The Burger Court Opinion Writing Database

U.S. Industries/Federal Sheet Metal, Inc. v. Director, Office of Workers' Compensation Programs

455 U.S. 608 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

October 28, 1981

PERSONAL

Re: 80-518 - U.S. Industries/Fed. Sheet Metal, Inc. v. Director, OWCP, U.S. Department of Labor

Dear Lewis:

Are you willing to undertake a dissent in the above?

Regards,

Justice Powell

cc: Justice Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 19, 1981

Re: No. 80-518 - U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP, U.S. Dept. of Labor

Dear John:

Your memo on this case raises new points which I find persuasive. I believe I could go along with it.

Regards,

WEB

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 22, 1982

Re: No. 80-518 - U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP, U.S. Dept. of Labor

Dear John:

I join.

Regards,

WEB

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 14, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 80-518 U.S. Industries v. Department of Labor

The Conference vote according to my record was Affirm 4 (WJB, BRW, TM, HAB) Reverse 3 (CJ, LFP, WHR) DIG 1 (JPS) with Sandra out of the case. We discussed what form of disposition should be made in such case. I mentioned a dispostion in another case that might provide a guide. It was in Anderson v. Johnson, 390 U.S. 456 (1968). The disposition was

"PER CURIAM.

Four members of the Court would reverse. Four members of the Court would dismiss the writ as improvidently granted. Consequently, the judgment of the United States Court of Appeals for the Sixth Circuit remains in effect.

Mr. Justice Marshall took no part in the consideration or decision of this case."

Bill

W.J.B. Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 16, 1981

RE: No. 80-518 U.S. Industries/Federal Sheet Metal
v. Department of Labor

Dear Chief:

John has agreed to undertake the opinion for the Court in the above.

Sincerely,

Bill

The Chief Justice

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–518

U. S. INDUSTRIES/FEDERAL SHEET METAL, INC., ET AL., PETITIONERS *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[March ——, 1982]

JUSTICE BRENNAN, dissenting.

I

Section 20(a) of the Longshoremen's and Harbor Workers' Compensation Act (LHCWA), 33 U. S. C. § 920(a), provides that "it shall be presumed, in the absence of substantial evidence to the contrary . . . [t]hat [a] claim [for compensation] comes within the provisions of this chapter." We granted certiorari to decide whether this provision requires the employer in a compensation hearing to offer "substantial evidence" negating the causal relationship between a compensation claimaint's injury and his employment. The issue has been fully briefed and argued, but the Court does not address it. For me, however, the answer is clear and controls the proper disposition of this case.

By its terms, and quite in contrast to the practice in judicial proceedings, § 20(a) requires the employer to take the initial steps to disprove his liability. This preliminary shifting of the burden to the employer exemplifies the "humanitarian nature of the Act," *O'Keefe* v. *Smith Associates*, 380 U. S. 359, 362 (1965) (*per curiam*), and the "strong legislative policy favoring awards in arguable cases," *Wheatley* v. *Adler*,

p 1

Justice
Brennan
Marshall
Blackmun
Powell
Rehnquist
Stevens
O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: MAY 12 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-518

U. S. INDUSTRIES/FEDERAL SHEET METAL, INC., ET AL., PETITIONERS *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[March ——, 1982]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

I

Section 20(a) of the Longshoremen's and Harbor Workers' Compensation Act (LHCWA), 33 U. S. C. § 920(a), provides that "it shall be presumed, in the absence of substantial evidence to the contrary . . . [t]hat [a] claim [for compensation] comes within the provisions of this chapter." The central issue before us is whether this provision requires the employer in a compensation hearing to offer "substantial evidence" refuting the existence of a causal relationship between a compensation claimaint's injury and his employment. The question has been fully briefed and argued, but the Court does not address it. For me, however, the answer is clear and controls the proper disposition of this case.

By its terms, and quite in contrast to the practice in judicial proceedings, § 20(a) requires the employer to take the initial steps to disprove his liability. This preliminary shifting of the burden to the employer exemplifies the "humanitarian nature of the Act," *O'Keefe* v. *Smith Associates*, 380 U. S. 359, 362 (1965) (*per curiam*), and the "strong legislative pol-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 8, 1982

Re: 80-~~815~~ - U. S. Industries/Federal Sheet Metal, Inc. v. Director, Office of Workers' Compensation Programs, Dept. of Labor

Dear John,

Please join me.

Sincerely yours,

Justice Stevens

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 10, 1982

Re: No. 80-518 - U.S. Industries/Federal Sheet Metal v. Director, Office of Workers' Compensation Programs, U.S. Dept. of Labor

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 12, 19

Re: No. 80-518 - U.S. Industries/Federal Sheet Metal, Inc., v. Director, OWCP, U.S. Department of Labor

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 28, 1981

80-518 - U.S. Industries/Fed. Sheet Metal, Inc. v. Director, OWCP, U.S. Department of Labor

Dear Chief:

I will be glad to undertake a dissent in this case. It may take a while.

Sincerely,

The Chief Justice

cc - Justice Rehnquist

LFP/vde

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 19, 1981

80-518 U.S. Industries v. Director

Dear John:

This is in response to your request for our reaction to your memorandum of November 18. First, I commend you on the thoroughness of the memorandum. I found it most helpful.

In considering the options you outline on page 18, I could join an opinion reaching the conclusion of your first option: i.e, "application of the presumption in this case vitiated two clear statutory mandates."

I could not join a DIG and leave CADC's erroneous opinion standing. This is a last resort, and already this Term we have fallen back on it a couple of times.

As to the text of your memorandum, I am generally in accord with your reading of the statute and your analysis. I am not entirely clear, however, as to the meaning of the second paragraph on p. 10, and particularly the second sentence thereof. Related to it, I believe, is the sentence in the following paragraph (p. 11) as follows:

> "If, for example, Riley had suffered his pain attack while at work instead of while at home, I assume he would have been entitled to a presumption that the accidential injury arose out of his employment. . ." (emphasis added)

Although you make only an "assumption", I do not think I could agree that where an employee suffers a pain attack (e.g., a coronary) at work rather than at home, a presumption arises that the illness is work related. As you suggest, this would be an irrational presumption - certainly in the absence of empiric evidence that coronaries occur more frequently in certain types of work than they do in bed, on the golf course, or wherever. My clerk has found no

case law supporting this view outside a line of cases in the CADC. The weight of authority - and in my view reason - is to the contrary. The first of these CADC cases is Robinson v. Bradshaw, 206 F. 2d 435 (1953). In the other CAs, the presumption applies only after the claimant shows either (i) an accident at work causing an injury; (ii) a job-related illness; or (iii) aggravation of a pre-existing condition by either an incident at work or by general employment duties. See, e.g., Continental Ins. Co. v. Bynne, 471 F. 2d 257 (1972) (accident at work); Eschbach v. Contractors, Pacific Naval Air Bases, 181 F. 2d 860 (CA7 1950) (must show job caused T.B.); John W. McGarth Corp. v. Hughes, 264 F. 2d 314 314 (CA2), cert. denied, 360 U.S. 931 (1959) (CA held that claimant did show causation between employment and on-the-job heart attack).

In sum, my vote is for your first option on page 18 of your memorandum. I could join an opinion containing your basic analysis if it omitted the dictum with respect to the presumption that I mention above.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

P.S. In view of John's thorough memorandum, I think no purpose would be served by further Conference discussion.

L.F.P., Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 28, 1982

80-518 U.S. Industries v. Director

Dear John:

Please join me.

Sincerely,

Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 19, 1981

Re: No. 80-518 U.S. Industries v. Director, OWCP

Dear John:

Your memorandum of November 18th in this case certainly presents a more detailed analysis of the situation than I had made prior to oral argument, and reflects a more substantial body of case law than I had been able to examine at the time that I cast my vote to reverse. Although I had some experience with these cases in practice in Arizona on the employer's side, the Arizona courts always seemed to me to be struggling with the same interlocking presumptions which you describe on page 8 of your memorandum: the injury must have both arisen "out of" and "in the course of" employment. While I am not completely comfortable with your memorandum as it presently stands, none of the alternativ are attractive either. An affirmance by an equally divided Court or a DIG will afford no guidance whatever to the other Courts of Appeals applying this presumption, and my present vote would be either to reverse in a short opinion as you suggest, although I believe that the grounds upon which you would reverse are narrower than those on which I would reverse, or in the alternative to consider the case again at Conference.

Sincerely,

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 1, 1982

Re: No. 80-518 U.S. Industries v. Director, Workers' Compensation Program

Dear John:

Please join me in your opinion for the Court.

Sincerely,

WHR

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 15, 1981

Re: 80-518 - U.S. Industries v.
Department of Labor

Dear Bill:

Your memorandum setting forth the unusual form of order to be entered when four Members would reverse and four would dismiss prompts this response.

After reflecting on the case, I realized that since I had voted to deny certiorari, I really would not have standing to vote to DIG unless someone who voted to grant first made such a motion. On that hypothesis, I must confront the question raised by the certiorari petition and, although I think the case was wrongly decided because the Court of Appeals applied the presumption to a claim that the respondent never asserted, I think the question that the certiorari petition asks must be answered the way the Court of Appeals answered it. What this means is that I believe I must vote to affirm even though I think the case was wrongly decided.

Respectfully,

JPS

Justice Brennan

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: NOV 13 '81

Recirculated: _____

80-518 - U.S. Industries v. Director, OWCP

Memorandum of JUSTICE STEVENS.

We granted certiorari to review the Court of Appeals' construction of the presumption created by §20(a) of the Longshoremen's and Harbor Workers' Compensation Act. That section provides: "In any proceeding for the enforcement of a claim for compensation ... it shall be presumed, in the absence of substantial evidence to the contrary ... [t]hat the claim comes within the provisions of [the Act]." 33 U.S.C. §920(a).

I am now persuaded that two other provisions of the Act -- §3(a) and §2(2) -- are of controlling importance in determining the claimant's entitlement to disability compensation. Section 3(a) provides: "Compensation shall be payable [under the Act] in respect of disability ... of an employee, but only if the disability ... results from an injury ... ." 33 U.S.C. §903(a) (emphasis added). And §2(2) provides: An "injury" is an "accidental injury ... arising out of and in the course of employment, and such occupational disease ... as arises naturally out of such employment." Id. §902(2). I believe that a proper construction of the statutory term "injury" undercuts the Court of Appeals' analysis of the case. Moreover, the Court of Appeals erroneously applied the presumption to a "claim" that respondent

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 26, 1982

MEMORANDUM TO THE CONFERENCE

Re: 80-518 - U.S. Industries v. OWCP

In an effort to revive interest in this fascinating case, I submit herewith a proposed opinion for the Court which is intended to do little more than reject the broad holding of the Court of Appeals which apparently would attach a presumption of compensability every time something goes wrong within the human frame of an employee whether or not there is any basis for believing that the harm either arose out of or in the course of employment.

Needless to say, I will welcome any suggestions that might help produce a disposition other than affirmance by an equally divided Court.

Respectfully,

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–518

U. S. INDUSTRIES/FEDERAL SHEET METAL, INC., ET AL., PETITIONERS *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTICT OF COLUMBIA CIRCUIT

[January ——, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

In the early morning of November 20, 1975, respondent Ralph Riley awoke with severe pains in his neck, shoulders, and arms, which later were attributed by physicians to an exacerbation of an arthritic condition. The United States Court of Appeals for the District of Columbia Circuit held that this "injury" was sufficient to invoke the "statutory presumption of compensability,"[1] § 20(a) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 920(a), and vacated the administrative denial of disability benefits. We granted certiorari, 450 U. S. 979, and we now reverse.

Contending that he was permanently and totally disabled by the arthritic condition,[2] Riley's retained counsel filed

[1] "Injury" and "statutory presumption of compensability" are terms employed by the Court of Appeals. See *Riley* v. *U. S. Industries/Federal Sheet Metal, Inc.*, 627 F. 2d 455 (CADC 1980). As we explain below, the use of the term "injury" to describe Riley's early morning attack of pain is incorrect. We do not decide the scope of the § 20(a) presumption, or, a fortiori, the appropriateness of the Court of Appeals' characterization of it.

[2] Apparently, it is undisputed that Riley is permanently and totally disabled. Brief for Resp. 5*.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–518

U. S. INDUSTRIES/FEDERAL SHEET METAL, INC., ET AL., PETITIONERS *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTICT OF COLUMBIA CIRCUIT

[February ——, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–518

U. S. INDUSTRIES/FEDERAL SHEET METAL, INC., ET AL., PETITIONERS *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTICT OF COLUMBIA CIRCUIT

[March ——, 1982]

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P.S

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–518

U. S. INDUSTRIES/FEDERAL SHEET METAL, INC., ET AL., PETITIONERS *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTICT OF COLUMBIA CIRCUIT

[March ——, 1982]

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HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Corrected Copy

March 24, 1982

MEMORANDUM TO THE CONFERENCE

Re: 80-2128 - Washington Metropolitan Area Transit Authority v. Hensley

This case was held for U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP, 80-518. In that case, we held that the Court of Appeals erred in applying the statutory presumption (1) to a claim that was not made and (2) when the claimant did not allege facts that would establish that his injury arose out of and in the course of employment. We did not decide the substantive scope of the statutory presumption, although we observed in a footnote that the nature of the presumption presumably was like that of the §20(d) and Federal Evidence Rule 301 presumptions, i.e., the presumption bursts when substantial evidence to the contrary is introduced.

In Hensley the respondent claimed that his work as a Metro bus driver aggravated his preexisting psoriasis condition. The ALJ and the Benefits Review Board denied the claim, and a divided panel of CADC reversed. The majority held that the employer did not discharge its burden of proving by substantial evidence that the injury was not work-related. The majority held that the burden had shifted to the employer both because of the statutory presumption and because of the substantial substantive evidence of work-relatedness that the claimant had introduced. The dissenting judge disagreed with the majority's analysis of the medical evidence. Moreover, he argued that the statutory presumption burst when the employer offered substantial evidence to rebut the claimant's prima facie case; because the majority found that the employer's rebuttal

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 5, 1982

No. 80-518 U. S. Industries/Federal Sheet Metal, Inc. v. Office of Workers' Compensation Programs, U. S. Dept. of Labor

Dear John,

As I mentioned to you, my conflict in the referenced case has been eliminated with John's change of law firms. If you need my participation in the case, it could be reset.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference