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THE BASIS FOR THE GRANTING and denial of compensation for heart attacks in the several states runs the gamut from common-sense reasoning to arbitrary adherence to rigid construction of the compensation statutes. To add to the difficulty as to the compensability of a heart attack injury, the courts must first resolve the question as to whether or not the injury or death was incurred in the course of employment. This issue in and of itself ofttimes poses questions that are sufficient to tax even the most adept legal minds.

In cases involving heart attacks the courts are additionally burdened by having to decide whether or not the heart attack, which did occur in the course of employment, was job-connected as opposed to a natural occurrence independent of the employment.[1]

## Theories Regarding Heart Strain

The rationale used by the various courts in deciding heart attack cases is founded on different theories pertaining to the absence or presence of any strain, usual or unusual.

Some courts hold that usual strain, inherent in the job, is strain sufficient to award compensation. Other courts hold that only where the exertion is unusual will compensation be granted. Still other courts employ the unexpected-result theory and the accidental-result theory.

The more liberal courts have even allowed awards where only mental stress and strain are involved; actual physical strain per se being non-existent.

To further extend the liberal attitude, awards have been granted where fright alone induced the heart attack; the court holding that the fright was germane to the heart attack.

Pre-existing heart conditions of the claimants in some cases have been held to vitiate the validity of the claim. In contradistinction, awards were allowed in cases where pre-existing conditions were involved. These conditions were considered only

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1 Oleck, Heart Attacks Are Problems for Courts, Cleveland Plain Dealer (Jan. 14, 1962).

relevant and not the controlling factor to be considered.

The more conservative courts arrive at their decisions primarily by strict construction of the state's statute and diligent devotion to the doctrine: *Stare Decisis Et Non Quieta Movere.*[2]

In *Masse v. James H. Robinson,*[3] Chief Judge Laughran in his opinion made this often quoted statement:

> Whether a particular event was an industrial accident is to be determined not by any legal definition, but by the common-sense viewpoint of the average man.

It is the application of the common-sense viewpoint versus the application of the forementioned theories that has resulted in the wide-spread divergences regarding decisions in heart attack cases.

## A Comparison Of Decisions

The following illustrations are in reference to heart attacks resulting, or claimed to have resulted from some unusual physical exertion, or simply "some" work-connected physical activity.

In a very recent Indiana case[4] where a decision in favor of the claimant resulted, the decedent was employed as a hod carrier. On the day prior to his death he had been lifting two hundred pound coping stones. The next day decedent lifted only one of these stones, and thereafter complained of a pain in his chest. He walked away and was found a short while later in a semi-conscious state and died five minutes later.

Medical testimony indicated that decedent had died of an acute coronary insufficiency, caused by the failure of a diseased coronary vessel to supply oxygenated blood to the heart muscle. A "mechanism death" results from this oxygen deficiency. This mechanism death occurs when the unoxygenated heart muscle "dies" either from standstill or from an abnormal rhythm.

The court found that the heart attack was caused by decedent's unusual exertion on the job, the day prior to, and the day of decedent's death. The fact that the decedent had coronary sclerosis did not influence the court at all.

An earlier Indiana case[5] used an interesting formula in finding for the claimant. That court held that the increase of the work

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[2] Black, Law Dictionary, 1578 (4th ed., 1951).

[3] Masse v. Robinson, 301 N. Y. 34, 92 N. E. 2d 56 (1950).

[4] Drompp v. East, 178 N. E. 2d 217 (Ind. 1961).

[5] U. S. Steel Corp. v. Dykes, 238 Ind. 599, 154 N. E. 2d 111 (1958).

load as opposed to the heart's inability to meet the increased demands, worked in favor of the claimant because the cause is that which had changed and not that which remained constant.

This is a marvelous example of the common-sense viewpoint in action.

However, a good argument for the "increase" versus "inability" theory is presented by medical authorities. They state that the normal heart has enough reserve energy to meet the increased demand made upon it by unusual exertion, but that a diseased heart loses this reserve.[6]

In answer to this argument, courts have on many occasions held that a pre-existing disease or infirmity does not disqualify a claim if the pre-existing condition is aggravated or accelerated by, or in some way combined in employment, and results in death or disability.

Where the claimant had a continuing hypertensive cardiovascular condition, and while working suffered a blackout, which resulted in severe damage to claimant's vascular and cardiac systems, a Mississippi court said, in awarding compensation, that the pre-existing condition worked no detrimental effect as to the creditability of the claim.[7]

A Massachusetts court[8] allowed the claim, where it had been argued that the disability occurred as a result of decedent's labor as a freight car loader; said labor accelerating a pre-existing heart condition.

A 63 year old claimant in South Carolina was allowed a claim for total disability incurred as a result of a heart attack. The claimant was a state game warden, and at times it became necessary that he perform certain acts which required a great amount of exertion. He had been treated eight years prior to the present attack, for a coronary thrombosis. That condition resulted in a 13 month period of total disability. That South Carolina court[9] said it had been well settled in a prior case,[10] that where a latent or quiescent weakened, but not disabling,

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[6] McBride, Disability Evaluation, Principles of Treatment of Compensable Injuries (5th ed. 1953).

[7] W. G. Avery Body Co. v. Hall, 224 Miss. 51, 79 So. 2d 453 (1955).

[8] McDonald's Case, 173 N. E. 2d 925 (Mass. 1961).

[9] Kearse v. So. Carolina Wildlife Resource Dept., 236 So. Car. 540, 115 S. E. 2d 183 (1960).

[10] Gorden v. E. I. duPont de Nemours and Co., 228 So. Car. 67, 88 S. E. 2d 844 (1955).

condition resulting from disease is by accidental injury in the course and scope of employment, aggravated, accelerated or activated, with resulting disability, such disability is compensable.

The existence of a pre-existing condition does not seem to influence many of the courts. If this situation develops to any appreciable extent, it could result, in those states, in workmen's compensation taking on the mantle of life and health insurance.[11]

Contrary to the last four cases cited, many courts look with disfavor on claims where a pre-existing condition is involved.

A 1960 Ohio case[12] concerned a claimant who suffered a heart attack while trying to keep a wheelbarrow from tipping while he was attempting to unload it. The claimant had a pre-existing condition, and said that the strain resulting from this over-exertion caused acute dilation of the heart, and damage to the heart muscle.

The court held that the injury sustained was not accidental in nature and not a compensable injury within the meaning of the Ohio Workmen's Compensation Act, which in part recites that:

> Injury includes any injury whether caused by external accidental means or accidental in character received in the course of and arising out of, the injured employee's employment.[13]

That court, in denying the claim, also implied that the claimant was guilty of contributory negligence. The court said that one operating a wheelbarrow must exercise care to prevent it from tipping over.

Throughout the United States, (citations too numerous to mention) both the liberal and conservative courts, as well as the compensation acts of the several states, state that a petitioner's contributory negligence will not preclude recovery.

In the *Stewart* case,[14] the Ohio court referred to another recent Ohio decision,[15] where it held that merely exerting more force than was ordinarily required did not entitle the claimant to recover under workmen's compensation.

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[11] Goldberg v. 954 Marcy Corp., 276 N. Y. 313, 12 N. E. 2d 311 (1938).

[12] Stewart v. Yount, 112 Ohio App. 433, 176 N. E. 2d 322 (1960).

[13] Ohio Rev. Code, Sec. 4123.01(C).

[14] Stewart v. Yount, *supra*, note 12.

[15] Carbone v. General Fireproofing Co., 169 Ohio St. 258, 159 N. E. 2d 227 (1959).

The Ohio court, in *Dripps v. Industrial Commission*,[16] (heart attack not involved) expanded the term "injury" to comprehend a physical or traumatic damage or harm accidental in character and as a result of external and accidental means in the sense of being a sudden mishap, occurring by chance, unexpectedly or not, in the usual course of events, at a particular time and place.

This refinement of definition does not appear to be aimed at giving greater latitude to the areas that encompass compensable injuries.

Kentucky denied compensation to an employee who suffered a heart attack after he had climbed a forty foot pole to replace a light bulb.[17] In Arkansas a claimant was denied an award where a heart attack ensued after the usual lifting of heavy materials.[18] After a workman's thirty minute climb up a one hundred twenty five foot ladder, followed by a heart attack, an Idaho court, in denying compensation, said that no accident had occurred.[19] An employee who suffered a coronary occlusion after holding a one hundred fifty to two hundred pound cornpicker had his claim overruled by a Missouri court.[20] In denying a claim, a New Jersey court said that the decedent, whose job was the lifting of one hundred pound sacks of chloride, had not been subjected to greater strain than usual and that there was no causal relationship between the work and the heart attack.[21] Similarly an Ohio appellate decision said that the injury did not result from employment where the claimant suffered a heart attack after straining himself in trying to prevent a five hundred pound barrel from falling on him, when he had slipped on an oily floor.[22] The *Heath* decision[23] certainly appears to run contrary to the definitions laid out by the Ohio Revised Code.[24]

To further point out the discrepancies as to the decisions of various courts, note the following two cases. In both instances decedent suffered a heart attack after cranking an automobile.

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[16] Dripps v. Industrial Comm., 165 Ohio St. 407, 135 N. E. 2d 873, 60 Ohio Op. 55 (1956).

[17] Salmon v. Armco Steel Corp., 275 S. W. 2d 590 (Ky. App. 1955).

[18] Farmer v. L. H. Knight, 220 Ark. 333, 248 S. W. 2d 111 (1952).

[19] Dunn v. Morrison-Knudsen Co., 74 Ida. 210, 260 P. 2d 398 (1953).

[20] Crow v. Missouri Implement Co., 301 S. W. 2d 423 (Mo. 1957).

[21] Lowe v. Borough of Union Beach, 56 N. J. S. 93, 151 A. 2d 568 (1959).

[22] Heath v. Standard Oil Co., 112 N. E. 2d 405 (Ohio App. 1953).

[23] *Ibid.*

[24] Ohio Rev. Code, *supra*, note 13.

A New York Court of Appeals unanimously affirmed an award,[25] while a Nebraska court, in denying the claim, held that for the claim to be compensable the exertion causing the heart attack had to be greater than usual.[26]

New York, one of the most liberal states, has ruled that, since the *Massa* case,[27] the "usual work" test has lost most of, if not all of its former significance, and the fact of "unusual work" is no longer decisive in cases where employees sustain heart attacks.[28] In cases where heart attacks followed the mowing of a lawn,[29] climbing of several flights of stairs,[30] or lifting of a batter of dough by a baker,[31] the New York courts have allowed the claims.

Some other states have granted compensation for heart attacks where there did not appear to be any physical exertion at all: as in the case of the lifting of a few ounces of compositor's materials,[32] the sweeping of a floor,[33] or where a fire lieutenant had an attack while directing his men at a fire,[34] or the driving of a truck and moving of cigar boxes.[35]

A whole series of New York cases in 1949 held that "catastrophe" can be spelled out by showing nothing more than the slightest exertive excess in relation to work done in the past.[36]

In a Montana case[37] the court held that a heart attack sustained by a truck driver, where there was no strain or exertion, and caused "solely" by a previously diseased condition, was a fortuitous event, (a term in Montana's statute synonymous with "industrial accident") and within the purview of the statute.

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25 Green v. Geiger, 280 N. Y. 609, 20 N. E. 2d 559 (1939).

26 Rose v. City of Fairmont, 140 Neb. 550, 300 N. W. 574 (1941).

27 Masse v. Robinson, *supra*, note 3.

28 N. Y. Consolidated Laws Service, Workmen's Compensation Law, Ch. 67, Sec. 2, Item 380.1.

29 Houghton v. Robinson, 286 A. D. 904, 141 N. Y. S. 2d 890 (1955).

30 Cunningham v. N. Y. City Housing Admin., 5 A. D. 2d 1032, 173 N. Y. S. 2d 168 (1958).

31 Eizenman v. Newman, 275 A. D. 736, 87 N. Y. S. 2d 154 (1949).

32 Atlantic Newspapers Inc. v. Clements, 88 Ga. 648, 76 S. E. 2d 830 (1953).

33 Harbor Marine Contracting Co. v. Lowe, 61 F. Supp. 964 (1945), affd. 152 F. 2d 845 (1946).

34 Town of Cicero v. Industrial Comm., 404 Ill. 487, 89 N. E. 2d 354 (1949).

35 Cooper v. Brunswick Cigar Co., 273 A. D. 1038, 83 N. E. 2d 142, 79 N. Y. S. 2d 867 (1948).

36 1 Larson, Workmen's Compensation Law, Sec. 38.64(a), p. 551 (1952).

37 Rathburn v. Taber Tank Lines, 129 Mont. 121, 283 P. 2d 966 (1955).

Justice Angstman, in that decision, gave an excellent discourse on heart failure as an industrial accident, and pointed out that the Montana statute defines injury, and that that definition is broadly construed so that an unexpected injury received in the "ordinary" performance of a duty in the usual manner is an injury by accident without the showing of anything fortuitous.

To further illustrate the latitude extended in compensation cases and the liberality of some courts in allowing of awards; there is the case of a Tennessee claimant who was warned by his physician to avoid physical excesses, and in refusing to follow his doctor's advice suffered a heart attack, was granted compensation.[38]

An award has been allowed where an employer had knowledge of the employee's existing heart condition, and still hired him. The court said that the employer's appeal could not be entertained because the employer assumed the risk as to any work injury the employee might sustain in connection with the weakness.[39]

From the foregoing it would seem, according to the decisions of one state compared to another and even the decisions within a given state, that there does not appear to be any clear pattern. The southern states, which do not have as many industrial claims, seem to be more liberal. Those areas which are situated in industrial complexes seem to have opposite views as between themselves (compare Ohio and New York).

It would appear that a "compensation maze" has been constructed, in which a claimant with the aid of the court can find his way out, or be left alone to run into the brick walls of appeal.

### Emotional Trauma and Heart Attacks

The cardiac muscle has an inherent power of rhythmic contraction, which in man is modified by the autonomic nervous system.[40] Every reader has probably heard of someone dropping dead from heart failure upon the receipt of bad news. Sometimes good news can have the same effect. Every day the heart of each of us pounds in anger or fear, or in an anxious moment. The rhythmatic changes are produced by emotional strain, which though never actually seen, can kill as swiftly as the strain in-

[38] Coleman v. Coker, 204 Tenn. 310, 321 S. W. 2d 540 (1959).

[39] Swift and Co. v. Howard, 186 Tenn. 584, 212 S. W. 2d 388 (1948).

[40] Langley and Cheraskin, The Physiology of Man, 218 (1st ed. 1954).

duced by lifting heavy objects, or the strain placed on a heart by the lack of oxygen due to violent exercise. Death can result from excitement attendant upon an emotional crisis, as well as from an external physical exertion.

"Emotional" heart attacks, sustained in the course of, or arising out of, employment, involve an area of law where the question arises whether or not these are injuries that come within the scope of workmen's compensation.

In *Klimas v. Trans-Caribbean Airways Inc.,*[41] (a very recent New York decision) the decedent, age 33, with no history of heart disease, died as a result of a myocardial infarction (coronary occlusion or closure of coronary vessels caused by spasm). The decedent was the director of maintenance and engineering for Trans-Caribbean. One of the defendant's planes was grounded by the C. A. A. for a structural defect. The president of Trans-Caribbean said that the defect was allowed to develop because of claimant's negligence. The president told claimant to get the plane in the air soon or there would be some job changes. The repair bill on the plane was $266,000.00. Decedent was shocked at the amount of the bill and became emotionally upset. Decedent worked steadily for three days at repairer's office, checking the bill and looking for a reduction. On the morning of the third day decedent talked long distance with his employer for forty minutes. Shortly thereafter decedent had a fatal heart attack.

The Workmen's Compensation Board allowed the claim. The New York Supreme Court reversed the decision,[42] holding that the claim would fail in the absence of a showing of any "physical strain." The matter was appealed and the New York Court of Appeals affirmed the award. That court cited *Furtardo v. American Export Airlines,*[43] where a heart attack claim was allowed with no more than mental strain involved. It also cited cases where apoplexy was brought on by fright,[44] heart attack following the witnessing of a fight,[45] and heart attack following a vigorous examination of a claimant as a witness being examined

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[41] Klimas v. Trans-Caribbean Airways, 10 N. Y. 2d 209, 176 N. E. 2d 714 (1961).

[42] Ibid., A. D., 207 N. Y. 2d 72 (1960).

[43] Furtardo v. American Export Lines, 274 A. D. 954, 83 N. Y. 2d 745 (1948).

[44] Pickerell v. Schumacher, 242 N. Y. 577, 152 N. E. 434 (1926).

[45] Krawczyk v. Jefferson Hotel, 278 A. D. 731, 103 N. Y. S. 2d 40 (1951).

at a trial,[46] in each of which compensation was granted. Larson's work on Workmen's Compensation was also given as an authority.[47] In its rationale the court said that the "common sense viewpoint of the average man," [48] would be in accord with the earlier decision of the Workmen's Compensation Board in awarding compensation.

Justice Desmond, in a strong dissenting opinion, said that with few exceptions, no idiopathic disease had ever been compensable. He cited a New York case[49] which held that heart attacks resulting from mental stress over job worries could not be regarded as an industrial accident. A 1920 case[50] was cited regarding the definition of worry. That case stated that there was a complete disassociation between what caused the decedent to worry and what caused his heart attack. The court said that the decedent sustained no injury arising from external, violent or accidental means.

Other states, though in a minority, have granted compensation for injuries resulting from sudden and severe mental shock during work.

In Texas,[51] compensation was granted to a claimant who was a structural steel worker and suffered a disabling neurosis after watching a fellow worker fall eight stories from a scaffold upon which they were standing. Claimant's physical injury amounted to no more than a bruise and a cable burn. The court held that damage or harm to the physical structure of the body extended to the mind, and therefore the claim was compensable. If compensation will extend to effects of the mind as a result of shock, why should it not in like manner extend to the heart?

The final case to be referred to is one that has a twist, including a job-sustained heart attack resulting in the development of an anxiety condition, followed by suicide.[52] In that 1961 Minnesota case the facts were as follows: July, 1955 de-

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[46] Church v. County of Westchester, 253 A. D. 859, 1 N. Y. S. 2d 581 (1938).

[47] Larson, *supra,* note 36, Vol. 1, Sec. 42.21, p. 616, and 1961 Supp. pp. 217, 221, 223.

[48] Masse v. Robinson, *supra,* note 3.

[49] Lesnik v. National Car-Loading Co., 285 A. D. 649, 140 N. Y. 2d 907 (1955).

[50] O'Connell v. Adirondack Electrical Power Corp., 193 A. D. 582, 185 N. Y. S. 455 (1920).

[51] Bailey v. American General Ins. Co., 154 Tex. 340, 279 S. W. 2d 315 (1955).

[52] Olson v. F. I. Crane Lumber Co., 107 N. W. 2d 223 (Minn. 1961).

cedent suffered a heart attack in the course of employment, developed an anxiety worrying about the heart condition; and May, 1956 decedent was committed to a mental institution as a result of mental depression; and August, 1957 decedent hanged himself.

A claim was made for death benefits. The question the court had to decide was whether the mental illness was coincidental, following the coronary, or whether in fact it was caused by it. The court said that a severe coronary attack could prey on a victim's mind, causing mental illness. Compensation was granted.

This case appears to be another step forward in the utilization of the "common-sense" viewpoint, as illustrated earlier in the article.

The Minnesota court never raised a question regarding the heart attack. It seems that the injury was considered to be compensable, otherwise the nexus between it and the mental derangement could never have been properly made.

While it could be argued that the Minnesota decision was "too" liberal, the liberal courts can likewise rebuke the decisions in other jurisdictions as being "too" conservative. The argument can only be resolved by seeing the trend that will develop in yet untried cases.

## Conclusion

While some states seem to deny compensation for job-related heart attacks entirely, as not being an industrial accident, others grant compensation where over-exertion, or even "any" exertion produced the heart attack. Still more extreme is the allowance of compensation for heart attacks which have allegedly resulted from mental stress and strain.

With due deference to the intelligence and integrity of all the courts, it would appear that some of them must be in error; whether it be the more liberal or the more conservative. True that by their very nature heart attack compensation claims may defy reconciliation, yet one would think that there lies within each of these claims one common thread to which the courts could cling in order to arrive at some standardized solution.

The absence of uniformity may ultimately breed fraud in those states where the heart attack victim's position is made

very difficult, due to the strict interpretation of what is and what is not a compensable injury.

The terms: coronary occlusion, myocardial infarction, coronary thrombosis and ventricular fibrillation, inter alia; mean very little to any but the medical men. To the person afflicted they mean only pain, incapacity and possible death. The doctors try to explain *what* it is, the claimant tries to explain *how* it happened, and the courts try to explain *why* they did or did not grant compensation.