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Chapter 15

HEART CASES

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WebMD.com
MedicineNet.com

Basic Anatomy of the Heart/Vocabulary

Glossary of Heart Anatomy

Atherosclerosis	plaquing, hardening and narrowing of the walls of a blood vessel.
Atrium, left and right	upper chambers of the heart, separated by valves, from the left and right ventricles
Ischemia	degeneration/death of tissue caused by lack of blood supply
Fibrillation	interruption of the normal, stable electrical rhythm of the heart
Valve, Tricuspid and Mitral	flaps which separate the right atrium from the right ventricle (tricuspid), and the left atrium from the left ventricle (mitral)
Vein, Pulmonary	vessel which carries blood to nourish the heart
Venae Cavae	two large veins which carry blood into the right atrium of the heart
Ventricles, Right and Left	lower chambers of the heart

Function of the Heart

The heart is the primary pump that powers the human body. Amazingly, this fist-sized mass of mostly muscle tissue is responsible for pumping, on average, 4300 gallons of blood per day through one's circulatory system. Although the heart's sole purpose is to pump blood, it receives no nourishment from the blood that moves inside its chambers. It is nourished only by the blood which is funneled through the pulmonary vein.

The heart pumps unceasingly from early development until the moment of death. Obviously, an injury to this vital organ is extremely serious and often deadly. One of the most common forms of injury to the heart is a myocardial infarction, or a heart attack.

I. GENERAL ANATOMY OF A HEART ATTACK

In essence, a heart attack is death of heart muscle caused by a lack of blood supply, typically caused by blockage of the blood vessel providing nourishment to a particular part of the heart. Blockage, in turn, typically occurs because of cholesterol plaque in the arteries of the heart. Over time, cholesterol plaque builds up along the walls of blood vessels serving the heart, causing thickening of the walls and narrowing of the vessel (atherosclerosis). When a rupture of the cholesterol plaque occurs, a blood clot may form around the site of the rupture, completely blocking the flow of blood past the site. The area of the heart thus deprived of blood begins to die, causing a heart attack.

Risk Factors

The risk factors for a heart attack are well-known. They include: high cholesterol, high blood pressure, obesity, cigarette smoking, as well as mental and physical stress. These factors are especially important in workers compensation cases for establishing proximate cause. They are addressed in greater detail below.

Symptoms

Many symptoms of a heart attack are well-known and easily recognized, although many are not. Common complaints include: chest pain/pressure; arm pain; shortness of breath; nausea; sweating; upper back pain; malaise; jaw pain; heart burn/indigestion. Because many of these symptoms are vague, it is sometimes difficult to diagnose a heart attack without the aid of an electrocardiogram (EKG). Many heart attacks—so-called “silent” heart attacks—occur without chest pain.

Anatomical Changes

During a heart attack, several anatomical changes occur. Most significantly, heart tissue deprived of blood and oxygen (a condition known as ischemia) may be lost permanently. Ischemia may also lead to electrical instability of the heart (ventricular fibrillation), which interrupts its normal beating rhythm. If the beating rhythm cannot be restored, the heart cannot continue its pumping function, the body does not receive blood, and the victim may suffer brain damage or death. If the blood flow cannot be restored to ischemic tissue, the tissue dies.

Diagnosis

Diagnoses of heart attacks are often made well after the heart attack has occurred and the damage has been done. An analysis of the physical symptoms and electrocardiogram results provide most of the data necessary for a successful diagnosis, although confirmation usually occurs only after one analyzes the level of cardiac enzymes in the blood. Cardiac enzymes are released into the blood stream by dying heart muscle. An analysis of the blood work taken during treatment for a heart attack can often assist in pinpointing the distinct time period when the heart attack began, since one can examine the levels of enzymes released into the blood stream at particular time intervals.

Consequences/Sequelae

Other than death, one of the most serious consequences of a heart attack is permanent loss of heart muscle. Loss of enough heart muscle can result in an inability to pump sufficient amounts of blood to nourish the body. Even if a heart attack is halted relatively quickly and blood supply is restored to the affected areas of the heart, the heart attack victim should be hospitalized and monitored closely before discharge. During this time, physicians often test the patient to determine the need for further monitoring and/or evaluate the likelihood of future cardiac problems, typically through stress testing, angiography, medication trials and electrocardiography. Victims need several weeks to recuperate from a heart attack. During this time, activity (especially work activity) should be limited. The recuperative period allows the damaged heart tissues to scar adequately so as to avoid further damage. Additional testing and imaging studies are often performed in the months after a heart attack to further assess a patient's future recovery and need for additional treatment.

II. CAUSATION IS KEY

Proximate Cause Analysis

One cannot win a heart case without proving proximate causation: more specifically, demonstrating (and illustrating) a connection or nexus between the employment and the heart attack. "To come within the statute the employee must prove that **some act or phase of the employment was a causative factor** in the ensuing injury. He need not prove that it was the sole causative factor nor even that it was the principal causative factor, but only that it was a causative factor in the resulting injury"¹ (emphasis added). Thus, if a non-employment-related factor is a contributing cause to an ensuing disability or injury, it does not constitute an "independent intervening cause" breaking the causal connection where it is not brought about by the claimant's intentional or negligent misconduct.²

In light of this standard, it should be apparent how heart cases are sources of much dispute. As shown above, many factors outside physical and mental stressors of the workplace may manifest themselves in a petitioner who has a heart attack allegedly connected to work. That is, many petitioners who have heart attacks already suffer from some preexisting disease or other risk factor which makes them susceptible to the very heart attack for which they seek compensation, such as obesity, atherosclerosis,

smoking, high cholesterol, etc. In fact, as shown in further detail below, a common defense to heart attack cases is that the heart attack would have occurred regardless of any work activity. Because of these issues, any strategy for a successful heart case must involve an intensive factual analysis which encompasses almost every aspect of the petitioner's lifestyle, both at and outside of the workplace.

Intensive Factual Analysis

Courts tend to evaluate whether a claim is compensable based upon the particular circumstances of each case. For example, in deciding whether a claim "arises out of" or "in the course of" a petitioner's employment, arbitrators, commissioners, and judges will typically look to whether the injury occurred during work hours, or at the place of employment.

In the past, courts have also looked to whether the petitioner was exposed to some risk greater than that faced by the general public. Under recent Illinois Supreme Court case law, if work-related activity causes the heart attack, it should not matter whether the work activity that caused it is somehow more stressful than other, outside activities. However, the Commission continues to rely on similar facts when determining causation (see e.g. Dragovan v. Illinois Worker's Compensation Commission in The Normal Daily Activity Exception below).

That said, the line is often blurry in heart cases. One must delve beyond the axiom that "proximate cause is generally a question of fact" and explore the particular facts and circumstances concerning topics such as the petitioner's physiology, mental status, and personal habits to determine whether the petitioner's work was a contributing cause to his or her heart attack.

Petitioner's Background

The Petitioner's background is one of the most vital pieces of information an attorney can present in a heart case. He must inquire far below the surface issues of what type of work the petitioner does (or did) and what the general nature of his or her health was before the accident. Rather, the attorney must be fully educated as to the petitioner's physical health (whether the petitioner: complained of nausea, complained of chest pain during activities or while at rest, received regular check-ups and physicals, had high blood pressure or cholesterol, etc.) as well as the petitioner's mental health (did the petitioner complain of sleeplessness, mental fatigue, panic attacks, excessive worry, etc.)

These facts will help identify additional stressors that the attorney will argue were (1) linked to work and (2) causative factors in bringing about the heart attack. Baggett v. Industrial Commission provides a prime example of this strategy at work, explored in the Illustration of the Causation is Key section below.

Eyewitness Testimony

Eyewitness testimony provides another essential piece of the proximate cause puzzle. The attorney should make every effort to interview and obtain the testimony of those

who were around during the time of the incident. Such testimony can prove the linchpin of a successful case, since the claimant oftentimes cannot testify about what he or she was experiencing at or near the time of a heart attack. By the same token, the inability to describe with competent testimony what the claimant felt before, during, and after the event can be fatal. Wamser v. Board of Education Belle Valley School District 119 provides a prime example of this type of analysis (see the Illustration of the Causation is Key section below).

Medical Opinion Testimony

Of course, effective medical testimony is another cornerstone of a successful heart case. Each heart case is based on unique medical circumstances. The attorney must resist the temptation to consider a heart case anything other than a substantial undertaking, requiring early and complete investigation of all issues.

Meeting with the Doctor

One of the most effective ways to become educated about the petitioner's case and lay the groundwork for obtaining vital testimony later is to meet with the petitioner's treating physician. One should schedule ample time to meet with the treating physician well in advance of the physician's testimony. While oftentimes difficult, given the schedules of doctors and lawyers, some physicians are at least accessible by phone, and may be receptive to discussing the matter if enough attempts are made to schedule a conference. Be patient.

Any discussion with the claimant's physician should include a frank discussion of the proximate cause standard. Many physicians believe that, since they cannot say with absolute certainty that a heart attack was caused by work-related activity, they cannot competently render testimony to help support their patient's worker's compensation claim. Perhaps because cardiologists do not see the volume of worker's compensation patients that others specialists (such as orthopedists) do, they may not be conversant in all the terms necessary to effectively discuss proximate cause.

It is helpful to discuss the claimant's work-related activities as "**a cause or a contributing factor**" to the heart attack, to make the physician more comfortable with examining all of the petitioner's activities of daily life, and focusing upon the work-related activities as a significant component thereof. Then, incorporate into the discussion the goal of showing that some work-related stressor contributed to the ensuing heart attack. Hypothetical questions may be helpful to get the physician in the right mindset.

Incidentally, the attorney must be distinctly aware of the proximate cause standard when dealing with the respondent's physicians. One should be prepared to approach respondents' experts on cross-examination in at least two ways: (1) attempt to have the expert agree that the petitioner's work activities had a direct impact on his cardiac condition, and (2) attempt to have the expert agree that the work activities were at least a link (however remote) in the chain of events that caused the heart attack. While physicians experienced in giving expert testimony will often be able to handle the first approach rather easily, the second is often a source of difficulty for them. Consider, for

example, the case of Flowers v. J.H. Spell & Associates, 97 W.C. 57014, 1999 Ill.Wrk.Comp. LEXIS 41, in which the respondent's physician tended to agree that there was a causal chain of events linking the petitioner's heart attack to his work activities even though he would not testify to a direct link.

Superimposed over this framework should be a discussion of the claimant's overall condition prior to the incident. For many years, courts drew a distinction between cases where a "different" or "unusual" stressor caused or contributed to the heart attack, and those where the petitioner's heart condition was a ticking time bomb (i.e. it had degraded to such a degree that any stressor, work-related or not, would have set it off). The courts viewed this second category of cases as non-compensable. This sort of analysis is arguably no longer permitted after the Illinois Supreme Court's 2005 decision in Twice Over Clean, Inc. v. Industrial Commission, but courts have upheld a finding of no causation by the Commission based on such an analysis even after Twice Over (see e.g. Swartz v. Industrial Commission in The Normal Daily Activity Exception below).

Every effort should be made to utilize the claimant's treating physician to provide testimony in support of causation, as some cases have demonstrated quite clearly that the use of experts strains credibility. Because heart cases are so intensively fact-oriented (and, therefore, highly dependent upon credibility), the testimony of a well-prepared treating physician may be worth that of three so-called "experts." However, if the treating physician is unable (or worse, unwilling) to support the petitioner's claim, then a hired expert is necessary.

Hired Experts

While using a hired expert to review a case and render opinions usually relieves a lawyer from having to expend a substantial amount of time and energy preparing him or her to deal with proximate causation issues, the lawyer must keep in mind that credibility is the order of the day. To that end, the lawyer must initially look to the expert's qualifications, especially with respect to treating patients similarly situated to the claimant.

As illustrated in Carr v. J.C. Anderson, Inc., (examined in Illustrating the Winning Strategy below), using experts is common, often necessary, but sometimes fruitless because the finder of fact finds treating physicians most influential. Oftentimes, where there is a loose temporal relationship between a work event and a cardiac event, the Commission will adopt the opinions of treating doctors over those of highly qualified examiners, rendering an expert unnecessary.

Consider Newton v. Spengler Plumbing, 06 IWCC 0665. In that case, the petitioner was electrocuted at work, then suffered a heart attack five months later. The respondent's expert opined that the heart attack had no relation to the electrocution, and that it was caused solely by the petitioner's underlying cardiac disease. The expert stated that any cardiac damage done by electrocution occurs immediately, and the medical records showed no evidence of this. The petitioner's treating physician, by contrast, opined that the electrocution was an accelerating factor, though he admitted that he was unclear what physiological correlation there might be between the events.

Ultimately, none of that mattered. Despite the lack of any medical evidence to support a connection between the electrocution and the heart attack, the Commission adopted the opinion of the petitioner's treating physician over the respondent's medical expert based on the loose temporal connection.

In Dunne v. Cook County, 07 IWCC 0419, the decedent was a "hard-working," "perfectionist," "type-A" supervisor in the County Assessor's office. His job was to meticulously analyze property sales data representing every such transaction in Cook County. The record showed that his office was understaffed, and that he lost his quickest data entry clerk just before the department's yearly busy season in February 1996. During this period he did not work overtime as he had in years past, but brought work home, according to his wife. By late May, the decedent's analysis was complete, and he was to prepare for a public hearing scheduled for June 10. The decedent's wife testified that he was "very anxious" about it. However, he died of cardiac arrest a few days short of the hearing on June 7, 1996, after attending a Cubs game with his department.

The treating doctor, a family physician with no training or experience in cardiology, related the heart attack causally to the decedent's work based on the timing of his increased stress and the timing of the heart attack. He offered no medical or scientific evidence to back up this conclusion. By contrast, the respondent's independent medical expert, a board-certified internist and cardiologist, testified that it was pure speculation to conclude that the heart attack was precipitated by an unusual amount of work stress, and that there was no medical basis to assert such a conclusion.

The Commission again adopted the position of the treating doctor over the respondent's cardiologist, concluding that the stress to which the respondent was exposed was greater than that to which the public was exposed, and that the temporal relationship between the stress and the heart attack suggested a causal link.

The Normal Daily Activity Exception

Sisbro

In Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003), the petitioner was a diabetic who twisted his ankle after stepping out of his delivery truck and into a pothole. This led to a degenerative condition called Charcot osteoarthropathy. The respondent did not dispute the diagnosis, but did deny that the injury was causally related to the accident.

The respondent based its position on the testimony of the petitioner's treating physician, who testified that Charcot is common in people with diabetes, and is typically initiated by some type of trauma, though the trauma can be something as minor as stepping off a curb, walking on uneven ground, or wearing uncomfortable shoes. Additionally, the respondent's examining physician testified that the petitioner's Charcot developed over time as a result of "microtraumas" (small knocks and bumps from everyday living) and his long history of poorly controlled diabetes.

The Appellate Court was persuaded by the respondent's argument, holding that

an employee whose preexisting condition was aggravated by an accident at work is not entitled to benefits where [his] health has so deteriorated that any normal, daily activity could have caused the injury or where the activity engaged in presents no greater risk than that to which the general public is exposed.

The Illinois Supreme Court reversed, holding that the Commission's findings of fact were not against the manifest weight of the evidence. Proceeding further, the court eviscerated the "normal daily activity" exception, concluding that just because an injury could have been caused by ordinary, daily activity, that does not render it noncompensable when it is in fact caused by activities at work:

When an employee with a pre-existing condition is injured in the course of employment, serious questions are raised about the genesis of the injury and the resulting disability. The Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the pre-existing condition or whether the pre-existing condition alone was the cause of the injury. Generally, these will be fact questions to be resolved by the Commission...If there is an adequate basis for finding that an occupational activity aggravated or accelerated a preexisting condition, and, thereby, caused the disability, the Commission's award of compensation must be confirmed.

Id. at 33.

Twice Over

The Illinois Supreme Court announced a definitive rule concerning the normal daily activity exception two years later in Twice Over Clean, Inc. v. Industrial Commission, 214 Ill.2d 403, 827 N.E.2d 409, 292 Ill.Dec. 880 (2005). Twice Over had a long, intricate journey on a relatively simple set of facts. The petitioner was loading large, heavy bags of asbestos from inside a building to dispose of them outside in cold weather. The petitioner testified that he had chest pain while working, but felt substantially worse after returning to his room at the end of the work day. He went to the hospital and was diagnosed with an acute myocardial infarction.

The petitioner's treating physician stated that the petitioner was "a heart attack waiting to happen." His post-heart attack work-up revealed 90% occlusion of his artery, blockage that would have produced a heart attack with any activity, work-related or not. The Third District seized on this fact, holding that even though work activity precipitated the heart attack, the petitioner was in such poor shape that "in light of his susceptibility to a heart attack outside of work, he failed in the first instance to prove a 'sufficient connection' between his work and his injury."

On appeal to the Illinois Supreme Court, the Court reversed. In so doing, the Court set

forth the following rule, which will likely become “words to live by” in terms of applying the normal daily activity exception to heart cases:

If a causal connection between the work activity and the injury is shown by competent testimony, no “limitation” or “exception” to compensation can be imposed to defeat recovery.

Additionally, the Court held:

Under the standard we announced in *Sisbro*, it was the Commission's function to decide whether, **considering the extent of [the petitioner's heart condition and the effects thereof] his pre-existing condition was aggravated or accelerated by the work activity**, thus sufficiently establishing a causal relationship between the work activity and the injury.

It would probably be wise to use language very similar to that in bold above when crafting questions directed toward the petitioner's treating physicians and/or expert to support a causal connection.

Life after Twice Over and Sisbro

After the Supreme Court's decision in Twice Over Clean, Inc. v. Industrial Commission, 214 Ill.2d 403, 827 N.E.2d 409, 292 Ill.Dec. 880 (2005) and Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003), the law has crystallized. However, heart attack cases remain very factually dependent, and work up of the cases on causation is key. It is particularly important to procure credible, cogent expert testimony.

Swartz v. Industrial Commission, 359 Ill.App.3d 1083, 837 N.E.2d 937, 297 Ill.Dec. 486 (3d. Dist. 2005), decided shortly after Twice Over, underscores this point. In Swartz, the decedent died of a “cardiac event” while working for the respondent. The decedent was a 53-year-old truck over-the-road driver of thirty years. A witness stopped to help the decedent when he saw his truck veer across and off the road. When he found him, the decedent was unconscious and not breathing. There was no evidence that he had applied the brakes. An autopsy revealed an enlarged heart and severe narrowing of the coronary arteries.

A battle of the experts ensued. The decedent's expert stated that the cardiac event could have occurred at any time, but that it was statistically more likely to have been precipitated by stress. He conceded, however, that the stress of driving a truck was no greater than that of driving any other vehicle. Meanwhile, the respondent's expert asserted that truck driving did not expose the decedent to such severe stress that it could be a causal factor in the heart attack, and that it would have occurred at “any time with any activity.”

The arbitrator awarded benefits, but the Commission reversed. The court then affirmed the denial of benefits on appeal. Even after analyzing the case in light of Sisbro and Twice Over, the court (with two dissenters) still sided with the respondent. It deferred to

the Commission's findings that causal connection had not been established, and that the respondent's medical testimony was more credible on this point.

Swartz was largely decided on the basis of the experts. Decedent's physician gave tenuous testimony: while he stated that the stress of truck driving most likely precipitated the heart attack, he also concluded that such stress would be no greater than most people would experience driving any vehicle. Respondent's expert's testimony, that decedent was not exposed to the type of severe stress necessary to serve as a causative factor of a cardiac event, was more believable to the Commission.

The paucity of physical evidence hampered the decedent as well. The only eyewitness testimony came from the man who witnessed the truck veering across the roadway. Without evidence of what stress and physiological symptoms the decedent experienced before death, the cards were stacked against him.

Commission and arbitrator decisions are also instructive. In Campbell v. Tandem, 99 WC 30534, 05 IWCC 0010, 2005 Ill.Wrk.Comp. LEXIS 10, the decedent was delivering rock salt during cold weather when he stopped and climbed up the rig to remove tarpaulin from the top of a trailer. He suffered a fatal ventricular arrhythmia, caused in part by severe narrowing of the coronary arteries. A pathologist and a cardiologist testified on behalf of the decedent. The defense expert, a cardiologist, conceded that lack of blood to the heart could trigger an arrhythmia, and that cold weather constricts the periphery, increasing myocardial demand. The Commission reversed the arbitrator, granting benefits.

In Dragovan v. Illinois Worker's Compensation Commission, 06 WC 31304, 2009 Ill.Wrk.Comp. LEXIS 1004, the petitioner adduced testimony that the decedent was a laborer for various utility companies, where he was responsible for "any labor intense work that had to be done on the job site." On the date of his heart attack, the decedent dug large holes in the ground, lifted and installed two 150-pound vaults in the holes, then filled the holes back in. Afterwards, he went to an another job site. He worked for 15 minutes, took a 15-minute break, then spent approximately 8-12 minutes more digging before collapsing of a fatal heart attack.

The arbitrator awarded benefits. The Commission reversed, relying on the testimony of respondent's expert that the decedent was not performing sufficiently strenuous physical labor close enough to the moment of his heart attack to establish causation. The Commission also noted that both sides' medical experts agreed that the decedent was born with congenital heart defects so severe that no physical activity at all was necessary to trigger arrhythmia.

In Mueting v. Nicholas, 97 WC 47472, 05 IWCC 0291, 2005 Ill.Wrk.Comp. LEXIS 272, a carpenter collapsed while carrying a cabinet. The decedent's expert testified that preexisting artery disease, fatigue from overtime work, stress from deadlines, and the physical demands of work all contributed to his death. The defense expert testified that work stress had never been shown to be related to sudden death and that whether or not some physical activity may contribute to the condition is only a theory. The arbitrator rejected this testimony and awarded benefits.

In Toler v. Jacobs Forging, 99 WC 12880, 05 IWCC 0490, 2005 Ill.Wrk.Comp. LEXIS 490, the Commission reversed an arbitrator's denial of compensation where the decedent's experts testified that physical exertion at work was a cause of the heart attack, and where the defense experts denied that work activities caused sudden cardiac death, citing other causes. The Commission awarded benefits, finding that the decedent was performing extraordinary duties on the date of the incident and that cardiac arrest was caused by the performance of those duties.

III. ILLUSTRATION OF THE WINNING STRATEGY AT WORK

The following cases illustrate how heart cases can be a very close call factually and legally. They are meant to demonstrate how skillful lawyering worked to produce a particular result, but keep in mind the importance of intensive factual analysis, because reasonable minds can differ significantly regarding how to properly assess a particular set of circumstances.

Niehills v. City of Caseyville, 94 WC 47897, 1998 Ill.Wrk.Comp. LEXIS 77, shows how a petitioner successfully convinced the Commission to reverse an arbitrator's denial of benefits through factual analysis and the use of strong medical opinion testimony. In that case, the petitioner's decedent was a 52 year old male construction laborer. He was a smoker with a family history of heart disease, hypertension, hypercholesterolemia, and hypertriglyceridemia. He even displayed coughing and chest pain at a pre-employment physical. In other words, he was a prime candidate for the "ticking time bomb" defense.

The petitioner in this case, however, overcame these obstacles by focusing the debate on the facts surrounding the work site environment (even though the decedent was only at work for 5 minutes before he died), and the timing of the attack, to show how the attack resulted from a combination of stressors that were different from the decedent's usual work activities. The petitioner showed that hot weather and sudden complaints of weakness after lifting were indicators of an acute, sudden event. Also, the petitioner introduced evidence of how the decedent passed a pre-employment physical (despite coughing and chest pain), and how his family doctor opined that the decedent had "very good" blood pressure for a man his age.

In City of Des Plaines v. Industrial Commission, 95 Ill.2d 83, 447 N.E.2d 307 (1983), the court held that a fireman's employer took him as it found him, and that in spite of the fireman's prior history of heart disease, a heart attack suffered at work would be compensable nonetheless if stress at work had aggravated his condition.

However, in Doyle v. Industrial Commission, 86 Ill.2d 544, 427 N.E.2d 1223 (1981), petitioner had three arteries that were 80, 90, and 100 percent blocked. Any stress, with or without physical exertion, could have triggered the heart attack. The court affirmed the Commission's denial of benefits, crafting an exception to the "took him as it found him" rule where an employee's heart disease is so extensive that even ordinary exertion can trigger the heart attack.

The Supreme Court's opinion in Baggett v. Industrial Commission, 201 Ill.2d 187, 775

N.E.2d 908, 266 Ill.Dec. 836 (2002), illustrates the strategy in a "mental-physical" scenario—that is, a claim of job stress manifesting itself in a heart attack.

In Baggett, the petitioner was an industrial arts teacher who suffered a great deal of work-related stress. He developed a bleeding ulcer, blood loss from which precipitated a heart attack. Due to the attack, he suffered brain damage from lack of oxygenated blood flowing to the brain. The Commission required the petitioner to show that he suffered increased and unusual stress relative to the other teachers, and required proof of a scientific correlation between stress and gastrointestinal bleeding. Finding that he had not met this burden, the Commission denied him benefits. The circuit court found that the Commission had applied improper standards of proof and reversed. The appellate court then reversed the circuit court, deferring to the Commission's findings of fact. On subsequent appeal, the Illinois Supreme Court reversed yet again, holding that the burdens of proof imposed by the Commission were improper, and that deference to its findings of fact was therefore improper.

The Court rejected respondent's argument that petitioner should have to show a strict, scientific causal relationship between stress and physical injury, holding that that would impose a burden of proof beyond mere preponderance of the evidence. The Court also held that the petitioner need not show his work was more stressful than that of his coworkers in order to establish causation. (One caveat to keep in mind when reading Baggett: it predates Sisbro and Twice Over, and therefore endorses the normal daily activity exception. This part of the case is no longer good law!)

Wamser v. Board of Education Belle Valley School District 119, 94 WC 2427, 1998 Ill.Wrk.Comp. LEXIS 5, and City of Waukegan v. Industrial Commission, 298 Ill.App.3d 1086, 700 N.E.2d 687 (2d Dist. 1998) both predate Baggett, but they can also be instructive on how to attack the factual investigation in a physical-mental case.

In Wamser, a high school volleyball coach suffered a fatal heart attack during an emotional game against the team's arch rival. Numerous witnesses provided credible testimony about how tense and worked-up the coach became during the game, describing him as red-faced, sweating and yelling. They also testified that he was ordinarily calm and laid-back while not coaching, and that he had never complained of symptoms indicating heart problems before. Although respondent's expert testified that the decedent could have had a heart attack at any time doing just about anything given the condition of his heart, the Commission noted that "the actual lethal attack Decedent suffered was a result of an arrhythmia triggered by his work activities."

In City of Waukegan, petitioner police officer testified credibly that he had made numerous complaints about job stress after being consistently subjected to second-guessing by superiors, adversarial situations, and criticism about uncompleted work duties. The court held that even though he had preexisting heart problems, the situation at his work was a cause of the heart attack, and that it was therefore compensable.

Several other precursor cases applied a Baggett-style approach. In Wheelan Funeral Home v. Industrial Commission, 208 Ill.App.3d 832, 567 N.E.2d 662 (3d Dist. 1991), the court noted that while the decedent had a history of heart problems, work-related

stress was nonetheless a contributing factor, and therefore awarded benefits to the petitioner. County of Tazewell v. Industrial Commission, 193 Ill.App.3d 309, 549 N.E.2d 805 (4th Dist. 1989), another Baggett precursor, held that fatigue brought on by excessive exertion at work could have been a contributing factor to the decedent's cardiac arrhythmia, and that causation was established by a preponderance of the evidence.

In Lomelli v. Levy Construction Company, 2 WC 58952, 9 IWCC 0163, 2009 Ill.Wrk.Comp. LEXIS 146, the petitioner, a construction worker, was working installing coreboard in a building when he suffered a cardiac event. According to the petitioner's own testimony, he was working in extreme heat on a floor with little to no ventilation, and the coreboards weighed more than 80 pounds apiece. The respondent employer offered no evidence that the petitioner had prior cardiac issues, nor any evidence to rebut the petitioner's description of the work environment that day. The arbitrator found that the petitioner's cardiac event was work-related, and the Commission affirmed.

Flynn v. Industrial Commission, 302 Ill.App.3d 695, 707 N.E.2d 208 (1st Dist. 1998) is a good example of a pre-Baggett opinion denying benefits based on a misapplication of the rules of causation. In Flynn, the court denied benefits based in part on the finding that out-of-work stressors were more significant in causing the heart attack than work stressors.

In Hand v. City of Moline, 05 WC 049206, 08 IWCC 0590, 2008 Ill.Wrk.Comp. LEXIS 587 (May 21, 2008), petitioner was a parks director. As part of his job duties, he gave a 10-minute speech at a press conference. He suffered a heart attack immediately after the speech. The petitioner's treating physician causally related the heart attack to the speech and other stress. The respondent's medical expert, however, testified that the speech would not have been stressful enough to be a cause of the heart attack. The arbitrator agreed, denying benefits because the petitioner should not have been stressed enough by the speech to have a heart attack. The Commission affirmed.

Ford Motor Co. v. Industrial Commission, 319 Ill.App.3d 1099, 745 N.E.2d 725 (1st Dist. 2001) shows the importance of having a detailed medical history to show a petitioner's prior good health. Likewise, Schenk v. Village of Broadview, 99 WC 10575, 2001 Ill.Wrk.Comp. LEXIS 496 (June 4, 2001) provides a good example of fact-finding by the Commission regarding heart attacks allegedly brought on by smoke inhalation.

Carr v. J.C. Anderson, Inc., 92 WC 55283, 1998 Ill.Wrk.Comp. LEXIS 115, presents an illustration of why a lawyer must address the issues of proximate cause with a treating physician as early as practicable. The petitioner was a carpenter working on a renovation project measuring and installing doors. The project had a workshop on a floor different from where the installation was done, and so the petitioner had to go back and forth between floors to measure the opening and trim the door. On one occasion, after lifting and moving several doors, the petitioner walked out of the elevator when he experienced elevated temperature, dizziness and heaviness in his arms. He was later taken to a hospital and diagnosed with a heart attack.

The petitioner claimed that the work that day was different. He claimed that the door trimming work was more stressful than other kinds of work on the project, because

mistakes on the doors were irreversible and would not be tolerated. Additionally, the work required him to lift the doors onto and off of the work surface and move them from the workshop to the installation site.

Despite his focus on the facts, a report authored by the treating physician early on in the litigation ultimately led to the petitioner's downfall. The physician was equivocal when asked to render an opinion on causation—he would not say definitively whether the work activity was a cause of the heart attack. Later, in an investigative report, he would only say that the work activity “could have been” a causative factor. Finally, at his deposition, the doctor testified that, to a reasonable degree of certainty, the work could have been a causative factor.

In finding against the petitioner, the Commission focused on the treating physician's inability to bolster the petitioner's claim, noting how the treator's testimony seemed to change as time went on. One wonders whether a stronger opinion from the treating physician earlier in the case might have changed the outcome.

Similarly, in Norkus v. Doug Lavery, 02 WC 15981, 8 IWCC 1130, 208 Ill.Wrk.Comp. LEXIS 1326 (September 30, 2008), the petitioner did heavy lifting, then suffered a heart attack the next day. The petitioner's treating physician prepared a report regarding causation, stating that the lifting could “possibly have contributed” to his preexisting heart ailment “if he was doing it right before the event and it was temporally associated.” The arbitrator held that petitioner had not met his burden in proving either that he suffered an accident arising out of his employment or that his rapid heart rate was causally related to his employment.

In Efredimis v. Industrial Commission, 308 Ill.App.3d 415, 719 N.E.2d 1133 (1st Dist. 1999), the Commission denied benefits because it found petitioner's medical expert less credible than respondent's concerning causation. On appeal, the Court would not disturb the Commission's findings of fact. In Powell v. Sangamo Construction Company, 97 WC 43161, 2001 Ill.Wrk.Comp. 144 (February 2, 2001), it was an inconsistent medical history that undermined the petitioner's case.

Expert credibility issues cut both ways, however. In Fel-Pro Inc. n/k/a Federal Mogul Corp. v. IWCC, 09 L 50803, Judge Tolmaire affirmed the Commission's decision providing total disability benefits to an employee who suffered a stroke while shoveling snow for his employer. The Commission found the petitioner's expert credible, while dismissing the opinions of respondent's experts as “inconsistent with the chronology of the claim and the findings of the treating physicians.” This case is still pending appeal.

In Inwin v. City of Naperville, 05 WC 023578, 08 IWCC 0273, 2009 Ill.Wrk.Comp. LEXIS 264 (March 10, 2008), a firefighter suffered two episodes of chest pain while preparing for work, worked throughout the day without incident, and then suffered much more severe chest pain while performing drills in full gear later that afternoon. He went to the hospital, where he suffered a cardiac event the following morning. Respondent's expert stated that the petitioner was a heart attack waiting to happen. Petitioner's treating physician testified that the cardiac event was brought on by strenuous work activities. He was awarded 20% loss of use under Section 8(d)2, and the Commission affirmed.

In McKeon v. Cook County Sheriffs, 00 WC 40695, 8 IWCC 0075, 2008 Ill.Wrk.Comp. LEXIS 115 (January 15, 2008), a parking garage supervisor intervened in an altercation between two employees. He was body-slammed then thrown aside, striking the edge of a table and falling to the floor. He suffered a heart attack while lying on the ground. The petitioner's treating physician authored a report causally connecting the incident to the heart attack, stating that it was an aggravation of a preexisting condition. With no contradictory evidence, the petitioner's award was affirmed by the arbitrator.

McCloud v. Nacme Steel Processing, 97 WC 67538, 2001 Ill.Wrk.Comp. LEXIS 433 (May 23, 2001) is notable primarily due to its dissent from Commissioner Stevenson, who pointed out that the petitioner had offered no expert medical opinion or medical records to establish a causal connection between an on-the-job injury and the petitioner's later heart attack. In Cognato v. Industrial Commission, 242 Ill.App.3d 50, 609 N.E.2d 783 (1st Dist. 1993), the court affirmed the Commission based on its findings that there was no evidence correlating the decedent's heart attack to workplace conditions or incidents at the workplace.

In Marshall-Lang v. Security Associates International, Inc., 02 WC 39956, 08 IWCC 0380, 2008 Ill.Wrk.Comp. LEXIS 507 (April 1, 2007), an emergency dispatcher with a congenital heart condition but otherwise in good health suffered a stroke while at work. Petitioner testified that the office was generally short-staffed and short-handed. However, his treating physician testified that work-related stress would not have been sufficient to cause the stroke without his congenital heart condition, and petitioner offered no evidence that anything he was doing at work was particularly stressful. Regardless, the arbitrator awarded benefits and the Commission affirmed.

In Chidichimo v. University of Chicago, 289 Ill.App.3d 6, 681 N.E.2d 107 (1st Dist. 1997) the court held that the petitioner's decedent's employer had no duty to maintain records relating to his employment pending the petitioner's worker's compensation claim.

1 Republic Steel Corp. v. Industrial Comm., 26 Ill.2d 32, 45, 185 N.E.2d 877, 884 (1962)

2 Int'l Harvester Co. v. Industrial Comm., 46 Ill.2d 238, 247, 263 N.E.2d 49, 54 (1970)