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(1) THE WORDS OF DIVISION (W) OF 4123.68, R.C., SHOULD BE CONSTRUED TO READ "FOR PERIODS AMOUNTING IN ALL TO AT LEAST THREE YEARS, SOME PORTION OF WHICH HAS BEEN AFTER *JULY 30, 1937.*"

(2) WHERE A DECEDENT HAD THREE YEARS EXPOSURE TO HARMFUL SILICA DUST SOME PORTION OF WHICH WAS AFTER JULY 30, 1937, THE PROVISIONS OF 4123.68, R.C., DO NOT PRECLUDE PAYMENT OF DEATH BENEFITS TO THE DECEDENT'S WIDOW—§4123.68, R.C.

SYLLABUS:

1. In view of the provisions of Section 4123.68, Revised Code, the words of Division (W) of Section 4123.68, Revised Code, reading "for periods amounting in all to at least three years, some portion of which has been after October 12, 1945" should be construed to read "for periods amounting in all to at least three years, some portion of which has been after July 30, 1937."

2. Where a decedent had at least three years injurious exposure to silica dust, some portion of which was after July 30, 1937, the provisions of Section 4123.68, Revised Code, as to the required period of injurious exposure to silica dust do not preclude the payment of death benefits to the decedent's widow.

Columbus, Ohio, June 30, 1961

The Industrial Commission of Ohio  
Ohio Departments Building, Columbus 15, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"The Industrial Commission of Ohio has directed the undersigned, as Acting Secretary for said Commission, to request your formal opinion on the following problem.

"The facts are these, a decedent, whose employment at a stone crushing plant terminated his employment on May 15, 1941, was compensated for disability due to silicosis on a permanent total basis from May 23, 1941 to the date of his death which occurred December 28, 1959.

"At the time of the onset of his disability Section 1465-68a G.C. provided that compensation for disability or death on account

of silicosis would be paid only in the event of injurious exposure to silica dust for periods amounting in all to at least three years, 'some portion of which shall have been after the effective date of this act.'

"Since October 1, 1953, the statute with reference to compensation for silicosis, which is now Section 4123.68 R.C., has provided for payment only in case of injurious exposure to silica dust for periods amounting in all to at least three years, 'some portion of which has been after October 12, 1945, except as provided in the last paragraph of Section 4123.57 of the Revised Code.'

"The decedent's widow has now filed an application for death benefits. In view of the fact that decedent had no employment subsequent to May 15, 1941 and consequently had no exposure to silica dust after October 12, 1945. We would like your opinion as to whether the provisions of Section 4123.68 R.C. in effect at the time of decedent's death preclude the payment of death benefits."

Section 4123,68, Revised Code, here pertinent, reads in part as follows:

"Every employee who is disabled because of the contraction of an occupational disease as defined in this section, or the dependent of an employee whose death is caused by an occupational disease as defined in this section, is entitled to the compensation provided by sections 4123.55 to 4123.59, inclusive, and section 4123.66 of the Revised Code, subject to the modifications relating to occupational diseases contained in sections 4123.01 to 4123.94, inclusive, of the Revised Code.

"The following diseases shall be considered occupational diseases and compensable as such when contracted by an employee in the course of his employment in which such employee was engaged at any time within twelve months previous to the date of his disablement and due to the nature of any process described in this section.

"

#### SCHEDULE

"Description of disease or injury and description of process:

"\* \* \*

\* \* \*

\* \* \*

"(W) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

"Sections 4123.01 to 4123.94, inclusive, of the Revised Code do not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability

or death from silicosis, unless the employee has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in this state preceding his disablement, for periods amounting in all to at least three years, *some portion of which has been after October 12, 1945*, except as provided in the last paragraph of section 4123.57 of the Revised Code.

“\* \* \*

\* \* \*

\* \* \*”

(Emphasis added)

In 1937, the provision of law dealing with silicosis appeared in the then existing Section 1465-68a, General Code, as amended in 1937 (117 Ohio Laws, 268, 270), which read in part:

“\* \* \*

\* \* \*

\* \* \*

“22. Silicosis. (Silicosis shall mean a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by x-ray examination or by autopsy).

“Nothing in this act shall entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, unless the employee has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in Ohio preceding his disablement, for periods amounting in all to at least five years, some portion of which shall have been after the effective date of this act.

“\* \* \*

\* \* \*

\* \* \*”

The words “after the effective date of this act” referred to the date, July 30, 1937, which was the effective date of the act enacting those words.

In 1939, the above-noted language of Section 1465-68a, *supra*, was amended to substitute a *three* year requirement in place of the then existing *five* year requirement. The language “after the effective date of this act” was not changed. (118 Ohio Laws, 422, 424.)

In 1943, the words “except as provided in the last paragraph of section 1465-80, General Code” were inserted after the words “after the effective date of this act.” (120 Ohio Laws, 449, 454.)

In 1945, Section 1465-68a, *supra*, was amended but the two paragraphs here under consideration were not changed in any way. (121 Ohio Laws, 660, 663.)

In 1951, Section 1465-68a, *supra*, was amended. The paragraph relating to silicosis was designated “23” instead of “22”; and in the second

paragraph noted earlier the words "of the" were inserted between "section 1465-80" and "General Code."

In the general code revision of 1953 (House Bill No. 1 of the 100th General Assembly) Section 1465-80a, General Code, was designated Section 4123.68, Revised Code. As amended by this bill, the two paragraphs here concerned then read:

"(W) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination or by autopsy.

"Sections 4123.01 to 4123.94, inclusive, of the Revised Code do not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, unless the employee has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in this state preceding his disablement for periods amounting in all to at least three years, *some portion of which has been after October 12, 1945*, except as provided in the last paragraph of section 4123.57 of the Revised Code." (Emphasis added)

It will be noted that the language of House Bill No. 1 is identical with that of the present law as set forth at the outset of this opinion. Although Section 4123.68 was amended again in 1953 (125 Ohio Laws, 903, 1019) and in 1959 (128 Ohio Laws 743, 766), the pertinent language dealing with silicosis was not changed.

House Bill No. 1 of the 100th General Assembly was the result of several years of work by the Bureau of Code Revision. The bill was limited to a revision and recodification of the laws and was not intended to change any substantive provisions of the law. In fact, as to intent, the bill enacted Section 1.24, Revised Code, which reads:

"That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments."

Further, it is stated in 37 Ohio Jurisprudence, Section 430, page 760:

"In the revision of statutes, neither an alteration in phraseology nor the omission or addition of words shall be held neces-

sarily to alter the construction of the earlier acts. Thus, it may be considered whether a change of language has not been accepted to express, in more explicit terms, the same thing or things intended by the former statutes. The rules favoring the construction which was, or should have been, given the original statutes or sections are applied, even though in the course of revision or consolidation the language may have been somewhat changed. Indeed, the revised statutes will be presumed to bear the same meaning as the original sections and will be so construed unless the language of the revision plainly requires a change of construction to conform to the manifest of the legislature."

On reviewing the history of the silicosis provisions, it is apparent that the words "after the effective date of this act" as appearing in former Section 1465-68a, General Code, referred to the effective date of the act contained in 117 Ohio Laws, 268, at 270, which effective date was July 30, 1937. And this is true even though that section was amended in 1939, 1943, 1945 and 1951, since those words were not changed in the later legislative enactments. The general rule of the law in this regard is stated in the case of *In re Hesse*, 93 Ohio St., 230, at 234, as :

"\* \* \* The provisions contained in the act as amended which were in the original act are not considered as repealed and again reenacted, but are regarded as having been continuous and undisturbed by the amendatory act. *In re Allen*, 91 Ohio St., 315. \* \* \*"

In revising the code in 1953, one of the rules adopted was to remove all references to "this act" and "effective date of this act" and to substitute the actual section numbers of the acts and the dates on which the acts referred to became effective. Thus, in revising Section 1465-68a, General Code, the references to "this act" were removed and section numbers were substituted. Also, the reference to "after the effective date of this act" was removed and a specific date, October 12, 1945, was inserted. It is obvious that the drafter of the amendment thought that the act referred to became effective on the 1945 date. But as seen earlier, the correct date was July 30, 1937, and the amendment made was clearly in error.

In accord with the provisions of Section 1.24, *supra*, and the general rule of law as expressed in 37 Ohio Jurisprudence, *supra*, it follows that the provision of Section 4123.68, *supra*, reading "for periods amounting in all to at least three years, some portion of which has been after October 12, 1945" should be construed to read "for periods amounting in all to at least three years, some portion of which has been after July 30, 1937."

Your specific question is concerned with a decedent who had injurious exposure to silica dust after July 30, 1937. Thus, the provisions of Section 4123.68, Revised Code, as to the period of injurious exposure to silica dust, do not preclude the payment of death benefits to the decedent's widow.

In conclusion, therefore, it is my opinion and you are advised:

1. In view of the provisions of Section 1.24, Revised Code, the words of Division (W) of Section 4123.68, Revised Code, reading "for periods amounting in all to at least three years, some portion of which has been after October 12, 1945" should be construed to read "for periods amounting in all to at least three years, some portion of which has been after July 30, 1937."

2. Where a decedent had at least three years injurious exposure to silica dust, some portion of which was after July 30, 1937, the provisions of Section 4123.68, Revised Code, as to the required period of injurious exposure to silica dust do not preclude the payment of death benefits to the decedent's widow.

Respectfully,

MARK McELROY

Attorney General