INJURY VERSUS INJURY BY ACCIDENT

W.S. 27-14-102

(xi) "Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extrahazardous duties incident to the business. "Injury" does not include:

(A) Any illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment;

(B) Injury caused by:

(I) The fact the employee is intoxicated or under the influence of a controlled substance, or both, except any prescribed drug taken as directed by an authorized health care provider. The division shall define "intoxicated" and "under the influence of a controlled substance" for purposes of this subparagraph in its rules and regulations; or

(II) The employee's willful intention to injure or kill himself or another.

(C) Injury due solely to the culpable negligence of the injured employee;

(D) Any injury sustained during travel to or from employment unless the employee is reimbursed for travel expenses or is transported by a vehicle of the employer;

(E) Any injury sustained by the prisoner during or any harm resulting from any illegal activity engaged in by prisoners held under custody;

(F) Any injury or condition preexisting at the time of employment with the employer against whom a claim is made;

(G) Any injury resulting primarily from the natural aging process or from the normal activities of day-to-day living, as established by medical evidence supported by objective findings;

(H) Any injury sustained while engaged in recreational or social events under circumstances where an employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer; or

(J) Any mental injury unless it is caused by a compensable physical injury, it occurs subsequent to or simultaneously with, the physical injury and it is established by clear and convincing evidence, which shall include a diagnosis by a licensed psychiatrist or licensed clinical psychologist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. In no event shall benefits for a compensable mental injury be paid for more than six (6) months after an injured employee's physical injury has healed to the point that it is not reasonably expected to substantially improve.

Wyoming Work Comp and True Drilling Company v. Barnes, 587 P.2d 214 (Wyo. 1978)

It was announced that it would do violence to the Act to interpret it in a way that inferred an "accident" and an "injury" identical in meaning:

"It is true that an accident frequently perhaps usually, at the exact time of its happening, produces a compensable injury, but, as the cases above make clear, that is not always so." Id. 62 P.2d at 539. We likewise hold that the term "injury", as used in the Worker's Compensation Law, means compensable injury and is not used in the sense of the occurrence of an industrial accident giving rise to or causing the compensable injury.

In the case at bar it is unquestioned that the employee was injured in an accident in March, 1967. It is likewise unquestioned that the accident produced a disabling injury which required surgical correction in February, 1976. Paralleling Scullion, it can be said that in February, 1976, it became reasonably clear to the employee here that he suffered from a herniated disc and was temporarily totally disabled. Prior to that time the doctors concluded that employee suffered an injury that May require surgical correction at some future time. Employer and the Division argue this knowledge differentiates Scullion. If this is a difference it is a difference without a distinction. Further, the difference is merely one that gels the facts more conclusively in favor of compensation than they were in Scullion. If there is any difference between Scullion and this case, it is the time span between accident and injury, a fact not changing the principles. Here we have more positive evidence that the accident caused the compensable injury. The employee as a reasonable man, could not be expected to submit to a delicate and risky surgical procedure until such time as he was told by his physician that it was required.

The employee's compensable injury occurred when he was operated upon, February 25, 1976.

Carabajal v. Wyoming Work Comp, 119 P.3d 947 (Wyo. 1997)

Employ returned for additional back surgery in 2002 after original injury in 1997.

We have long recognized that an industrial accident can give rise to more than one compensable injury. We generally refer to this principle as the "second compensable injury rule." The second compensable injury rule applies when "an initial compensable injury ripens into a condition requiring additional medical intervention."

We have previously recognized a significant distinction between resolution of a benefit claim pursuant to the second compensable injury rule rather than Wyo. Stat. Ann. § 27-14-605. "Under the second compensable injury rule, a worker who has received a compensable injury and received benefits for that injury can, regardless of the passage of time, receive more benefits for that compensable injury without meeting either of the time limits or increased burden of proof found in Wyo. Stat. Ann. § 27-14-605

§ 27-14-605. Application for modification of benefits; time limitation; grounds; termination of case; exceptions

(a) If a determination is made in favor of or on behalf of an employee for any benefits under this act, an application may be made to the division by any party within four (4) years from the date of the last payment for additional benefits or for a modification of the amount of benefits on the ground of increase or decrease of incapacity due solely to the injury, or upon grounds of mistake or fraud. The division may, upon the same grounds and within the same time period, apply for modification of medical and disability benefits to a hearing examiner or the medical commission, as appropriate.

(b) Any right to benefits shall be terminated and is no longer under the jurisdiction of this act if a claim for any benefit is not filed with the division within the four (4) year limitation prescribed under subsection (a) of this section.

(c) A claim for medical benefits which would otherwise be terminated under subsection (b) of this section and barred under W.S. 27-14-503(a) and (b) may be paid by the division if the claimant:

(i) Submits medical reports to the division substantiating his claim;
(ii) Proves by competent medical authority and to a reasonable degree of medical certainty that the condition is directly related to the original injury; and
(iii) Submits to an examination by a health care provider selected by the division and results of the examination validate his claim.

Exploration Drilling Company v. Guthrie, 370 P.2d 362 (Wyo. 1962)

The employer argues that the disability resulted from a preexisting idiopathic condition and that it did not result from the workman's employment.

In dealing with this question, it must be kept in mind that Guthrie testified that he reached back for a sledge hammer and fell. None of the witnesses testified that there was a seizure, but two of the workmen did say that Guthrie was 'thrashing' around in the cellar, raising up to a crouching position and falling down again. Dr. Baughman did not recognize a seizure and was not aware of anything concerning Guthrie's history of epilepsy until later. The evidence as a whole was such that the lower court would have been justified in concluding that epilepsy had nothing to do with the accident.

It is well settled in Wyoming that compensation is not made to rest upon the condition of health of the employee or upon his freedom from liability to injury through a constitutional weakness or latent tendency. Also it matters not, as far as the right to compensation is concerned, whether the weakness or liability to injury has come about by disease or existed from birth. *In re Scrogham,* 52 Wyo. 232, 73 P.2d 300, 307; *In re Frihauf,* 58 Wyo. 479, 135 P.2d 427, 432-433.

An award is made, as was pointed out in the Scrogham case, for an injury which is a hazard of the employment. This hazard applies to the particular employee in his condition of health. It is not necessarily that hazard which might apply to a healthy or average employee. The compensation act makes no distinction between healthy or diseased employees. *In re Madden,* 222 Mass. 487, 111 N.E. 379, 382, L.R.A.1916D, 1000.

Cronk v. City of Cody, 897 P.2d 476 (Wyo. 1995)

Police officer injured while working out at the police gym, held:

Undoubtedly, certain activities, such as maintaining physical fitness in a job that requires a lot of physical exertion, would enhance an employee's performance of his job and benefit his employer. However, if an employer does not require its employees to engage in such activities as a condition of employment, then those activities cannot be in the course of employment. W.S. 27-14-102(a)(xi).

Richard v. Wyoming Work Comp, 831 P.2d 244 (Wyo. 1992)

Unexplained fatal rollover crash one mile from well site. Reason for travel unknown.

When there is some doubt about whether the death occurred within the course and scope of employment, the rule has been applied to situations in which employees have been found dead in slightly improbable locations, so long as there is some reasonable explanation.

If the employee, in the course of employment, engages in an utterly perplexing act for which no personal or employment motive can be deciphered, the neutral-risk principle should control and the employment connection supplied by the presence of the act within the course of employment should tip the scale in favor of compensability.

Where an employee has no fixed place or time of work, the unexplained-death assumptions apply as long as there is some evidence the employee continued in his course of employment. These inferences are subject to rebuttal.

Wyoming Work Comp v. Sparks, 792 P.2d 507 (Wyo. 1999)

Injured while bending over to pick up a pill out of medicine cart. Division argued not covered because bending over is an act of day to day living.

It follows that when the employer has the right of control and can tell the employee not only what to do, but how to do it, that is not one of "the normal activities of day-to-day living." When we examine the factual background of this case, it is clear that the hospital had the right to control the means and manner of the performance of Sparks' tasks as well as the result. We hold that Wyo. Stat. Ann. § 27-14-102(a)(xi)(G) does not exclude from coverage those injuries sustained at the workplace when the employer has the right to control the details of the activity in which the employee at that time was engaged.

§ 27-14-603. Burden of proof; required proof of circumstances; coronary conditions; hernia

(a) The burden of proof in contested cases involving injuries which occur over a substantial period of time is on the employee to prove by competent medical authority that his claim arose out of and in the course of his employment and to prove by a preponderance of evidence that:
(i) There is a direct causal connection between the condition or circumstances under which the work is performed and the injury;
(ii) The injury can be seen to have followed as a natural incident of the work as a result of the employment;
(iii) The injury can fairly be traced to the employment as a proximate cause;
(iv) The injury does not come from a hazard to which employees would have been equally exposed outside of the employment; and
(v) The injury is incidental to the character of the business and not independent of the relation of employer and employee.

(b) Benefits for employment-related coronary conditions except those directly and solely caused by an injury, are not payable unless the employee establishes by competent medical authority that:
(i) There is a direct causal connection between the condition under which the work was performed and the cardiac condition; and
(ii) The causative exertion occurs during the actual period of employment stress clearly unusual to or abnormal for employees in that particular employment, irrespective of whether the employment stress is unusual to or abnormal for the individual employee; and
(iii) The acute symptoms of the cardiac condition are clearly manifested not later than four (4) hours after the alleged causative exertion.

(c) If an employee suffers a hernia, he is entitled to compensation if he clearly proves that:
(i) The hernia is of recent origin;
(ii) Its appearance was accompanied by pain;
(iii) It was immediately preceded by some accidental strain suffered in the course of the employment; and
(iv) It did not exist prior to the date of the alleged injury.
(d) If an employee establishes his right to compensation for a hernia as provided and elects not to be operated on, he shall not be compensated for the results of future strangulation of the hernia.
(e) In those proceedings in which the entitlement of an employee to benefits for successive compensable injuries is established but no single employer can be determined to be chargeable for the injuries, the division shall apportion the benefit charge in accordance with W.S. 27-14-201(d).

Ball v. Wyoming Work Comp, 239 P.3d 621 (Wyo. 2010)

Ball originally had a spinal cord stimulator implanted for treatment of his chronic pain in 2000. By May of 2006, the original stimulator was no longer operable and a new stimulator was implanted. Unfortunately, with the new stimulator, Ball developed painful side effects that he described as " good jolts" or " a shocking sensation," and which occurred without warning while he was lying down or moved in a certain way. At the time of the hearing in this matter, Ball was working with his physicians to resolve these problems.

In mid-July of 2007, Ball was at home lying in bed when he experienced a shocking sensation that caused him to attempt to stand up "real fast." Ball described it as having his right leg feel as though it was all muscle cramps or a big "charley horse." As Ball stood, he fell. He did not know whether he passed out or not, but when he attempted to get up, he experienced a pain in his left groin that he had never experienced before. Ball attempted to call his physician as he feared he had broken a wire on the stimulator. He initially thought that he had perhaps pulled a muscle, but the pain in his left groin worsened over time to the point that he sought medical attention.

We see no reason to depart from our holding in Corean. The phrases "arising out of" and " in the course of" employment, together or separately, mean the same thing. Thus, the phrase " in the course of the employment" as used in the hernia statute means the same thing it means elsewhere in the Act. A hernia, like any other injury, is compensable if there exists " a nexus between the injury and some condition, activity, environment or requirement of the employment." And, a hernia, like any other injury, is compensable whether it occurs on or off the premises of the employer, as long as the required nexus exists between the employee's work and the hernia. Id.; see also Alvarez, ¶ 27, 164 P.3d at 555 (" what matters is not where the employee was or the nature of the triggering event, but whether the initial compensable injury ripened into a condition requiring additional medical intervention and whether the subsequent injury was causally related to the initial compensable injury").