



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 17, 1962

*Overruled by
WW-1426
and withdrawn*

Honorable J. Overby Smith
Chairman, Industrial Accident
Board
Walton Building
Austin, Texas

Opinion No. WW-1389

Re: Under Section 6 of Article
8306 of Vernon's Civil
Statutes, should the first
day which an injured em-
ployee is unable to per-
form his regular task for
any part of such day be
counted as the first day
of incapacity for purposes
of this section?

Dear Mr. Smith:

You have requested the opinion of this office concerning Section 6 of Article 8306 of Vernon's Civil Statutes as it applies to determine when an incapacitated employee becomes entitled to workmen's compensation benefits.

Section 6 of Article 8306 of Vernon's Civil Statutes provides:

"No compensation shall be paid under this law for an injury which does not incapacitate the employee for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury. The medical aid, hospital services, chiropractic services, and medicines, as provided for in Section 7 hereof, shall be supplied as and when needed and according to the terms and provisions of said Section 7. If incapacity does not follow at once after the infliction of the injury or within eight days thereof but does result subsequently, compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employee shall be entitled to the medical aid, hospital service, chiropractic service, and medicines provided in this law. Provided further that if such incapacity continues for four (4) weeks or longer, compensation shall be com-

puted from the inception date of such incapacity."

The question you have submitted is as follows:

"Should the first day regardless of time of day in which the injured employee is unable to perform his regular task for any part of the day, be considered and counted as the first day of incapacity?"

The answer to your question depends upon the meaning to be given to the terms "eighth day after the injury" and "eighth day after the date incapacity commenced" as used in Section 6 of Article 8306. Although the specific question you ask has not heretofore been passed upon by our appellate courts, nonetheless, a consideration of cases in which the computation of the compensation allowed by Section 6 of Article 8306 has been either approved as made by the trial court or reformed by the appellate court indicate that your question must be answered in the affirmative.

First, in the case of United Employers Casualty Co. v. Oden, 150 S.W.2d 114 (Civ.App. 1941, Error Dism., Judgm. Cor.) at page 117 we find stated:

" . . . The compensation period begins on the date when incapacity arises and ends in all events at the expiration of 401 weeks after the date when the accidental injuries are sustained. Texas Employers Ins. Ass'n. v. Guidry, 128 Tex. 433, 99 S.W.2d 900; Traders & General Ins. Co. v. Watson, Tex. Civ.App., 131 S.W.2d 1103; Maryland Cas. Co. v. Abbott, Tex.Civ.App., 131 S.W.2d 171. . . ." (Emphasis ours)

In ICT Insurance Company v. Gunn, 294 S.W.2d 435 (Civ.App. 1956) the following statements of the Court bear upon the question at hand, at page 444:

"Appellant's fourth point is substantially that the court erred in entering judgment for workmen's compensation benefits for the full period of 401 weeks after June 15, 1955, when the jury found that the injury occurred on June 29, 1954, for the reason that, as a matter of law, compensation benefits for total disability can be recovered only for a period

of 401 weeks after date of injury rather than after date disability commenced.

". . .

"It is without dispute that appellee was injured on June 29, 1954, and that his total disability began on June 15, 1955, all of which is found in the findings of the jury.

". . ."

Continuing at page 445:

". . .it being without dispute that 50 weeks lapsed from the date of injury to the date of appellee's total permanent disability, that the judgment entered by the trial court must be credited with 50 weeks at \$25 per week, or a total credit of \$1,250, and the judgment entered by the trial court is reformed. . . ."

Since, as held in the Oden Case, supra, the 401 week period began to run on the 29th day of June, 1954, and crediting 50 weeks from this date carries through the 14th day of June, 1955, thus allowing the claimant compensation from the first day of his incapacity without regard to the time of day.

We consider to be directly in point Royal Indemnity Co. v. Jones, 201 S.W.2d 129 (Tex.Civ.App. 1947, error ref. n.r.e.) wherein the claimant was injured on July 18, 1945, and became incapacitated on November 30, 1945. The court awarded compensation from December 7, 1945, thus holding that December 7, 1945, was the eighth day after the claimant's incapacity commenced, which of necessity counted November 30, 1945, as the first day of incapacity without regard to the time of day that the incapacity commenced.

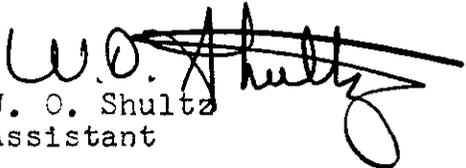
In view of the foregoing holdings your question is hereby answered in the affirmative and you are advised that the first day, regardless of the time of day, wherein an injured employee is unable to perform his regular task is to be considered the first day of incapacity.

S U M M A R Y

Under the provisions of Section 6 of Article 8306 of Vernon's Civil Statutes, the first day, regardless of time of day, wherein an injured employee is unable to perform his regular task shall be considered and counted as the first day of incapacity.

Very truly yours,

WILL WILSON
Attorney General of Texas


By: W. O. Shultz
Assistant

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APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
Pat Bailey
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Marietta Payne

REVIEWED FOR THE ATTORNEY GENERAL
BY: Leonard Passmore