

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 405

An Act to amend and reenact §§ 65.2-400 and 65.2-401 of the Code of Virginia, relating to workers' compensation; hearing loss and carpal tunnel syndrome.

[H 2556]

Approved March 15, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-400 and 65.2-401 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-400. "Occupational disease" defined.

A. As used in this title, unless the context clearly indicates otherwise, the term "occupational disease" means a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment.

B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

1. A direct causal connection between the conditions under which work is performed and the occupational disease;

2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

3. It can be fairly traced to the employment as the proximate cause;

4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;

5. It is incidental to the character of the business and not independent of the relation of employer and employee; and

6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

C. Hearing loss and the condition of carpal tunnel syndrome are not occupational diseases but are ordinary diseases of life as defined in § 65.2-401.

§ 65.2-401. "Ordinary disease of life" coverage.

An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease for purposes of this title if ~~it~~ *each of the following elements* is established by clear and convincing evidence; ~~to a reasonable medical certainty, that~~ *(not a mere probability)*:

1. ~~That the disease exists and~~ *arose out of and in the course of employment as provided in § 65.2-400 with respect to occupational diseases and did not result from causes outside of the employment, and that*

2. *That one of the following exists:*

~~1-~~ *a. It follows as an incident of occupational disease as defined in this title; or*

~~2-~~ *b. It is an infectious or contagious disease contracted in the course of one's employment in a hospital or sanitarium or laboratory or nursing home as defined in § 32.1-123, or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel referred to in § 65.2-101; or*

~~3-~~ *c. It is characteristic of the employment and was caused by conditions peculiar to such employment.*