Workmen's Compensation -- Unusual Exertion Test for Heart Cases

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to the voters' choice. With the addition of the kind of picture described above to the mailing, will relevance or flammability weigh heavier in the Board's decision? It is true that a vital legal system demands judicial consideration of many subtleties of human experience, yet the nature of the hidden springs of political conduct in cases like these may strain the capacity of any judicial or quasi-judicial body.

The writer believes that despite the problems this case raises, the Board has sounded a healthy note for national policy. It has set a standard, rough-hewn though it may be.

MARSHALL S. SHAPO

WORKMEN'S COMPENSATION—UNUSUAL EXERTION TEST FOR HEART CASES

The claimant, while engaged in his usual employment activities of lifting, carrying and stacking cases of whiskey on a truck, suffered a coronary occlusion. The deputy commissioner's order, which was affirmed on appeal to the Florida Industrial Commission, granted compensation on the ground that the claimant's injury was causally contributed to by his employment. On certiorari to the Florida Supreme Court, held, reversed: a heart attack suffered by an employee while at his usual work is not a compensable injury under the Florida Workmen's Compensation Law. In heart cases, when the duties incident to the employment precipitate a disabling heart attack, the injury is compensable only if the employee was at the time subject to unusual strain or overexertion not routine to the type of work he was accustomed to performing. Victor Wine & Liquor, Inc. v. Beasley, 141 So.2d 581 (Fla. 1962).

Under the Florida Workmen's Compensation Law, an injury is compensable if it occurs by accident and arises out of and in the course of the employment. As early as 1903, judicial construction was given to the term "accident." The definition provided was "an unlooked-for mis-hap or an untoward event which is not expected or designed." This interpretation of the English Workmen's Compensation Law, upon which the Florida statute is based, has been favorably considered since its rendition in both England and the United States.

The Florida Supreme Court saw fit to further define the term by requiring the injury to follow an unexpected or unusual event. This

3. Id. at 448.
6. McNell v. Thompson, 53 So.2d 868 (Fla. 1951); LeViness v. Mauer, 53 So.2d 113
pronouncement in itself was somewhat surprising considering the court's well reasoned earlier opinion in which it was indicated that there was no requirement of a fortuitous event under the concept of "injury by accident." "Injury by accident" had previously been thought of in its popular and intended sense of simply, accidental injury. However, the court recognized the difficulties involved in requiring a literal showing of an accident such as a slip, fall or misstep and in the famous Bonnie Gray case held the accident requirement to be satisfied if there was an unexpected result even though there was no unexpected cause.

Recognizing the wisdom of the court's construction, the Legislature, then in session, amended the "accident" provision of the Florida Workmen's Compensation Law so as to read "unexpected or unusual event or result ... ."

It has been said that because of the liberal position maintained in requiring only an unusual result, the Workmen's Compensation Law may very easily become a health insurance program. This contention, of course, overlooks the basic fact that before the claimant will be entitled to compensation, he must sustain his burden of proving causal connection between the work in which he was involved and the injury. Therefore, once the unusual event is evident, i.e., the injury, the essential question is whether the work in which the claimant was engaged did in fact, cause or contribute to the injury.

The Workmen's Compensation Law does not prescribe any standard of health for the claimant, which simply means that the employer takes the employee as he finds him. The Florida statute specifically provides

(Fla. 1951); Brooks-Scanlon, Inc. v. Lee, 44 So.2d 650 (Fla. 1950); Meehan v. Crowder, 158 Fla. 361, 28 So.2d 435 (1946); Cleary Bros. Constr. Co. v. Nobles, 156 Fla. 408, 23 So.2d 525 (1945); Travelers Ins. Co. v. Shepard, 155 Fla. 576, 20 So.2d 903 (1945).

7. Duff Hotel Co. v. Ficara, 150 Fla. 442, 7 So.2d 790 (1942).
11. "It is enough, then, if there is an unexpected result, even though there was no unexpected cause, such as a slip, fall or misstep, in order to constitute an 'accident' within the meaning of the Workmen's Compensation Law... ." Id. at 651.
for compensation where "a pre-existing disease is accelerated or aggravated by accident arising out of and in the course of the employment . . ." However, in cases involving the employee’s diseased condition, the Florida Supreme Court has asserted that the claimant must clearly show that the work contributed to the injury, beyond that of merely establishing a logical cause as is the procedure in cases involving other than pre-existing diseases. This extra weight added to the existing burden is to overcome the inference that the injury was caused by the natural progression of the disease. Noting that heart injuries are compensable in Florida, the inference of natural causation in these

17. FLA. STAT. § 440.02(19) (1961).
18. In cases involving external occurrences "where an injury is conclusively shown and logical cause for it is proven as arising out of claimant's employment a presumption arises of causal connection and the burden shifts to the one who seeks to defeat recovery to establish proof that another cause is more logical and consonant with reason." However, "in cases involving diseases or physical defects of an employee as distinguished from external occurrence to an employee such as an automobile accident claimant must prove a causal connection other than by merely showing that it is logical that the injury arose out of claimant's employment . . ." Harris v. Josephs of Greater Miami, Inc., 122 So.2d 561, 562 (Fla. 1960).
20. Heart injuries are of various types and may result from one or more of several recognized conditions. The usual etiology includes the following diseases: 1) congenital; 2) rheumatic; 3) syphilitic; 4) hypertensive and; 5) arteriosclerotic. Of course, traumatic lesions resulting from penetrating or nonpenetrating injuries must also be included as a cause of cardiac disease. The common pathological manifestations vary according to the particular etiology. The following is an indication of the more common manifestations and is by no means intended to be an exhaustive treatment of the subject: 1) congenital—"rupture of a congenital aneurysm of an aortic sinus (congenital developmental weakness of root of the aorta)"; 2) rheumatic—"enlargement of the heart, interference with the normal heart rhythm and rate, failure of the heart muscle with congestion of body tissue, and clot formation of the heart due to blood flow stagnation with periodic breaking off of clots which block important vessels in the lungs, the brain, or other vital organs (thrombus and embolism)"; 3) syphilitic—"deformity of aortic valve (valve between the left ventricular chamber and the aorta or large systemic vessel leading from the heart) and the basic lesion in the blood vessel causes weakening of the vessel wall with aneurysm formation (ballooning)"; 4) hypertensive—"changes in the wall of the small arterioles (small terminal branches of arteries) which produce an increased resistance to peripheral blood flow, resulting in an increase in blood pressure and workload on the heart—failure of the left ventricle is often the terminal event"; 5) arteriosclerotic—"reduction in the flow of blood through the coronary vessel because of a narrowed canal in the artery and a decrease of blood supply carrying oxygen and other nutrients to the heart muscle . . ." Myocardial infarction (death of heart tissue) often results from the coronary occlusion. Mattingly, Pathogenesis of Heart Disease, 192 DEP'T LABOR BULL. 108-119 (1956).
cases becomes particularly acute. This situation reflects the underlying reluctance of courts to allow compensation for injuries involved in heart cases because of the great incidence of heart attacks among the general populace. Of course, accidents of any kind are not the exclusive province of industry and ultimately, the necessary prerequisite to compensation is causal connection.

There is not much contention with the position that exertion will rarely cause heart disease or precipitate an injury of a healthy heart. There is, however, widespread disagreement among medical authorities as to whether exertion alone could aggravate a diseased condition so as to precipitate a heart injury. As previously indicated, however, when speaking of heart injuries, it is necessary to recognize the generic nature of the term. Medical science is cognizant of various cardiac and arterial diseases and can, with some degree of certainty, indicate not only the initial etiology of these conditions but also, disclose many situations which may play an important role in the aggravation or acceleration of the disease so as to precipitate an injury. There is an interesting point to note in this respect. So common is the knowledge that any strenuous activity is dangerous to one afflicted with a serious heart condition, that judicial notice has been taken of the fact.

In the instant case, the court carefully reiterated its position that a literal slip, fall or misstep is not a condition precedent to obtaining workmen’s compensation in any type case, including heart cases. This pronouncement is clearly the unusual result doctrine that was first seen


22. 192 DEP’T LABOR BULL. 86 (1956).
23. Ibid.
25. Supra note 20.
in the Bonnie Gray case\textsuperscript{28} and which is now part of the Workmen's Compensation Statute.\textsuperscript{29} The court also went on to indicate that "an internal failure, such as a strained muscle, ruptured disc, 'snapped' knee-cap, and the like, brought about by exertion in the performance of the regular or usual duties of the employment, may be found to be an injury 'by accident' . . . .\textsuperscript{30} The logical inference would seem to be that if causal connection can be shown between the unusual result and the regular or usual duties of the employment, the injury is compensable without requiring anything unusual as far as preceding events are concerned.\textsuperscript{31} However, notwithstanding this seemingly inevitable conclusion, an exertion unusual to the injured claimant's employment was established as a necessary element of "injury by accident" in heart cases.\textsuperscript{32}

We now have a situation in which the injured claimant is not only required to maintain a heavier burden of proof of causal connection\textsuperscript{33} but also has the previously mitigated criterion of unusual cause imposed upon him. The dissenting opinion, although joining with the majority on rehearing, raised the salient objection to the practice of affording heart cases special treatment\textsuperscript{34} and asserted that if causal connection could be shown, the injury should be compensable.\textsuperscript{35} It has been noted that decisions in heart cases and those in others, such as "breakage" or "internal failure" cases are irreconcilable.\textsuperscript{36} Most courts, including the

\begin{enumerate}
\item \textsuperscript{28} Supra note 10.
\item \textsuperscript{29} Supra note 12.
\item \textsuperscript{30} Victor Wine & Liquor, Inc. v. Beasley, 141 So.2d 581, 588 (Fla. 1962).
\item \textsuperscript{31} Under the category of cases denying compensation for routine exertion injuries, Professor Larson, in his treatise, lists Florida and cites Brooks-Scanlon, Inc. v. Lee, 44 So.2d 650 (Fla. 1950) and Cleary Bros. Constr. Co. v. Nobles, 156 Fla. 406, 23 So.2d 525 (1945).
\item \textsuperscript{32} Victor Wine & Liquor, Inc. v. Beasley, 141 So.2d 581, 588, 589 (Fla. 1962).
\item \textsuperscript{33} Supra note 12.
\item \textsuperscript{34} "When disabling heart attacks are involved and where such heart conditions are precipitated by work-connected exertion affecting a pre-existing non-disabling heart disease, said injuries are compensable only if the employee was at the time subject to unusual strain or over-exertion not routine to the type of work he was accustomed to performing." Victor Wine & Liquor, Inc. v. Beasley, 141 So.2d 581, 588, 589 (Fla. 1962).
\item \textsuperscript{35} Ciuba v. Irvington Varnish & Insulator Co., 27 N.J. 127, 141 A.2d 761 (1958);
\item \textsuperscript{36} 1 Larson, Workmen's Compensation Law § 38.10 (1952).
\end{enumerate}
Florida Supreme Court, would allow compensation in cases where the exertion usual to the claimant’s employment leads to a specific “breaking.” A study of the decisions reveal that the courts are more amenable to find an “injury by accident” in such cases simply because the question of causal connection can be more definitively determined. However, requiring an unusual exertion in heart cases does nothing to ameliorate the difficult question of causation, and the majority of jurisdictions have recognized this fact.

Even if there were legislative support for making a distinction between those cases which involve a structural change such as a breakage, and those which do not, it should be recognized that the most frequently encountered type of heart failure is that of coronary thrombosis. In cases of this type the injury results from a sudden and mechanical plugging-up action of a blood clot which produces a structural change that can be observed. Therefore, to place heart cases in an imaginary and singular category has sanction neither in law nor in logic.

Another problem inherent in the instant decision is the difficulty, and oftentimes inequitable result, in determining what is unusual or over-

37. Supra note 30 and accompanying text.
38. 192 DEPT LABOR BULL. 86 (1956); 1 LARSON, WORKMEN’S COMPENSATION LAW § 38.20 (1952).
39. Purity Biscuit Co. v. Industrial Comm’n, 201 P.2d 961 (Utah 1949); 1 LARSON, WORKMEN’S COMPENSATION LAW § 38.83 (1952).
40. 1 LARSON, WORKMEN’S COMPENSATION LAW § 38.83 (1952).

In the following cases compensation was granted for death caused by heart attack resulting from exertion which was lighter than usual: Lumbermen’s Mut. Cas. Co. v. Kitchens, 81 Ga. App. 470, 59 S.E.2d 270 (1950); Wright v. Louisiana Ice & Util. Co., 14 La. App. 621, 129 So. 436 (1930).

42. Spiers v. Sun Crab Co., 2 FCR 96 (1956); 1 LARSON, WORKMEN’S COMPENSATION LAW § 38.80 (1952).
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exertion. Overexertion is obviously a situation peculiar to the individual and not dependent upon the general or routine nature of the duties required to be performed in a particular occupation.

One is hard pressed to find a place for the unusual exertion requirement in the Florida Workmen’s Compensation Law. The court is committed to the position that the accident need not be found in the cause of an injury nor need the accident be unusual since the accepted definition will be satisfied by unexpectedness. Upon careful examination, it becomes clear that the decision in the instant case introduces an illusory criterion into the accident concept.

It is difficult to reconcile the court’s ruling with the remedial nature of the Workmen’s Compensation Law which, by virtue of its raison d’être, should be construed liberally in favor of the claimant. Not holding the employer liable for heart injuries may perhaps be a means of inducing the employment of those who are afflicted with cardiac disease. If this be the case, the court should be commended in its noble and altruistic endeavor but should also recognize that such policy decisions are purely legislative in nature.

MASON C. LEWIS


In his treatise, Professor Larson compares two cases which involved disabling heart attacks suffered by the employees. One claimant was a salesman and the other a longshoreman. Commenting upon the inequity inherent in granting compensation for the former and denying compensation for the latter, the author states, “It is not as though continuous heavy work over a long period built up a strong heart, while desk work for the same period resulted in a weak heart. The longshoreman and the salesman may have hearts which, weakened by disease, are no different in their ability to withstand strain. Now . . . the salesman indulges in the (for him) unusual effort of carrying a 15-pound parcel to help out in an emergency, while the [longshoreman] . . . lifts 200 pounds of mail, which for him is routine. [The salesman] gets compensation; [the longshoreman] does not.”

1 LARSON, WORKMEN’S COMPENSATION LAW § 38.81 (1952).


48. Boden v. City of Hialeah, 132 So.2d 160 (Fla. 1961); City of Hialeah v. Warner, 128 So.2d 611 (Fla. 1961); Great Am. Indem. Co. v. Williams, 85 So.2d 619 (Fla. 1956); Bailey’s Auto Serv. v. Mitchell, 85 So.2d 228 (Fla. 1956); Alexander v. Peoples Ice Co., 85 So.2d 846 (Fla. 1955); Townsley v. Miami Roofing & Sheet Metal Co., 79 So.2d 785 (Fla. 1955); Parker v. Brinson Constr. Co., 78 So.2d 873 (Fla. 1955); Naranja Rock Co. v. Dawal Farms, 74 So.2d 282 (Fla. 1954); Florida Game & Fresh Water Fish Comm’n v. Driggers, 65 So.2d 723 (Fla. 1953); Di Giorgio Fruit Corp. v. Pittman, 49 So.2d 600 (Fla. 1950); Southern Bell Tel. & Tel. Co. v. Pinkerman, 47 So.2d 547 (Fla. 1950); Sanford v. A. P. Clark Motors, 45 So.2d 185 (Fla. 1950); Fidelity & Cas. Co. of New York v. Moore, 143 Fla. 103, 196 So. 495 (1940).