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1. WORKMEN'S COMPENSATION BENEFITS—NO MINIMUM AGE LIMIT TO RECEIVE—CIVIL DEFENSE WORKERS UNDER 16 YEARS OF AGE NOT PREVENTED FROM RECEIVING BENEFITS.
2. LOYALTY OATHS—PROVIDED FOR IN SECTION 4123.036, R. C.—SET FORTH IN SECTION 5915.14, R. C.—NO AGE LIMITATION REGARDING SUBSCRIPTION TO.
3. PERMANENT RECORDS—CONTEMPLATED BY SECTION 4123.036, R. C.—LOGS, DUTY ROSTERS AND DUTY REPORTS CONSTITUTE SUCH RECORDS.
4. WORKMEN'S COMPENSATION COVERAGE—CIVIL DEFENSE WORKERS—TRAVEL TO OR FROM CIVIL DEFENSE STATION NOT INCLUDED, EXCEPT AS PROVIDED BY STATUTE—AUTHORIZED TRAVEL REQUIRED OR DIRECTLY INVOLVED IN ACTIVITY INCLUDED IN COVERAGE.
5. CIVIL DEFENSE VOLUNTEERS—TEMPORARILY ASSIGNED TO COOPERATING ORGANIZATION OF WHICH THEY ARE MEMBERS—ACTUALLY PERFORMING CIVIL DEFENSE DUTY UNDER EXPRESS OR CONSTRUCTIVE ORDERS OF CIVIL DEFENSE OFFICIALS—MAY BE ENTITLED TO WORKMEN'S COMPENSATION COVERAGE—INDUSTRIAL COMMISSION OF OHIO TO DETERMINE QUESTIONS OF FACT IN EACH CASE.

SYLLABUS:

1. There is no minimum age limit as to those who may receive workmen's compensation benefits. Therefore, civil defense workers who are under 16 years of age are not thereby prevented from receiving compensation benefits.

2. There is no age limitation regarding the subscription to loyalty oaths by teenagers, which oath is provided for in Section 4123.036, Revised Code, and is set forth in Section 5915.14, Revised Code.

3. Logs, duty rosters and duty reports signed by those participating or their officers, and including the type of civil defense activity involved, the dates and times of performance and the names of those participating, constitute permanent records as contemplated by Section 4123.036, Revised Code.

4. Workmen's compensation coverage for civil defense workers does not include travel from home or employment to civil defense station or return therefrom, except as provided by statute. Coverage extends to authorized travel required or directly involved in activity after reporting to such station.

5. Members of organizations cooperating with the Civil Defense Corps in the performance of civil defense functions may not, solely for the purpose of securing workmen's compensation coverage for such individuals as civil defense workers, be individually enrolled in the Civil Defense Corps and thereafter be released to serve with such cooperating organizations; but where bona fide civil defense volunteers are temporarily assigned to perform civil defense duty with cooperating organizations of which they are members and they actually perform such civil defense duties under the express or constructive orders of civil defense officials, such volunteers may be entitled to the benefits of such workmen's compensation coverage. The question of good faith in such arrangement, and of the actual duty performance under such orders of civil defense officials, are questions of fact for decision and determination in each case by the Industrial Commission of Ohio.

Columbus, Ohio, July 24, 1956

Hon. Leo M. Kerber, Major General, The Adjutant General
Fort Hayes, Columbus 18, Ohio

Dear Sir:

Your request for my opinion includes the following questions:

“* * * 1. While we understand current provisions as to industrial workers limit recovery to those 16 years of age, or over, does this age limit apply to volunteer Civil Defense workers?

“2. Under Section 4123.036 A and B certain requirements and limitations are set forth, including requirement for subscribing to a loyalty oath, either the Federal or State form. Is there any age or any other constructive limitation upon a teen-ager, 13 to 21 years of age, subscribing to such an oath, and thereby complying with the requirements precedent to recover under the Sections noted, as a volunteer Civil Defense worker? * * *”

“3. Does the signing of the Aircraft Flash Log by a Ground Observer Corps volunteer with the date and time of his arrival on the post and departure therefrom, or the log maintained by an individual Warden of the dates and times during which he was canvassing his block under direct or constructive orders of his Civil Defense superiors, or the duty rosters or duty reports of a municipal Police Department showing the name, badge number, date and time on duty and off duty of Auxiliary Police riding with regular Police Officers in patrol cars, accident cars, ambulances, or performing other similar on-the-job training for Civil Defense, constitute sufficient permanent record of such duty

and Civil Defense activity and training as required under paragraph C of Section 4123.036 of the Revised Code. The above situations are listed as specific questions and also as examples for the general question.

“* * * 4. When a Civil Defense Worker as defined in paragraph A Section 4123.031 of the Revised Code, has been directly or constructively ordered or instructed to report to a meeting, drill, test, Civil Defense activity, ceremony, or operations under natural disaster emergency conditions, etc., does the language of paragraph B Section 4123.031 of the Revised Code to wit (in part) ‘including all authorized travel required or directly involved in such activities’ mean that the Civil Defense worker is covered under this Act and is therefore protected by Workmen’s Compensation from such time as he leaves his place of residence or employment to travel by the most direct practical route to such Civil Defense activity and until he returns to his place of residence or place of business by the most direct practical route, or does such language in the Code cover only travel occurring after the Civil Defense worker has reported to the first place of duty, activity, meeting, etc., and cover only until the time of leaving the last such place of duty, meeting, etc.

“* * * 5. Can paragraph A of Section 4123.031 of the Revised Code be interpreted to legally permit a Civil Defense organization to enroll and administer the loyalty oath to persons who are volunteer members of other organizations which normally aid and assist Civil Defense and then assign such persons to their respective organizations for duty, for the purpose of covering such volunteer persons under Workmen’s Compensation? Groups of volunteers such as members of the Red Cross First Aid, Canteen, and Welfare Center Corps and members of the Civil Air Patrol are examples of such persons. Specifically, can such persons be considered ‘Civil Defense Volunteers’ if they receive their operating instructions through some other cooperating volunteer agency?

“We believe that the above question should be considered in the light of the fact that written registration, administration of the Loyalty Oath and direct assignment to Civil Defense duty are required. In the case of the Civil Air Patrol, this organization wishes to perform Civil Defense missions but its officials expect and insist that such missions will be carried out under their own leadership, rules and regulations. In other words, the missions will be assigned by Civil Defense but the accomplishment will be entirely an autonomous matter for the CAP. This is not exactly the situation which obtains in connection with Red Cross members as they undoubtedly will be more or less directly under the supervision of Civil Defense Directors or members of local, county, area or state Civil Defense staffs. * * *”

The question of whether or not a minor may recover under the provisions of the Workmen's Compensation Act, is not dependent upon the age of that minor. Section 4123.031 (A), Revised Code, defines a "civil defense worker" as:

"* * * *anyone* who has been duly registered for service in connection with the development, maintenance and operation, excluding emergency conditions due to enemy attack, of any civil defense organization authorized by law and who has met the minimum requirements as set forth in sections 4123.031 to 4123.037, inclusive, of the Revised Code, * * *"

(Emphasis added.)

Section 4123.032, Revised Code, provides that civil defense workers are entitled to workmen's compensation benefits. This section reads in part as follows:

"Every civil defense worker of the civil defense corps of the state, as defined in sections 4123.031 to 4123.037, inclusive, of the Revised Code, shall, with respect to the performance of his duties as such civil defense worker, be in the employment of the state purposes of sections 4123.01 to 4123.94, inclusive, of the Revised Code, and every civil defense worker or in case of death his dependents shall be entitled to the benefits payable on account of total disability, loss of member or death as accorded by such sections to employees covered by its provisions. * * *"

It was held in *Hartley v. The Victor Rubber Co.*, 23 N. P. (N.S.), 593, that a minor, even though employed contrary to the provisions of the law in reference to the employment of minors, was deemed *sui juris* for all purposes of the Act under the amendment of Section 1465-93, General Code (Section 4123.89, Revised Code), and as such was competent to elect to receive compensation from the state insurance fund.

It should also be noted that Section 4123.01, Revised Code, which defines "employee," "workman," or "operative" does not establish a minimum age limit for those who may receive benefits. This section reads in part:

"* * * (A) 'Employee,' 'workman,' or 'operative' means:

"(1) Every person in the service of the state, or any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, except any elected official

of the state, or of any county, municipal corporation, or township, or members of boards of education ;

“(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, employing three or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and *minors*, but not including any person whose employment is but casual and not in the usual course of trade, business, profession, or occupation of his employer. * * *”

(Emphasis added.)

Therefore, one who is a duly registered civil defense worker may receive workmen's compensation benefits even though he may be under 16 years of age.

As to your second question, the requirement for a civil defense worker to subscribe to a loyalty oath is set forth in Section 4123.036 (B), Revised Code, which reads :

“Such civil defense worker shall have subscribed to the loyalty oath administered either under the provisions of the Ohio statute pertaining to oaths and in the form set forth in the civil defense act (RC Sec. 5915.01 et seq.), or shall have subscribed to the federal form of the loyalty oath administered under the provisions of Public Law No. 268, 82nd Congress.”

The form of the Ohio oath is included in Section 5915.14, Revised Code. That oath reads as follows :

“* * * I, do solemnly swear (or affirm) that I will support and defend the constitution of the United States and the constitution of the state of Ohio, against all enemies, foreign and domestic ; that I will bear true faith and allegiance to the same ; that I will obey the orders of the governor of the state of Ohio, that I take this obligation freely, without any mental reservation or purpose of evasion ; and that I will faithfully discharge the duties upon which I am about to enter.

“And I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence ; and that during such time as I am a member of the (name of civil defense organization), I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence.”

In order to determine who may take a loyalty oath it is necessary to refer to the definition and purpose of oaths generally. A good definition may be found in 30 Ohio Jurisprudence, 445, Section 2, which reads:

“An oath is declared to be the calling upon God to witness that what is said by the person sworn is true, and invoking the divine vengeance upon his head if what he says is false. It is no more a part of Christianity than of every other religion in the world.

“Under the General Code the word ‘oath’ includes affirmation. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by a person having conscientious scruples to taking an oath. An affirmation has the same force and effect as an oath. In its broadest sense, therefore, an oath, within the meaning of the statute, embraces every method whereby the conscience of a witness is obligated to testify to the truth.

“It has been said that the purpose of the oath is not to call the attention of God to the witness, but the attention of the witness to God; not to call upon Him to punish the false swearer, but on the witness to remember that He will assuredly do so. By thus laying hold of the conscience of the witness and appealing to his sense of accountability, the law best insures the utterance of truth.”

In Section 4 on page 448, it is stated:

“* * * If the witness believes in some Superior Being, whom he recognizes as a God who will punish for false swearing, an oath may be administered according to his belief, and such obligation will satisfy the requirements of the law, for the reason that it binds his conscience so as to influence him to speak the truth.”

Therefore, it is a parent that for a person to be competent to subscribe to an oath, he must be of such an age and mentality as to possess a sense of accountability. He must be capable of understanding the oath to which he is to subscribe, and he must be able to affirm that he truthfully subscribes to the oath.

The competency of one as a witness is set forth in Section 2317.01, Revised Code, which reads:

“All persons are competent witnesses except those of unsound mind, and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.”

In order to give testimony as a witness, a person must take an oath. See Section 2317.30, Revised Code. It follows that one who is deemed to be capable to give testimony as a witness must also be capable of taking the prerequisite oath.

It was held in *Hill, a Minor v. Skinner*, 81 Ohio App., 375, that the competency of an infant under ten years of age to testify as a witness is governed by (a) his comprehension of the obligation to tell the truth and (b) his intellectual capacity of observation, recollection and communication. An infant would have to have the same comprehension of the obligation to tell the truth in taking an oath as he has to have to qualify as a witness.

Subscribing to an oath is in essence promising that one will be bound in conscience to perform an act faithfully and truthfully. There is no basis for differentiating between the oath of a witness as provided in Section 2317.30, Revised Code, and the oath to be taken by prospective civil defense workers as set forth in Section 5915.14, Revised Code.

Consequently, it seems apparent that the requisite for taking a loyalty oath as provided in Section 4123.036, Revised Code, and set forth in Section 5915.14, Revised Code, should be the same as for one taking an oath to testify as a witness in a court proceeding, as provided in Section 2317.30, Revised Code.

Since it must be deduced from Section 2317.01, Revised Code, that, as far as age is concerned, anyone that is ten years old or older is competent to take an oath to testify, I conclude that such persons could also subscribe to a loyalty oath.

Therefore, there is no age limitation regarding the subscription to loyalty oaths by teen-agers, aged 13 to 21 years, which oath is provided for in Section 4123.036, Revised Code, and is set forth in Section 5915.14, Revised Code.

Turning to your third question, Section 4123.036 (C), Revised Code, provides that certain permanent records shall be maintained to show that a civil defense worker was performing a civil defense duty at the time the accident or event occurs for which a claim is made for workmen's compensation benefits. That section reads in part:

“(C) At the time the accident or event occurs for which a claim is made under sections 4123.01 to 4123.94, inclusive, of

the Revised Code, said civil defense worker shall have been acting in good faith in performing a civil defense duty, function or act in connection with the development, training, maintenance, or operation of a civil defense organization under expressed or constructive instruction or orders of a duly appointed director of a civil defense or an authorized staff member of the civil defense organization charged with the authority and responsibility for issuing such instructions or orders. To implement this requirement a permanent record of all meetings, drills, tests, and participation in civil defense activities and ceremonies as well as operations under natural disaster emergency conditions, shall be maintained and it shall be a condition precedent to recovery hereunder that any claimant under the provisions of this amendment shall furnish a certified copy of the permanent record attesting to the participation of said claimant or of the individual whose participation forms the basis for the claim in the respective civil defense activity during or as a result of which a claim for injury or death is made."

One appropriate definition of "record" may be found in 36 Words and Phrases, 533, which definition reads:

"A 'record' is a written memorial made by a public officer authorized by law to perform that function, the memorial being intended to serve as evidence of something written, said or done."

The above quoted Section 4123.036 (C), *supra*, specifies that a permanent record "shall be maintained." There is no specification as to who shall make or compile such records. Thus, I conclude that any such persons as are authorized by the Civil Defense Corps regulations to make the records, or the entries therein, may compile records which will comply with this section of the Revised Code.

As to whether or not the various logs, duty rosters and duty reports used by the Civil Defense Corps constitute a "permanent record," as contemplated in Section 4123.036 (C), *supra*, I refer to the above quoted definition of "record." Since the logs and rosters are written records which may be kept as evidence of the various civil defense activities carried out by the civil defense workers, those records should be classified as permanent records within the terms of this statute.

These logs and duty rosters include the type of activity involved, the date, time and place of that activity, and the names of those participating. Surely, this is sufficient information to make such logs and rosters qualify as permanent records of "meetings, drills, tests and participation

in civil defense activities and ceremonies,” as required by Section 4123.036, Revised Code.

Turning now to a consideration of your fourth question, I call your attention first to the provisions of Section 4123.035 of the Revised Code. It is there provided that a decision of the Industrial Commission as to the facts of a claim for compensation is final except as to dependency and “* * * whether the accident occurred in the course of claimant’s work as a civil defense worker * * *.” It thus appears that the quoted requirements must be met for a claim to be compensable. I note that subsection (C) of Section 4123.036 of the Revised Code, provides in part as follows:

“(C) At the time the accident or event occurs for which a claim is made under sections 4123.01 to 4123.94, inclusive, of the Revised Code, said civil defense worker shall have been acting in good faith in performing a civil defense duty, function or act in connection with the development, training, maintenance, or operation of a civil defense organization under expressed or constructive instruction or orders of a duly appointed director of a civil defense or an authorized staff member of the civil defense organization charged with the authority and responsibility for issuing such instructions or orders. * * *”

Civil defense duties are further defined in subsection (B) of Section 4123.031 of the Revised Code, which provides as follows:

“(B) ‘Civil defense duties’ mean and include any or all activities in connection with civil defense, including actual operations in natural disaster, training, organizing, attending meetings and conferences, answering calls to duty in case of false or test alerts including all authorized travel required or directly involved in such activities.”

In essence, your question is whether or not the last quoted section removes civil defense workers from the effect of the established “going and coming” rule that applies to workmen’s compensation generally. Simply stated, the rule is one that has evolved through judicial interpretation of the “course of employment” requirement and it excludes travel to and from the place of employment from coverage under the Act. More specifically, going to and coming from work is considered a personal matter and not an act for the benefit of the employer. *Industrial Commission v. Heil*, 123 Ohio St., 604; *Industrial Commission v. Gintert*, 128 Ohio St., 129.

Sections 4123.031 to 4123.037, inclusive, of the Revised Code, providing for coverage of civil defense workers, contain some specific modifications of the general workmen's compensation coverage. In Section 4123.032 of the Revised Code, it is provided that the claim must be filed within one year of the injury. For other persons covered by workmen's compensation, the period of limitations for the filing of a claim is two years. In Section 4123.035 of the Revised Code, it is provided that a civil defense claim can be appealed on only two grounds. For other persons covered by workmen's compensation, excepting occupational disease claims, a claim may be appealed on any ground except the extent and degree of recognized disability. The intent of the Legislature in creating a special rule for civil defense workers is clearly apparent in these two areas. I do not find a clear expression of intent to remove civil defense workers from the general application of the "going and coming" rule. I conclude that the general "going and coming" rule applies to civil defense workers. In reaching this conclusion, I rely upon Section 4123.035, supra, which indicates that a compensable injury must be sustained in the course of civil defense work and upon Sections 4123.032, 4123.033 and 4123.036, of the Revised Code, each of which requires that a compensable accident must be one that is sustained while performing a civil defense duty. It is my opinion that the usual concept of occupation on behalf of the employer is applicable here. In construing civil defense duties as defined in subsection (B) of Section 4123.031, supra, I conclude that authorized travel time does not include going to and from civil defense activities. I reach this conclusion upon four considerations. First, subsection (B) specifically provides that "* * * answering calls to duty in case of false or test alerts * * *" constitutes a civil defense duty. If the provision for authorized travel time was intended to negate the "going and coming" rule, the quoted language would be surplusage. The portion quoted refers to answering but not securing from such alerts. It is apparent to me that the Legislature intended that answering such calls would be an exception to the "going and coming" rule and that the exception is so limited. Secondly, I rely upon the following provisions from subsection (C) of Section 4123.036, of the Revised Code:

"* * * To implement this requirement, a permanent record of all meetings, drills, tests, and participation in civil defense activities and ceremonies as well as operations under natural disaster emergency conditions, shall be maintained and it shall be a condition precedent to recovery hereunder that any claimant

under the provisions of this amendment shall furnish a certified copy of the permanent record attesting to the participation of said claimant or of the individual whose participation forms the basis for the claim in the respective civil defense activity during or as a result of which a claim for injury or death is made."

The requirement of certification would be, in many instances, a practical impossibility if travel to and from activities was to be included within this special coverage. Thirdly, I believe the word "authorized" as used in subsection (B) of Section 4123.031, of the Revised Code, implies travel other than going to and from the activity involved. The word carries the connotation of specific approval rather than an all inclusive appropriation. A blanket or constructive authorization would raise all the practical impediments that the "going and coming" rule resolves. Lastly, I conclude that the reasons for the "going and coming" rule are equally applicable to civil defense workers. A civil defense worker is no more engaged in activity on behalf of his employer as he travels to his employment than an industrial worker. It is also apparent that there are very serious problems as to the actual point that such coverage begins or ends. The statutes covering civil defense workers do not indicate that the beginning and terminating of coverage should be governed by rules other than those generally applicable to workmen's compensation except for the special provision as to answering false or test alerts.

I would also call to your attention the fact that judicial exceptions to the "going and coming" rule exist. It is not practical to enumerate them, but it should be remembered that they would apply equally to civil defense workers.

I conclude, in answer to your question, that coverage for civil defense workers does not include travel from home or employment to civil defense stations or return therefrom, but that it embraces only authorized travel required or directly involved in activity after reporting to such station.

In regard to your last question, those persons who are members of various other organizations which normally aid and assist the Civil Defense Corps may not be properly enrolled individually as civil defense workers "for the purpose of covering such persons under Workmen's Compensation" and then be assigned to their respective cooperating organizations, and still be within the scope of the definition of a "civil defense worker" as defined in Section 4123.031, Revised Code.

The above plainly suggests no other purpose being served by so enrolling these persons in the Civil Defense Corps; i.e., no other purpose than getting workmen's compensation coverage. However, the existence of other purposes, actual Civil Defense Corps purposes, is conceivable. This purpose or these purposes could be served by assigning civil defense volunteers to other organizations in which they have membership; but when on duty with such other organizations, they must, under Section 4123.036 (C), Revised Code, act under "expressed or constructive instruction or orders" of civil defense officers as such.

It is difficult to see how such volunteers, on duty with a "cooperating" organization, could be supposed to be acting under express or constructive orders of civil defense officers, since, if the orders come directly to the volunteer, he is only cooperating as a civil defense volunteer and not serving therein as a member thereof as such; and if there is a cooperative agreement only, there could be no such thing as the transmission of an order from civil defense officers to a civil defense volunteer through such cooperating agency. This would be more of a request than an order.

In short, there cannot be subterfuge; but coverage is possible, in special circumstances, if the civil defense volunteer actually acts under orders of civil defense officers rather than under orders of officers of some cooperating agency. The determination of this is up to the Industrial Commission of Ohio on the fact question in each case as to whether a given civil defense volunteer was so acting as specified in Section 4123.036 (C), Revised Code. It can be expected that the Industrial Commission would require clear proof on this point, thus it will not be an easy matter to establish.

In specific answer to your question, I conclude that:

1. There is no minimum age limit as to those who may receive workmen's compensation benefits, and civil defense workers who are under 16 years of age are not thereby prevented from receiving compensation benefits.
2. There is no age limitation regarding the subscription to loyalty oaths by teen-agers, which oath is provided for in Section 4123.036, Revised Code, and is set forth in Section 5915.14, Revised Code.
3. Logs, duty rosters and duty reports signed by those participating or their officers, and including the type of civil defense activity involved,

the dates and times of performance and the names of those participating, constitute permanent records as contemplated by Section 4123.036, Revised Code.

4. Workmen's compensation coverage for civil defense workers does not include travel from home or employment to civil defense station or return therefrom, except as provided by statute. Coverage extends to authorized travel required or directly involved in activity after reporting to such station.

5. Members of organizations cooperating with the Civil Defense Corps in the performance of civil defense functions may not, solely for the purpose of securing workmen's compensation coverage for such individuals as civil defense workers, be individually enrolled in the Civil Defense Corps and thereafter be released to serve with such cooperating organizations; but where bona fide civil defense volunteers are temporarily assigned to perform civil defense duty with cooperating organizations of which they are members and they actually perform such civil defense duties under the express or constructive orders of civil defense officials, such volunteers may be entitled to the benefits of such workmen's compensation coverage. The question of good faith in such arrangement, and of the actual duty performance under such orders of civil defense officials, are questions of fact for decision and determination in each case by the Industrial Commission of Ohio.

Respectfully,

C. WILLIAM O'NEILL

Attorney General