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# *Heart Attack as Compensable Injury*

*Marvin D. Silver**

THE ORIGINAL INTENTION of the author was to propose the idea that a heart attack might be compensable as an occupational disease. However, after extensive research and deliberation, it appears evident that the universally accepted construction and interpretation of the term "occupational disease" is invulnerable to the inclusion therein of the heart attack incident.

A clear and concise definition of the term "occupational disease," presenting the requisite elements thereof, is quoted from the syllabus of *Marie v. Standard Steel Works Corp.*,[1] and may, for our purposes, readily conclude any further consideration of the cardiac disability as a compensable occupational disease.

> The term "occupational disease" is regarded as being employed in the compensation act in its ordinary and customary sense, that is, referring to a disease which is the natural incident or result of particular employment and is peculiar to it, usually developing gradually from the effects of long continued work at the employment, and serving, because of its known relation to the employment, to attach to the employment a risk or hazard which distinguishes it from the ordinary run of occupations and is in excess of that attending employments in general.

The continued high death rate due to heart attacks alone is of notable concern to the public in general and should be of topical concern to lawyers, in view of the claims arising therefrom. In 1950, in Cleveland, Ohio, 3632 deaths due to heart attacks were reported, of a total 10,020 deaths, a percentage of approximately 36.[2] In 1960, that city reported 3900 deaths due to heart attacks, of a total 11,061 deaths—again approximately 36 per cent.[3]

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1 319 S. W. 2d 871, syl. par. 5 (Mo., 1959). For other judicial constructions and definitions of "Occupational Disease," see 29 Words and Phrases.

2 Cleveland Div. of Health, Bureau of Vital Statistics, Annual Report, 1950.

3 Id., 1960. These reports annually list heart attacks as the number one cause of the ten main causes of death.

In order to facilitate the reader's understanding of certain medical terms used throughout this study, the following definitions are presented.[4]

*myocardial*: relating to the myocardium, or heart muscle[4a]

*infarction*: necrotic changes (pathologic death of cells) resulting from obstruction of an end artery[4b]

*thrombus*: a clot more or less completely occluding a blood vessel or forming in one of the cavities of the heart[4c]

*coronary thrombosis*: coronary occlusion by thrombus formation . . . usually leading to myocardial infarction[4d]

*arteriosclerosis*: arterial sclerosis; hardening of the arteries; . . .

a. *obliterans* (type): producing narrowing and occlusion of the arterial lumen (space in vessel) [4e]

## Usual Strain Doctrine

One of the principal questions in heart attack cases is whether the strain of an employee's normal duties will support a compensation award when he suffers a cardiac disability following the performance of such duties. The controlling proposition in the majority of American courts allows compensation though the cardiac involvement followed performance of the employee's regular duties.

The New Jersey court in *Ciuba v. Irvington Varnish & Insulator Co.*, granted compensation to the claimant for an acute myocardial infarction suffered in the performance of an "intermittent" duty at work. In answer to whether recovery was allowed on the basis that the intermittent work constituted "unusual strain" causing the "accident," the court explained that:

> When heart ravaged by disease succumbs to exertion arising from doing of employer's work, though it be but a normal incident of service, in no sense extraordinary, there is an "accident" within the meaning of the (N. J.) Workmen's Compensation Act.[5]

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[4] Stedman's Medical Dictionary, Unabridged Lawyer's Edition (1961).

[4a] Id. at p. 992.

[4b] Id. at p. 766.

[4c] Id. at p. 1533

[4d] Id. at p. 1533

[4e] Id. at p. 152.

[5] 27 N. J. 127, 141 A. 2d 761, (1958).

The opinion of the court, delivered by Judge Heher, clearly explained the intended construction of the term "accidental injury" in the New Jersey Act,[6] citing the controlling English cases interpreting this identical clause in the English Act,[7] which antedated the New Jersey statute. The learned Judge reasonably presumed that the New Jersey law-making body had in view the construction theretofore given this clause by the English courts.[8]

*McLain v. Woodbury Board of Education*[9] involved a claim for a myocardial infarction suffered by a school superintendent during a PTA meeting for school integration planning. The court confirmed the rule that compensatory injury may result from nervous and emotional strain as well as from physical stress.

Similarly, where an employee in Mississippi suffered a stroke in the performance of clerical and executive duties, compensation was allowed.[10] The court determined that when mental and nervous strain of work is a factor contributing to disability, compensation is recoverable, even though no "immediate, unusual, or specific" stress or strain at or prior to the injury can be shown.

In Tennessee it is well established that ordinary and usual exertion at work resulting in injuries is compensable.[11]

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[6] R. S. 34:15-7, N. J. S. A. (1959).

[7] The National Insurance (Industrial Injuries) Act, 1946, 16 Halsbury's Statutes of England 797.

[8] Partridge Jones & John Paton, Ltd. v. James, A. C. 501 (1933), determined that the decedent was engaged in doing his ordinary work in a diseased heart condition, that the work and the disease together contributed to his death and that this constituted an "accident" which arose out of his employment. Clover, Clayton & Co., Ltd. v. Hughes, A. C. 242 (1910); McArdle v. Gwansea Harbour Trust, 113 L. T. 677, 8 B. W. C. C. 489 (Ct. App., 1915); Stewart v. Wilsons & Clyde Coal Co., Ltd., 5 F. 120 (Ct. Sess., 1902).

[9] 30 N. J. 567, 154 A. 2d 569 (1959). See also, Coleman v. Andrew Jergens Co., 65 N. J. Super. 592, 168 A. 2d 265 (1961), where a coronary infarction suffered by a hypertensive female office worker was held to be compensable.

[10] Insurance Dept. of Mississippi v. Dinsmore, 233 Miss. 569, 102 So. 2d 691 (1958). Accord, Shannon v. City of Hazlehurst, 237 Miss. 828, 116 So. 2d 546 (1959); Meridian Mattress Factory, Inc. v. Morris, 239 Miss. 792, 125 So. 2d 533 (1960).

[11] Patterson Transfer Co. v. Lewis, 195 Tenn. 474, 260 S. W. 2d 182 (1953); Nashville Pure Milk Co. v. Rychen, 204 Tenn. 575, 322 S. W. 2d 432 (1958); Aetna Casualty & Surety Co. v. Johnson, 278 F. 2d 200 (6 Cir., Tenn., 1960). That the injury must be work-connected, see Jakes v. Union Carbide Nuclear Co., 206 Tenn. 466, 334 S. W. 2d 720 (1960), where compensation was denied, the employee having died upon arrival "to" work.

## Unusual Strain Doctrine

The basis of this doctrine is that it is necessary to overcome the inference that a heart ailment is due to "natural causes," and that, to overcome this inference, it is incumbent upon the claimant to produce evidence of an unusual strain or exertion, event or happening incidental to but beyond the mere employment itself, to constitute satisfactory proof of an "accident" within the meaning of the compensation acts.

Clearly established among the leading proponents of this doctrine is the state of Ohio, as reaffirmed by the court in *Dripps v. Industrial Commission,* wherein it was declared,

> The fact that a workman is injured by exerting more effort or being subjected to a greater strain than is customary in the performance of his work is not in and of itself sufficient to entitle such workman to participate in the State Insurance Fund; and before such participation may be had it must appear that such increased effort or strain was occasioned by some sudden or unusual event.[12]

Construing the Ohio Workmen's Compensation Act, the Ohio courts have denied compensation where the claimant's proof failed to show that an "external accidental injury" caused the heart attack. However, the enactment by the Ohio Legislature in 1959 of an important amendment (to date no heart attack cases are reported as having applied this amendment) should provide substantial momentum to the claimant's contention that the heart attack incident is itself an accidental injury in "character and result" [13] and thereby compensable.

During the school term in 1958, 54 year old William G. Johnston, Dean of the University of Denver Law School, died of a heart attack. In an unreported decision, District Judge Don D. Bowman reversed a decision of the Colorado Industrial Commission denying a claim for $11,466 for the family of the deceased Dean, who, according to the determination of the court, "worked himself to death." [14] However, since the Colorado court in two

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[12] 165 Ohio St. 407, 135 N. E. 2d 873, syl. par. 2 (1956). Accord, Swift & Co. v. Wreede, 110 Ohio App. 252, 168 N. E. 2d 757 (1959); Barrett Div., Allied Chem. and Dye Corp. v. Owens, 110 Ohio App. 316, 169 N. E. 2d 453 (1960).

[13] Ohio Revised Code, sec. 4123.01(C) (amend., 1959), provides, " 'Injury' includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment." For Ohio decisions relating to injury and pre-existing heart condition, see infra.

[14] Johnston v. Industrial Commission (unreported), New York Times, Aug. 12, 1961, p. 21, col. 5.

later decisions[15] clearly allied that state with the "unusual strain" rule, we may reasonably assume that Judge Bowman meant that the Dean "overworked" himself to death.

In Pennsylvania an employee who arrived late to work became involved in a heated argument with his foreman and after a few minutes on the job, the employee fell dead of a heart attack. The court refused to allow compensation where no evidence of "physical" force, violence or strain could be shown from the consequence of either external or internal exertion.[16] Contrariwise, the Texas court in *Aetna Insurance Co. v. Hart,* determined that the customer's smart-aleck expressions of dissatisfaction "might well" have been the precipitating factor of the stroke suffered by the claimant while she attended the customer in the dry-cleaning establishment.[17]

### New York's "Exceptional Strain" Rule

During recent years the New York courts have applied a doctrine in heart attack cases which amounts to a sophisticated version of the "unusual strain" rule. One of the more recent decisions[18] involved a 74 year old handyman employed upon a country estate who suffered an acute myocardial infarction near the termination of a number of strenuous chores. The court accepted from a maze of conflicting medical testimony, the detailed explanation of the claimant's expert, wherein he concluded that the infarction was caused by the work activities on the day in question and was not due to a culmination of the underlying, insidiously progressive arteriosclerotic condition in and of itself.

Dispensing with the appellant's contention that the strain was not "unusual" compared to that which was normally present in the claimant's work, the court cited *Schechter v. State Insurance*

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[15] Jones v. Industrial Commission, 365 P. 2d 689 (Colo., 1961). The court, denying compensation to the widow of a 70 year old carpenter who died on the job, declared that the claimant's evidence failed to support a finding that the decedent was performing other than the ordinary work of his trade and that the injury resulted from an accidental strain or accidental "overexertion." Huff v. Aetna Insurance Co., 360 P. 2d 667 (Colo., 1961), held that changing a truck tire in the course of employment is a normal part of the driver's duties and a heart attack suffered in the performance thereof is not compensable.

[16] Hoffman v. Rhoades Constr. Co., 113 Pa. Super. 55, 172 Atl. 33 (1934). Accord, Baur v. Mesta Machine Co., 195 Pa. Super. 22, 168 A. 2d 591 (1961).

[17] 315 S. W. 2d 169 (Tex. Civ. App., 1958).

[18] Sczesniak v. Whitney, 211 N. Y. S. 2d 581, 12 A. D. 2d 366 (1961).

*Fund,*[19] wherein it was declared that ". . . the claimant may be subjected to unusual or excessive strain in the course of his employment despite the fact that the work performed by him which precipitates the heart attack is one of the same general type as that in which he is regularly involved," and concluded that the phrase ". . . 'unusual or excessive strain' . . . is not so limited in its meaning as to include only work of an entirely different character from that customarily done; . . . so long as the conditions of performing the work are such that an exceptional strain is imposed on the worker so great that his heart is affected and damaged thereby, the requirement of unusual or excessive strain is satisfied." [20]

In *Klimas v. Trans Caribbean Airways, Inc.,*[21] compensation was upheld to the widow of an employee who, after receiving a scolding from his employer, became worried and upset, suffered a heart attack and died. The court determined that undue anxiety, strain and mental stress from work are frequently more devastating than a mere physical injury.

**Injury and Pre-existing Heart Condition**

Where an injury combines with a pre-existing heart condition, resulting in disability or death, the previous physical condition is, by the weight of authority, considered unimportant, and compensation may be allowed even though the heart incident occurs during the normal duties of employment.

In *Lakatos v. Industrial Commission,*[22] an Ohio Court of Appeals denied compensation for a heart attack suffered by an assembly line worker who had a pre-existing heart disease. The court determined that the work was not different in kind or in exertion from the regular, ordinary work performed by the workman and those engaged in like occupations.

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[19] 6 N. Y. 2d 506, 160 N. E. 2d 901 (1959). Here, the claimant's workload as trial counsel was increased by between 30 to 40% of what it normally was, and the court determined that the coronary occlusion suffered by the claimant was compensable.

[20] Id. at p. 510.

[21] 10 N. Y. 2d 209, 176 N. E. 2d 714 (1961). The court in Wagner v. City Products Corp., 199 N. Y. S. 2d 807, 11 A. D. 2d 551 (1960), awarded compensation on the basis of substantial medical evidence that there was causal connection between the coronary occlusion which occurred while the claimant was lifting two 50 pound bags of ice at once, notwithstanding the work was no more strenuous than work which the claimant normally performed; the effort was greater than the ordinary wear and tear of life and was hard physical work.

[22] 94 Ohio App. 486, 116 N. E. 2d 742 (1952).

An important Ohio decision was later handed down in *Williams v. Industrial Commission.*[23] The court, refuting the defendant's argument that it was essential to the claimant's case that the employee's death did not result from the "usual" course of his employment, nonetheless determined that there was substantial evidence that his death resulted from an internal injury caused by "over exertion" in moving the heavy rolls without assistance for an "unusual" distance. However, the court concluded that in the final analysis, the fact that the injury may occur while the employee is engaged in his "usual" labor is immaterial, where, upon a pre-existing diseased condition there is an "internal injury" which is received "in the course of employment" and which directly "arises out of the employment."

However, certain limitations are imposed in some of the "unusual strain" rule states, as in *Prejean v. Bituminous Coal Cas. Corp.,*[24] compensation was denied for a coronary occlusion suffered by a police officer during normal patrol in his car. The court agreed with the claimant's contention that it is not necessary that the attack be the result of "unusual" physical effort, if the diseased organ gives way while the claimant is performing his usual "heavy" duties.

The New York courts apply their "exceptional Strain" rule to this area and have held that it is immaterial that the exertion is part of the claimant's normal work if the strain involved is "more than the ordinary wear and tear of life." [25]

### Causal Connection—The Main Problem

It is firmly established among the states that it is incumbent upon the claimant to prove, by a preponderance of the probabilities, a causal connection between the employment, or the exertion occasioned by the employment, and the resulting injury or death. In heart attack cases, the difficulty of proving causation is not merely pronounced by the various state constructions of the terms "accidental injury," "usual strain," "unusual strain,"

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[23] 95 Ohio App. 275, 119 N. E. 2d 126 (1953).

[24] 125 So. 2d 221 (La. App., 1960). Accord, Finn v. Delta Drilling Co., 121 So. 2d 340 (La. App. 1960), where "heavy" work precipitated or accelerated a predisposition or disease into becoming a present disability.

[25] Stefaniak v. Chudy Paper Co., 206 N. Y. S. 2d 704, 12 A. D. 2d 533 (1960). Accord, Clifford-Jacobs Forging Co. v. Industrial Commission, 19 Ill. 2d 236, 166 N. E. 2d 582 (1960); MacDonald's Case, 173 N. E. 2d 925 (Mass., 1961).

etcetera, but is painfully compounded by the vague and conflicting expert medical testimony presented in these cases.

*Rorabaugh v. General Mills, Inc.*[26] involved a claim founded upon the death of an employee who suffered a coronary occlusion caused by a thrombosis ten minutes after completing strenuous labor. The court reiterated its long acceptance of the "usual strain" doctrine but in the light (or perhaps 'shade') of conflicting medical authority, allowed the non-causal relationship testimony to tip the scale for the employer, where such testimony did not "feel" that what the decedent was doing "physically" actually precipitated the appearance of the complication of the thrombosis. Without any medical certainty that the physical exertion caused the arteriosclerosis or what actually causes a thrombosis to form, the court was constrained to allow compensation.

In *Harper v. Henry J. Kaiser Constr. Co.*,[27] compensation was denied, where no causal connection was held to have been established between the heart attack suffered by the claimant and the "type" of work he was doing at the time. The court emphasized its adherence to the "usual strain" concept but explained that had the claimant been engaged in some "strenuous" work, whether in the normal course of employment or otherwise, it would have been a circumstance to show "causal-connection."

A particularly interesting case in this area concerned a laborer who suffered a piece of metal to be lodged in his ear while cutting scrap. Later the same year, after an operation, considerable treatment and loss of work, he experienced a coronary thrombosis, which he claimed was caused by his regular employment, by the stress on his nervous system resulting from the injury to his ear, and by the anesthetic administered in connection with the ear operation. The court questioned the claimant's argument, to the extent that it would have the courts hold that anytime an employee, in the course of his regular employment, suffered a heart attack, his claim should be compensable. "Perhaps," replied Justice Ward, "due to the conflict and uncertainties in medical theories relative to the cause of heart attacks, this contention . . . merits some consideration."[28] How-

[26] 187 Kan. 363, 356 P. 2d 796 (1960).

[27] 344 S. W. 2d 856 (Ark., 1961).

[28] Auto Salvage Co. v. Rogers, 342 S. W. 2d 85 at p. 89 (Ark., 1961). Accord, C. P. Chaney Sawmill, Inc. v. Robertson, 348 S. W. 2d 703 (Ark., 1961);

(Continued on next page)

ever, compensation was denied for lack of causal connection, the court leaving unprovided any implementation of the claimant's proposal.

In *Meridian Mattress Factory, Inc. v. Morris,*[29] a 57 year old bookkeeper suffered a stroke while at work and died of a coronary thrombosis a week later. One of three medical experts testified unequivocally that in his opinion there was a causal connection between the work of the deceased and the onset of the heart attack. The other two experts would have prescribed for the deceased that he "rest rather than work," in view of the diseased state of his arteries. The court, however, determined that the evidence was substantial to support the finding that the work of the employee "aggravated, accelerated and precipitated" the onset of the coronary thrombosis which resulted in his death, and that the employer had not met the burden of showing that there was no causal connection between the work of the deceased and the onset of the heart attack.

*Dwyer v. Ford Motor Co.,*[30] concerned the case of an employee who, having suffered from severe coronary insufficiency, experienced an acute coronary occlusion during the course of his routine duties of employment and died later that day. The New Jersey court confirmed the principle established in the *Ciuba* case, supra, that if the exertions attending the work performed by the decedent contributed to his death, compensation

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(Continued from preceding page)

Daniels v. Industrial Accident Commission, 148 Cal. App. 2d 500, 306 P. 2d 905 (1957); Alspaugh v. Mountain States Mutual Cas. Co., 343 P. 2d 697 (N. M., 1959), wherein compensation was denied for death occurring three months after a heart attack suffered during employment, on the grounds that the "proximity in the time of death to the accident" was insufficient to justify recovery. Where compensation was allowed for a stroke occurring during sleep, see Joy v. Florence Pipe Foundry Co., 64 N. J. Super. 13, 165 A. 2d 191 (1960).

[29] Meridian Mattress Factory, Inc. v. Morris, supra, n. 10. Accord, Shannon v. City of Hazlehurst, supra, n. 10, wherein compensation was allowed for the death of a garbage collector found at a place where his duties required him to be; the employer failing to rebut the presumption that the death was work-connected, by a showing that the decedent was not engaged in his master's business and that the accident did not arise out of and in the course of employment.

[30] 66 N. J. Super. 469, 169 A. 2d 499 (1961). Accord, Tritschler v. Merck & Co., 66 N. J. Super. 116, 168 A. 2d 666 (1961), wherein medical testimony established that the decedent's coronary occlusion occurred purely in the natural course of the underlying disease while the decedent was working at his desk, and the fact that he collapsed and died after "walking to the company infirmary" did not bring the heart attack within the compensable sphere of "accidents arising out of and in the course of employment."

should be allowed, as it is not necessary that an "unusual" strain be proved. However, in denying compensation, the court, fearing to equate the word "accident" with the word "employment," concluded that death from heart disease is presumably the result of natural physiological causes and that the burden is upon the claimant to establish by a "preponderance of the probabilities" that the employment was "at least" a contributing cause of the death; but that the facts in the case permitted of "no inference" that but for the work performed by the decedent he would not have died when and as he did. The court accepted as the sole cause of the decedent's death the physiological damage resulting from the severe heart attack he suffered "at home" two days prior to the fatal occlusion, and which attack continued without interruption or abatement.

As the golfing season approaches, notice might be made of *Messersmith's Case*,[31] wherein the court considered that a heart attack while playing golf, if in the course of and arising out of employment, may be compensable.

## Conclusion

It is apparent from the cases presented by this study that the compensability of a heart incident ultimately depends upon the expert medical testimony relating to the issue of causation and the effect given by the court thereto.

Speaking at the Annual Meeting, California Heart Association, Dr. Douglas A. Campbell, Referee, California Industrial Commission, noted that,

> It is an unfortunate fact that as soon as litigation enters the picture, scientific procedures and attitudes become diluted by partisan enthusiasm, with the result that opinions as to the effect of an accused event upon a subsequent heart episode are produced more for their economic value than for scientific worth. Until the medical profession has clearer and more universally recognized concepts of cause and effect, it is and will remain difficult to reconcile the results desired by those seeking to rehabilitate industrially the cardiac patient and the fears of industry of an adverse effect upon compensation costs.[32]

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[31] 340 Mass. 117, 163 N. E. 2d 22 (1959).

[32] Campbell, Heart Disease and Compensability Under Workmen's Compensation, J. Occup. Med. 71-74 (Feb. 61).

Dr. Campbell quoted from an article prepared for a similar meeting before the Washington State Heart Association, with which I would like to summarize.

> *It is* probably true that, viewed from the physician's standpoint, courts have reached inconsistent conclusions on similar or even identical factual patterns. But a careful case by case review of . . . decision (sic) will reveal that any seeming inconsistencies have resulted not so much from inconsistent application of rules of law as from variant medical opinions expressed in various cases. To one who understands the judicial process, inconsistent results may be expected where ostensibly qualified medical experts express contrary opinions regarding factual situations. . . .[33]

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[33] Id. at p. 73, from Wilbur, When is a Heart Case Compensable?