Buffalo Law Review

Volume 9 | Number 1 Article 124

10-1-1959

# Workmen's Compensation—Coronary Thrombosis as Basis of Claim

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ployees by eliminating many of the common law defenses of the employer, thereby allowing recovery in a greater number of cases. The rationale for this is founded on the fact that employers may insure themselves and add this to their cost of doing business which in effect places the cost on the consumer. In the instant case, the facts clearly show that an accident did occur, and no evidence was submitted indicating the possibility of fraud. Since the major issue in this case was the conflicting medical testimony, the mere fact that the conflict existed should be enough to raise a doubt as to whether or not the accident produced the fatal attack. This doubt having been resolved by the Board in favor of the claimant coupled with the policy considerations behind Workmen's Compensation is sufficient justification for affirming the award.

CORONARY THROMBOSIS AS BASIS OF CLAIM

An accidental injury, arising out of, or sustained in the course of one's employment, is compensable under New York's Workmen's Compensation Law so long as the injury complained of is one within the meaning of the term "industrial accident." "What constitutes an 'industrial accident' is to be determined by the common-sense viewpoint of the average man."[8]

In *Schecter v. State Insurance Fund*,[9] the claimant, Senior Trial Attorney in charge of all litigation for the State Insurance Fund, suffered a heart attack after his work load had been significantly increased. The Workmen's Compensation Board granted an award to him which was subsequently set aside by the Appellate Division of the Supreme Court, Third Department, which held that there was no accident within the legal meaning of the word.[10] However, the Court of Appeals, in a five to two decision, reinstated the award granted by the board.

A coronary thrombosis is compensable under the Workmen's Compensation Law provided it results from unusual or excessive strain in the performance of one's work.[11] Furthermore, one may be subjected to such strain although the work performed is of the same general type as that in which one is regularly involved,[12] and the fact that there is a pre-existing pathology which contributes to the injury is not sufficient reason for denial of compensation.[13]

In the instant case, the claimant normally spent sixty to seventy percent of his time in court performing his work as trial counsel but, for a seven week period immediately preceeding the heart attack, he was required to be present in court one hundred percent of the time.

At the hearing before the Workmen's Compensation Board conflicting expert medical testimony was advanced on behalf of both the claimant and the carrier as to the causal connection between the increased workload and the

8. Masse v. James H. Robinson Co., 301 N.Y. 34, 37, 92 N.E.2d 56, 57 (1950).
9. 6 N.Y.2d 506, 190 N.Y.S.2d 656 (1959).
10. 7 A.D.2d 813, 180 N.Y.S.2d 782 (3d Dep't 1959).
11. Cooper v. Brunswick Cigar Co., 298 N.Y. 731, 83 N.E.2d 142 (1948).
12. Sleator v. National City Bank, 309 N.Y. 708, 128 N.E.2d 415 (1955).
13. Cooper v. Brunswick Cigar Co., *supra.*, note 11.

heart attack. However, an impartial heart expert, designated by the Board to examine the claimant and report on this issue of causation, stated that, in his opinion, the heart attack suffered by the claimant was directly related to the unusual exertion and strains undergone by claimant in the seven weeks prior to the attack.

Thus, the Court held that the Board having determined that the claimant was entitled to compensation, and the evidence presented being such that a reasonable mind might accept it as adequate to support the conclusion of the Board, there were no grounds present to justify a reversal of the Board's determination.

APPORTIONMENT OF COST OF OPERATION AMONG SIX INJURIES

Section 10 of the New York Workmen's Compensation Law charges employers with the duty of providing compensation for injuries "arising out of and in the course of the employment." Section 15 Subdivision 7 of the same law amplifies the dictate of Section 10 as it relates to previous disabilities and provides generally that the compensation for a later injury shall not be "in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability." Section 15 Subdivision 8 makes special provision for workers who are employed after they have suffered some degree of permanent disability. It provides that they shall receive full compensation for subsequent injuries, but that the employer so paying shall receive partial reimbursement from a special fund, for such compensation paid. These three provisions are the statutory dictates which control the payment of claims resulting from successive injuries to employees covered by the Workmen's Compensation Law.

In 1954 the Workmen's Compensation Board awarded a claimant one sixth of the disability compensation and surgical and hospital expense associated with an operation on his shoulder. The claimant had suffered six shoulder dislocations, only the fourth of which was an industrial injury. On appeal this award was affirmed by the Court of Appeals in *Engle v. Niagara Mohawk Power Corp.*[14]

No cases prior to this one have concerned an apportionment of compensation between an industrial injury and other injuries which were not industrial, so as to allow only partial recovery. However, in many instances awards apportioning damages between a number of compensable accidents so that the various employers each pay a part of the compensation have been upheld by the courts.[15] The fact of this history of apportionment between compensable injuries, coupled with the policy evidenced by Section 15 Subdivision 7 concerning awards to be made for successive injuries, supported the Board's determination in the *Engle* case. If the Board had found that the industrial

14. 6 N.Y.2d 449, 190 N.Y.S.2d 348 (1959), *affirming* 6 A.D.2d 631, 180 N.Y.S.2d 422 (3d Dep't 1958).

15. Anderson v. Babcock and Wilcox Co., 256 N.Y. 146, 175 N.E. 654 (1931); Fichtner v. Bloomingdale Bros., 4 N.Y.2d 914, 174 N.Y.S.2d 663 (1958).