting a risk to the worker over and above the risks of daily life.⁷ The unexpected cause theory is illustrated in *City of Anderson v. Borton*.⁸ In *Borton*, the claimant was bending over to lift a trap door to read a utility meter when he experienced back pain.⁹ The claimant did not suffer any unusual strain, exertion, untoward or unusual event of any kind that may have precipitated these pains.¹⁰ To the contrary, the evidence showed that the plaintiff had a constant traumatic condition and that any trivial act, such as walking, might have caused a protrusion of the claimant's degenerated disc to press upon a nerve root. Accordingly, the court reversed the Industrial Board's award in favor of the claimant.¹¹

The second theory of accident, the unexpected result definition, is illustrated by *Ellis v. Hubbell Metals, Inc.*¹² In *Ellis*, the claimant suffered a back injury while performing his normal work duties.¹³ There was evidently no unusual exertion of any kind, nor any mishap precipitating the injury.¹⁴ The court in *Ellis*, however, finding that the unexpected result theory better comported with the humanitarian purposes of the Act, held that because the resultant injury was "neither foreseen nor expected . . . Ellis suffered an 'accident' in the course of his employment."¹⁵

Resolution of these opposing theories came in the court of appeals decision in *Young v. Smalley's Chicken Villa*.¹⁶ In *Young*, the court of appeals interpreted the decision of the Indiana Supreme Court in *Calhoun*

⁵IND. CODE § 22-3 (1982).

⁶See *supra* note 2.

⁷See, e.g., *Ellis v. Hubbell Metals, Inc.*, 174 Ind. App. 86, 366 N.E.2d 207 (1977).

⁸132 Ind. App. 684, 178 N.E.2d 904 (1961).

⁹*Id.* at 686, 178 N.E.2d at 904.

¹⁰*Id.* at 691, 178 N.E.2d at 908.

¹¹*Id.* at 694, 178 N.E.2d at 909.

¹²174 Ind. App. 86, 366 N.E.2d 207.

¹³*Id.* at 87, 366 N.E.2d at 208.

¹⁴*Id.* at 93, 366 N.E.2d at 212.

¹⁵*Id.*

¹⁶458 N.E.2d 686 (Ind. Ct. App. 1984).

*v. Hillenbrand Industries*¹⁷ as a declaration that the unexpected event requirement was synonymous with the unexpected cause theory, and not the more liberal unexpected result theory.¹⁸ Thus, the court affirmed the denial of compensation to a claimant who suffered his back injury while bending over to retrieve a piece of chicken from a deep fat fryer.

III. *Houchins* — THE BEST SOLUTION

A. *Houchins*

In *Houchins v. J. Pierponts*,¹⁹ decided during the survey period, the court of appeals firmly entrenched the “cause” interpretation of “accident” adopted in *Young*.²⁰ In *Houchins*, the claimant had finished wiping out the bottom of a refrigerator and attempted to stand from a squatting position when her knee locked.²¹ She was eventually hospitalized and underwent surgery for the locked knee.²² Although the event occurred without any slipping, falling, or twisting of her foot,²³ and the claimant had not felt anything unusual in her knee prior to attempting to stand from the squatting position,²⁴ the single hearing member found the case to be compensable.²⁵ On appeal to the full Industrial Board, the award was reversed with a finding of “no accident.”²⁶ The court of appeals affirmed the Industrial Board’s denial.

With *Young* serving as a foundation, the import of *Houchins* is magnified tremendously. Without the *Young* decision, *Houchins* may easily have been fit into the unexpected result theory of *Ellis*. The claimant’s medical history revealed that she had a long history of her knee locking once or twice per year since she had undergone surgery as a child.²⁷ *Houchins* testified that when she squatted down, or would practice gymnastics, she could expect her knee to lock up, although she was able to manipulate it manually to the point of release prior to the industrial incident.²⁸ Therefore, her application to the Industrial Board could have been rejected because the result could not have been considered unexpected and within the guidelines of *Ellis*.²⁹

¹⁷269 Ind. 507, 381 N.E.2d 1242 (1978).

¹⁸458 N.E.2d at 688.

¹⁹469 N.E.2d 785 (Ind. Ct. App. 1984).

²⁰See *supra* text accompanying notes 16-18.

²¹469 N.E.2d at 787.

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*

²⁸*Id.*

²⁹See *supra* notes 14-15 and accompanying text.

With the *Young* decision, however, it is clear that consideration of the degree to which the result can be expected is not a relevant factor. The more conservative view, requiring a sudden and untoward event or unusual happening to precipitate the injury, is the essence of a compensable accident under the workmen's compensation law. Accordingly, *Houchins* clearly requires an accident in the classical or common sense of the word; one cannot recover for injuries without an event which provided an increased risk springing out of the work environment.

The magnitude of the *Houchins* decision becomes apparent upon the realization that many injuries may occur as easily when rising from bed in the morning or bending to tie a shoelace as when lifting a heavy object at work. The burden of proving an accident has once again been placed upon the claimant. No longer will mere location of the claimant at his place of employment be sufficient to make the injury compensable when an ordinary act such as bending over is involved.

B. *The Criticism*

There is, nevertheless, an undercurrent of criticism of the unexpected cause theory calling for an adoption of the unexpected result theory articulated in *Ellis v. Hubbell Metals*.³⁰ In *Kerchner v. Kingsley Furniture Co.*,³¹ decided in early 1985, Judge Ratliff openly expressed his displeasure with the unexpected cause theory. Judge Ratliff, viewing the unexpected cause requirement as a departure from the underlying humanitarian purposes of the Workmen's Compensation Act, stated, "The proper focus in determining eligibility for workmen's compensation benefits should be upon an unexpected or untoward result arising out of and in the course of the employment. . . ."³²

Judge Ratliff's criticisms are not new. In *Calhoun v. Hillenbrand Industries*,³³ the case credited with having firmly established the unexpected cause rule, Justice DeBruler, in dissent, expressed his view that the unexpected cause theory was contrary to law.³⁴ Additionally, in *Young v. Smalley's Chicken Villa*,³⁵ Judge Neal characterized the unexpected cause theory as a resurrection of tort theories intended to be laid to rest by the Workmen's Compensation Act.³⁶

³⁰174 Ind. App. 86, 366 N.E.2d 207. See also *supra* text accompanying notes 12-15.

³¹478 N.E.2d 74 (Ind. Ct. App. 1985).

³²*Id.* at 78 (Ratliff, J., concurring).

³³269 Ind. 507, 381 N.E.2d 1242 (1978).

³⁴*Id.* at 511-12, 381 N.E.2d at 1244-45 (DeBruler, J., dissenting).

³⁵458 N.E.2d 686.

³⁶*Id.* at 688 (Neal, J., concurring).

C. Unexpected Cause — The Best Solution

While those who dissent from the classical definition of "accident" may be correct in their claims that certain tort issues and analyses have been reinjected into the Workmen's Compensation Act, and that on occasion this may be viewed as frustrating the humane purposes of the Act, practical experience would suggest restraint in departing from the principles established in the *Calhoun* decision. All too often, an unjust result would occur if the defendant were required to make his case merely by arguing that the accident did not arise out of and in the course of the employment.

While there may be a significant overlap between the areas of "accident" and "arising out of and in the course of employment" from a legal standpoint,³⁷ the medical component of workmen's compensation law pertinent to the definition of accident should not be ignored. Practitioners in the area know well that the typical ruptured disc injury could

³⁷It should be noted that this overlap, or unfortunate blurring, between the areas of "accident" and "arising out of and in the course of employment" is graphically illustrated in the recent court of appeals decision in *Evans v. Yankeetown Dock Corp.*, 481 N.E.2d 121 (Ind. Ct. App. 1985) (decided after the present survey period). In *Evans*, a case dealing with the definition of "personal injury or death by accident" under IND. CODE § 22-3-2-6 (Supp. 1985), the pre-emption provision of the Workmen's Compensation Act, the court rejected the unexpected cause theory announced in *Calhoun* and *Houchins*, and essentially adopted the unexpected result theory of *Ellis*. *Evans*, 481 N.E.2d at 129. The *Evans* court, however, then proceeded to analyze the requirement that the "accident" "arise out of and in the course of employment." *Id.* Using the same heart attack example used by this author, see *infra* text accompanying notes 38-42, the court concluded that changing the definition of "accident" and focusing on "arising out of and in the course of employment" "does not change the law as it has been applied." *Evans*, 481 N.E.2d at 121.

One must, however, notice the bootstrap effort to build a foundation from which to change the definition of "accident" in the compensation section of the Act, IND. CODE § 22-3-2-2 (Supp. 1985), by changing the definition of "accident" in the pre-emption section of the Act, IND. CODE § 22-3-2-6 (Supp. 1985). The court embarks on a jurisdictional quest and becomes sidetracked with issues of compensability so as to posit that injury with no discernible causation is covered. *Evans*, 481 N.E.2d at 128. Such a position destroys the causation requirements of the Act and flies in the face of the supreme court's holding in *Calhoun*. Most importantly, the court in *Evans* begs the question with its assumption that personal injury by accident is the equivalent of accidental injury, thereby eliminating the proximate cause requirement originally written into the Act by the legislature.

It should also be noted that the *Evans* court reviews what it considers to be the current state of confusion resulting from an attempt to determine whether the event used to define "accident" is an unexpected injury (result) or unexpected source (cause). Notably absent from the court's analysis was any acknowledgement of the resolution of this supposedly confusing issue by the *Young* and *Houchins* decisions. Such an unprecedented assumption that personal injury by accident is the same as accidental injury, so as to eliminate the proximate cause requirement, constitutes a truly unfortunate muddying of the waters finally made clear, if only for a time, by the decisions in *Young* and *Houchins*.

have occurred when the claimant arose from bed in the morning, bent over to tie his shoe, or stooped to pick up a dropped pencil. Medically and legally it would seem unfounded to bring such occurrences within the ambit of workmen's compensation when the only tie to the Act is that the occurrence took place while the individual was performing services on behalf of his employer. Such an approach would remove from legal analysis medicine's contribution of determining the mechanism of injury. The unexpected result approach would "water down" or eliminate the causal connection which assures fairness to the employer by not requiring the employer to be responsible for random conditions and occurrences of life which are unrelated to any risk or hazard of the work environment. Sufficient latitude exists to maintain peaceful coexistence between the humanitarian purpose and spirit of the Workmen's Compensation Act and the classical definition of "accident"; and the Industrial Board and the courts have maintained such a balance in various difficult areas.

Heart attack cases provide an excellent example of the ability of the courts and the Industrial Board to make workable the classic definition of accident. In *United States Steel Corporation v. Dykes*,³⁸ the court formulated an unusual exertion test to define accident in heart failure cases. In *Dykes*, the decedent's heart was gradually losing its functional ability.³⁹ There was no evidence of increase in the workload or any extra exertion on the day of the heart attack.⁴⁰ An autopsy showed the heart to have failed because of unoxygenated blood resulting from long-standing coronary disease.⁴¹ Based on those facts, Judge Bobbitt wrote:

Under the evidence in this case, decedent's fatal heart attack might have happened while he was working, driving his car, sitting or even sleeping. It happened while he was working at his usual occupation; and in such event it could be said that his heart failed because it could not handle the load then demanded of it. In our opinion it was not the intention of the Legislature that such happenings be considered a "death by accident arising out of and in the course of employment"

. . . .

The mere showing that he was performing his usual routine everyday task when he suffered a heart attack does not establish a right to workmen's compensation⁴²

³⁸238 Ind. 599, 154 N.E.2d 111 (1958).

³⁹*Id.* at 608, 154 N.E.2d at 116.

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.* at 611-13, 154 N.E.2d at 118-19 (citation omitted).

In *Harris v. Rainsoft of Allen County, Inc.*,⁴³ however, a heart attack was found to be compensable. In *Harris*, the President of Rainsoft witnessed a fire within the same building that housed his corporation.⁴⁴ Late one evening, he was awakened by a telephone call reporting that his business premises were on fire.⁴⁵ The victim went to the premises and observed the fire which had encompassed his business.⁴⁶ Moments after arrival, he became pale and fell to the ground. He was then taken to the hospital and died that night.⁴⁷ Medical testimony indicated that the decedent had a history of heart disease, suffering his first heart attack in December of 1975.⁴⁸ He also suffered from arteriosclerosis, or hardening of the arteries, which was an ongoing disease process.⁴⁹

Medical testimony in *Harris* showed that emotional stress can be a factor in precipitating certain abnormalities of heart disease and that the stress surrounding the fire could have been a factor in precipitating the attack.⁵⁰ Thus, the court of appeals held in the claimant's favor, finding as a matter of law that it was not merely a physical stimulus which could, as in the case of extra exertion or trauma, cause a compensable heart attack; psychological, mental, or emotional stimuli were held to satisfy the requirement of an event or happening beyond mere employment as required by the *Dykes* case.

The approach taken in the *Rainsoft* case demonstrates that the classical definition is workable and can live harmoniously with the humanitarian purpose of the Workmen's Compensation Act. Moreover, the employer is protected from becoming a "super insurance policy" through workmen's compensation for those problems which are a part of everyday life.

IV. CONCLUSION

Given the adaptability which allows both the protection of the employer as well as humanitarian concern for the employee, the unexpected cause theory, while not the most liberal approach, is the most equitable. Thus, it was no accident that the court in *Houchins* applied the classical definition of accident. The definition firmly entrenched by *Houchins* is historically sound and workable even in problematic areas

⁴³416 N.E.2d 1320 (Ind. Ct. App. 1981).

⁴⁴*Id.* at 1321.

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.* at 1322.

involving close questions of medical and legal causation. In finally laying to rest the competing theory of accident espoused in the *Ellis* case, much confusion in the law of workmen's compensation has been eliminated.