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Areas of Changing Interpretation: Heart and Neurosis Cases Student Symposium - Workmen's Compensation: A Pandect of the Texas Law.

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be neither well versed in law nor skilled in interpreting, deciding, and resolving legal questions.[388] Another disadvantage arises from the fact that an industrial accident board, being an administrative agency, is not bound by the rules of evidence and procedure applicable to the courts.[389] Since all forms of evidence, including ex parte affidavits and other hearsay, are admissible before administrative boards,[390] it is possible that the substantial evidence rule could lead to the establishment of inappropriate precedents. This could arise, for example, if a court upheld a board decision on the basis that there was sufficient evidence supporting such decision, even though undisclosed portions of the evidence relied on by the board were incompetent.

There were 2,394 notices of intention to appeal filed with the Texas Industrial Accident Board in 1973,[391] of which it can be reasonably assumed that many were settled or dropped before the trial date. Based on these statistics, it does not appear that the Texas courts have been burdened with an excessive number of workmen's compensation cases. Furthermore, in 1973, there were 641 cases in which the courts awarded different dollar amounts of compensation than that given by the Board.[392] In those cases, the board had awarded a total of $6,940,834.00, while the courts had awarded only $3,289,081.00.[393] Thus, the theory that the administrative agency will enforce the Act with only a minimal difference than would the courts if they heard the cases de novo appears to be without merit.

AREAS OF CHANGING INTERPRETATION: HEART AND NEUROSIS CASES

Two areas in the field of workmen's compensation which have seen evolution through significant judicial decisions are those involving claims predicated upon heart attacks and neurosis. In these areas the nature of the cases presented for judicial review has required that the courts fashion judicial doctrine so as to enable deserving claimants to recover for disabilities not specifically controlled by terms of the statute. At the same time, however, the courts must keep liability for heart and neurosis claims within ordained bounds, particularly where the injuries are idiopathic. Heart and neurosis cases turn predominantly on the factual situations and on medical testimony

388. TEX. REV. CIV. STAT. ANN. art. 8307, § 2 (1967) requires only one member of the Board to be an attorney.

389. *See* Traders & Gen. Ins. Co. v. Huntsman, 125 S.W.2d 431, 436 (Tex. Civ. App.—Fort Worth 1939, writ dism'd jdgmt cor.); Travelers Ins. Co. v. Mote, 116 S.W.2d 427, 430-31 (Tex. Civ. App.—Amarillo 1938, writ dism'd by agr.).

390. Traders & Gen. Ins. Co. v. Lincecum, 126 S.W.2d 692, 695 (Tex. Civ. App.—Fort Worth 1939, no writ); Texas Employers' Ins. Ass'n v. Jimenez, 267 S.W. 752, 755 (Tex. Civ. App.—San Antonio 1924, writ dism'd).

391. ANN. REP. OF THE INDUSTRIAL ACCIDENT BD. 2 (1973).

392. *Id.* at 6.

393. *Id.* at 6.

tending to show the probability of causal relation between employment activity and the injury sustained.

General Scope of Heart Cases

In heart attack cases the traditional requisite for a successful compensation claim is the showing of unusual strain or overexertion by the employee in the course of his employment.[394] The claimant must show that the heart injury sustained occurred immediately after strenuous physical activity which would not have been undertaken by the employee in the *ordinary* performance of his duties.[395] This rule has resulted in a panorama of decisions awarding or denying recovery on the basis of the type of employment and the activity involved. From these varied decisions the question naturally arises as to what an unusual exertion in an occupation is, since the quantum of exertion in a job may vary from day to day and from business to business. The principle has been criticized at length by Professor Larson for its orientation toward accidental cause rather than result, and its impracticality in application.[396] Despite its limitations, the unusual exertion requirement survives in some 12 jurisdictions.[397]

As pointed out by Professor Larson, the concept of unusual exertion as a requisite for recovery stems from statutory requirements that an injury be "accidental" in order to be compensable.[398] Even where not statutorily imposed, the "accidental" requirement has been judicially adopted in all but six states.[399] Under this requirement, "unusual" or "unexpected" is equated with "accidental" for the purposes of determining the character of the injury. Thus in the situation where the employee is stricken with a heart attack while

394. Friendly Frost Used Appliances v. Reiser, 152 So. 2d 721, 723 (Fla. 1963); Herbert v. Sharp Bros. Contracting Co., 467 S.W.2d 105, 108 (Mo. Ct. App. 1971); Rose v. City of Fairmont, 300 N.W. 574, 577 (Neb. 1941); Hrynkin v. Davis & Lyon, 265 N.Y.S.2d 321, 323 (App. Div. 1965), *aff'd*, 234 N.E.2d 453 (1967); York v. State Workmen's Ins. Fund, 200 A.2d 230, 232 (Pa. 1938).

395. Marlowe v. Huron Mountain Club, 260 N.W. 130, 132 (Mich. 1935).

396. 1 A. Larson, The Law of Workmen's Compensation §§ 38.61-38.63 (1973); Larson, *The "Heart Cases" in Workmen's Compensation: An Analysis and Suggested Solution*, 65 Mich. L. Rev. 441, 465-68 (1967); *see, e.g.*, Philadelphia Dairy Prods. Co. v. Farran, 57 A.2d 88 (Del. Super. Ct.), *aff'd*, 61 A.2d 400 (Del. 1948) (salesman injured in unusual exertion of carrying 15 pound parcel was compensated); Marlowe v. Huron Mountain Club, 260 N.W. 130 (Mich. 1935) (postal employee injured in routine lifting of 200 pound sacks of mail was denied compensation).

397. Colorado, Delware, Florida, Indiana, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Washington. Larson, *The "Heart Cases" in Workmen's Compensation: An Analysis and Suggested Solution*, 65 Mich L. Rev. 441, 445, 447 n.18 (1967).

398. Larson, *The "Heart Cases" in Workmen's Compensation: An Analysis and Suggested Solution*, 65 Mich. L. Rev. 441, 442-44 (1967), *citing* Ohio Rev. Code Ann. § 4123.01(c) (1973).

399. *Id.* at 442. The six states are California, Iowa, Massachusetts, Minnesota, Rhode Island, and Texas.

he is engaged merely in his usual ordinary routine type of work, compensation is denied on the ground that the heart injury sustained did not constitute an "accident" within the legal definition of "compensable injury."[400]

In the course of workmen's compensation litigation, the majority of jurisdictions have liberalized their construction of the term "accidental injury," extending it to apply in situations where the work done is usual and ordinary, but either the cause or the result is unexpected.[401] This criterion is applied regardless of the pre-existing health of the employee, subject only to the qualifying proviso that the exertion be "either the sole or a contributing cause of the injury."[402] Since medical evidence in heart attack cases usually establishes the fact that the victim had a pre-existing heart disease which rendered him susceptible to an attack, the above limitation becomes extremely significant. There must be established a causal connection between the work activity and the heart injury. The claimant must prove that the exertion within the scope of employment produced or aggravated the disease which was the cause of the disability.[403] As defined by the Supreme Court of Louisiana,

> [t]he legal criterion in compensation cases involving heart disease should be whether the accident [exertion] caused a change in the employee's physical condition which is disabling, and not whether the accident changed the diseased organ of the employee. The residual condition from an accidental injury which *substantially* increases the possibility of recurrence of a disabling or death-dealing episode is legally disabling and is compensable . . . .[404]

In cases where the heart attack is aggravated or precipitated by mental or emotional stress arising out of the employee's work, the majority of jurisdictions have seen fit to award compensation on the basis of criteria maintaining varying degrees of strictness.[405] Consequently, the success of claims involving emotionally induced heart attacks varies accordingly. Most decisions, controlled by the legislative "injury by accident" provision, have adhered to the "unusualness" requirement in these cases.[406] Since it is diffi-

400. Russell v. Southwest Grease & Oil Co., 509 S.W.2d 776, 781 (Mo. Ct. App. 1974).

401. *E.g.*, Bryant Stave & Heading Co. v. White, 296 S.W.2d 436, 441 (Ark. 1956); Ferguson v. HDE, Inc., 270 So. 2d 867, 869 (La. 1973); Sheppard v. Michigan Nat'l Bank, 83 N.W.2d 614, 626 (Mich. 1957).

402. Bryant Stave & Heading Co. v. White, 296 S.W.2d 436, 441 (Ark. 1956).

403. Bertrand v. Coal Operators Cas. Co., 221 So. 2d 816, 827 (La. 1968); Dwyer v. Ford Motor Co., 178 A.2d 161, 164 (N.J. 1962); Flint Constr. Co. v. Dowmun, 444 P.2d 200, 203 (Okla. 1968).

404. Bertrand v. Coal Operators Cas. Co., 221 So. 2d 816, 828 (La. 1968) (court's emphasis).

405. Hoage v. Royal Indem. Co., 90 F.2d 387 (D.C. Cir.), *cert. denied, sub nom.*, Royal Indem. Co. v. Cardillo, 302 U.S. 736 (1937); Ferguson v. HDE, Inc., 270 So. 2d 867 (La. 1973); Klimas v. Trans Caribbean Airways, Inc., 219 N.Y.S.2d 14 (1961); Aetna Cas. & Surety Co. v. Calhoun, 426 S.W.2d 655 (Tex. Civ. App.—Beaumont 1968, writ ref'd n.r.e.).

406. Korsun's Case, 235 N.E.2d 814, 816 (Mass. 1968) (employee suffered heart at-

cult for the claimant to satisfy this requirement in situations where the heart attack was produced by emotional pressures, the number of denials of compensation in nonphysical exertion cases are proportionately higher than in physical exertion cases.[407] A few jurisdictions, however, have utilized the sound causal connection principle as applied in physically induced heart cases.[408] Considering the elusiveness of the problem in mentally induced injuries, this progression away from the "unusualness" requirement is quite a significant development.

An early decision, *Hoage v. Royal Indemnity Co.*,[409] applied the theory of cause and effect to the sequence of facts in order to bring the case of an emotionally induced heart attack within the purview of the statutory requisite of "accidental injury." The plaintiff was a claims adjuster who, after working feverishly for 8 months under the pressures of an increasing number of cases, collapsed at his desk from angina pectoris.[410] A cardiac specialist testified that plaintiff's overwork, worry, and emotional strain produced a spasm in a coronary artery and brought about the collapse. From this evidence the court concluded that the attack was the consequence of continued overwork and mental strain required of the plaintiff by his employer, and deemed the angina pectoris and resultant disability "accidental."[411]

In *Klimas v. Trans Caribbean Airways*,[412] the New York Court of Appeals reviewed that state's judicial policy, which was in the process of evolving in favor of compensating physical injuries resulting from nonphysical strain, and reached the conclusion that the decedent's emotionally induced heart attack was an "industrial accident."[413] Deceased was director of maintenance and engineering for the airline. One of the planes under his supervision was grounded because of a defect, and decedent was personally harangued by his employer for negligence and incompetence. Under pressure to have the

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tack from emotional stress induced by sight of empty whiskey bottle placed on his desk and fear that he would lose his job); Goodwin v. State Workmen's Compensation Bd., 249 N.Y.S.2d 63, 64 (App. Div.), *aff'd*, 254 N.Y.S.2d 114 (1964) (referee for state workmen's compensation board, with prior history of ulcers and hypertension, suffered paralyzing stroke, attributed to situation of emotional tension with claimant in addition to exceptional workload of hearings with its attendant emotional stress.

407. *See* 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 38.65 (1973).

408. Lamb v. Workmen's Compensation Appeals Bd., 113 Cal. Rptr. 162, 168 (1974); Insurance Dept. v. Dinsmore, 102 So. 2d 691, 694 (Miss Ct. App.), *aff'd on rehearing*, 104 So. 2d 296 (Miss. 1958).

409. 90 F.2d 387 (D.C. Cir.), *cert. denied*, 302 U.S. 736 (1937).

410. Angina pectoris is the medical term applied to symptoms of sudden, short paroxysms of chest pain, usually precipitated by exertion and arising from temporary insufficiency of coronary circulation. E. SAGALL & B. REED, THE HEART AND THE LAW 498 (1968).

411. Hoage v. Royal Indem. Co., 90 F.2d 387, 391 (D.C. Cir.), *cert. denied sub nom.*, Royal Indem. Co. v. Cardillo, 302 U.S. 736 (1937).

412. 219 N.Y.S.2d 14 (1961).

413. *Id.* at 19.

plane repaired, decedent first had difficulty procuring replacement parts; then, handed a staggering repair bill for which he felt personally responsible, he spent some extremely frustrating hours in an attempt to reduce the amount. In a state of depression and agitation, Klimas, who had no prior history of heart disease, suffered a fatal myocardial infarction.[414] To the majority of the reviewing court this case contained no barrier to sustaining the award of the Board, in view of precedent decisions allowing compensation where physical injuries were incurred as a result of fright, nervous shock, continued anxiety, severe pressure and excessive strain from employment.[415] On the other hand, the minority could not justify stretching compensability to cover an idiopathic injury which was "essentially the result of the customary stress and strain of life."[416] While the dissent had looked for an "industrial accident" in a "real, objective sense,"[417] the majority opinion turned on the fact that, at the time of the fatal attack, the employee was embroiled in a state of prolonged emotional tension arising directly out of the pressures and problems of his employment.[418] It was sufficient that his death was shown to have been caused by the protracted emotional stress of his employment; that decedent may have been unusually vulnerable to mental stress was not considered to have been the issue.[419]

The lenient principle of *Klimas* found fuller expression in the recent California case of *Lamb v. Workmen's Compensation Appeals Board*,[420] in which the Supreme Court of California reversed the Board's denial of award on conclusion that the Board had failed to consider evidence tending to show that emotional stress was a contributing cause of the decedent's heart attack.[421] As stipulated by the court,

it is not the Board's assessment of the amount of stress *inherent* in a

414. Myocardial infarction refers to the destruction of heart muscle tissue resulting from an insufficiency of blood supply to the heart wall. E. SAGALL & B. REED, THE HEART AND THE LAW 449 (1968).

415. Klimas v. Trans Caribbean Airways, 219 N.Y.S.2d 14, 16-18 (1961), *citing* Pickerell v. Schumacher, 152 N.E.2d 434 (N.Y. 1926) (fright when emergency brake failed to hold as motor vehicle rolled backwards); Krawczyk v. Jefferson Hotel, 103 N.Y.S.2d 40 (App. Div. 1951) (shock from witnessing fight between two other employees); Furtado v. American Export Airlines, 83 N.Y.S.2d 745 (App. Div. 1948) (continued overwork in supervising of construction); Church v. Westchester County, 1 N.Y.S.2d 581 (App. Div. 1938) (mental stress on being vigorously cross-examined during employer's trial).

416. Klimas v. Trans Caribbean Airways, Inc., 219 N.Y.S.2d 14, 20 (1961) (dissenting opinion).

417. *Id.* at 20.

418. *Id.* at 18.

419. *Cf.* Cramer v. Barney's Clothing Store, 223 N.Y.S.2d 813, 814 (App. Div. 1962), *aff'd*, 241 N.Y.S.2d 844 (1963), in which claimant suffered a myocardial infarction while involved in an argument with his supervisor over his paycheck. Recovery was denied on the ground of lack of "aggravated and prolonged situation of emotional tension" as existed in *Klimas*. *Id.* at 814.

420. 113 Cal. Rptr. 162 (1974).

421. *Id.* at 168.

> workmen's employment which governs in matters of stress-caused injury, but rather the Board's determination of the amount of stress which the particular employment has *in fact* exerted upon the particular workman.[422]

Essential to a finding that emotional stress of employment has contributed to an injury is the rule that a pre-existing heart disease does not bar compensation for an injury arising out of employment which accelerates the heart disease to the point of disability.[423] Thus, whether the employee's condition was average or pre-existing subnormal makes no difference as long as the disability was proximately caused by an injury arising out of employment.[424]

The apparent trend in heart cases is to consider the individual employee and his particular situation in order to determine if some job-related event or events was a producing or contributing cause of the injury. Under this principle, any distinction between the physical and emotional stimuli provoking a heart attack is without foundation. The logic of the rule applies equally to both types of situations in determining whether the injury was an accidental one:

> [i]t seems unthinkable that, if hypertension may be aggravated either by physical or mental and emotional exertion, courts should be willing to accept the physical as causative, but reject, as not accidental, a disability, proximately resulting from mental and emotional exertion.[425]

An illustrative example is *Ferguson v. HDE, Inc.*,[426] a Louisiana case in which the claimant became upset and angry over a paycheck that was substantially lower than he had expected, and, in the midst of a heated discourse with his superior, suffered a stroke resulting in paralysis. The lower courts had denied compensation on the basis of precedent that emotionally caused disabilities were not compensable under the Louisiana statute requiring that the injury be "by accident."[427] In overruling its earlier decision and awarding compensation, the supreme court applied the statutory definition of "accident" to the facts and concluded that the injury was accidental because it was "unexpected and unforeseen," it "happened suddenly and violently," and it produced "objective symptoms of injury."[428] The court reasoned that since the event producing the injury was clearly job-connected, the claim should not be rejected merely because the exertion resulting in disability was emotional rather than physical.[429]

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422. *Id.* at 168 (court's emphasis).
423. *Id.* at 167.
424. *Id.* at 167 n.6.
425. Insurance Dept. v. Dinsmore, 102 So. 2d 691, 694 (Miss. Ct. App.), *aff'd on rehearing*, 104 So. 2d 296 (Miss. 1958).
426. 270 So. 2d 867 (La. 1973), *rev'g* 254 So. 2d 691 (La. Ct. App. 1971).
427. Danziger v. Employers Mut. Liab. Co., 156 So. 2d 468 (La. 1963).
428. Ferguson v. HDE, Inc., 270 So. 2d 867, 869 (La. 1973), *rev'g* 254 So. 2d 691 (La. Ct. App. 1971).
429. *Id.* at 870.

This extreme liability, as manifested by the Louisiana court, is easily susceptible to criticism on the ground that the award was apparently unjustified. Cases like *Ferguson* seem to herald runaway compensability and transform workmen's compensation into a system of health insurance coverage for any heart attack. But the critic must bear in mind the legal principle underlying all workmen's compensation litigation and its logical application to the facts: compensation as provided by the statute should be awarded when the evidence shows that some factor of employment significantly contributed to the injury, regardless of whether the precipitating stimulus was of physical or emotional nature. The range of compensability should be limited, not by the nonphysical nature of the precipitating cause, but rather by the indefinite nature of the cause. Recovery will and should be denied if the cause of the injury, whether physical or emotional, lacks a sufficiently definite connection to the job. This view is illustrated by the Texas cases, which have generally required the showing of a definite or specific cause arising out of employment as requisite to awarding compensation for emotionally induced heart attacks.

HEART CASES IN TEXAS

Litigation of heart attack cases under Texas workmen's compensation law has established that unusual exertion is not a requisite for an award;[430] a gradual buildup of emotional stress as the sole producing cause of a heart attack, however, will preclude recovery.[431]

Texas is one of six states which has neither legislatively nor judicially adopted the requirement that a compensable injury be accidental in character.[432] The Texas Workmen's Compensation Act defines personal injury simply as "damage or harm to the physical structure of the body and such other diseases or infections as naturally result therefrom."[433] In response the courts have formulated the basic guiding principle:

> [t]o recover under the Act it need only be shown that an injury to the physical structure of the body was sustained by the employee as a result of a risk or hazard of the employment while the employee was acting in the course of his employment.[434]

A risk can be incidental to usual work activity; therefore, an injury will be

430. United States Fidelity & Guar. Co. v. Herzik, 359 S.W.2d 914, 919 (Tex. Civ. App.—Houston 1962, writ ref'd n.r.e.).

431. *See* Olson v. Hartford Accident & Indem. Co., 477 S.W.2d 859, 860 (Tex. Sup. 1972).

432. Larson, *The "Heart Cases" in Workmen's Compensation: An Analysis and Suggested Solution*, 65 MICH. L. REV. 441, 442 (1967). The other five states are California, Iowa, Massachusetts, Minnesota, and Rhode Island.

433. TEX. REV. CIV. STAT. ANN. art 8306, § 20 (Supp. 1974).

434. Aetna Ins. Co. v. Hart, 315 S.W.2d 169, 172 (Tex. Civ. App.—Houston 1958, writ ref'd n.r.e.); *see* Pacific Employers Ins. Co. v. Solomon, 488 S.W.2d 189, 191 (Tex. Civ. App.—Texarkana 1972, writ ref'd n.r.e.); Midwestern Ins. Co. v. Wagner, 370 S.W. 2d 779, 783 (Tex. Civ. App.—Eastland 1963, writ ref'd n.r.e.).

deemed compensable, in the absence of unusual strain or overexertion, if a causal connection is established between the injury and the employee's work performance.[435]

To prove this causal connection the heart disability must be traceable to a definite time, place, and event.[436] This judicially imposed requirement arises from cognizance that the legislature did not intend to provide general health insurance by enacting workmen's compensation law.[437] As the factual situation in most heart cases includes a pre-existing heart disease which creates vulnerability to an attack, the rule may be applied in these cases more strictly through a closer scrutiny of the evidence to ascertain causal connection. Two Texas cases illustrating successful claims under application of the causal connection rule are *Insurance Co. of North America v. Kneten*[438] and *Aetna Casualty & Surety Co. v. Calhoun*.[439] In *Kneten* the supreme court concluded that the heart attack, promptly following an electrical shock received while claimant was drilling, could reasonably have been precipitated by the work incident, notwithstanding the fact that claimant had arteriosclerosis which predisposed him to an attack.[440] In *Calhoun* a millwright died of coronary occlusion 15 days after he had taken a nerve-racking overhead welding test. His symptoms of heart damage had begun immediately after he took the test and had continued until his death. It was determined that the "progressive disease process" had been produced specifically by the welding test and aggravated by continued physical activity of decedent's employment.[441]

On the other hand, recovery was denied in *Olson v. Hartford Accident & Indemnity Co.*,[442] where the claimant sought compensation for disability resulting from a heart attack precipitated by four emotionally stressful incidents arising out of his employment. The majority was of the opinion that

435. Carter v. Travelers Ins. Co., 132 Tex. 288, 120 S.W.2d 581 (1938) (maid in hotel suffered hemorrhage from lifting and carrying heavy loads and moving furniture); United States Fidelity & Guar. Co. v. Herzik, 359 S.W.2d 914 (Tex. Civ. App.—Houston 1962, writ ref'd n.r.e.) (oven loader in bakery sustained coronary occlusion in usual course of work); Hartford Accident & Indem. Co. v. Gant, 346 S.W.2d 359 (Tex. Civ. App.—Dallas 1961, no writ) (grocery truck driver suffered heart attack while delivering 53 pound packages); Aetna Ins. Co. v. Hart, 315 S.W.2d 169 (Tex. Civ. App.—Houston 1958, writ ref'd n.r.e.) (employee in dry cleaning store suffered stroke after frightening berating by customer).

436. Olson v. Hartford Accident & Indem. Co., 477 S.W.2d 859, 860 (Tex. Sup. 1972); Aetna Ins. Co. v. Hart, 315 S.W.2d 169, 175 (Tex. Civ. App.—Houston 1958, writ ref'd n.r.e.).

437. Olson v. Hartford Accident & Indem. Co., 477 S.W.2d 859, 860 (Tex. Sup. 1972).

438. 440 S.W.2d 52 (Tex. Sup. 1969).

439. 426 S.W.2d 655 (Tex. Civ. App.—Beaumont 1968, writ ref'd n.r.e.).

440. Insurance Co. of North America v. Kneten, 440 S.W.2d 52, 54 (Tex. Sup. 1969).

441. Aetna Cas. & Surety Co. v. Calhoun, 426 S.W.2d 655, 658 (Tex. Civ. App.—Beaumont 1968, writ ref'd n.r.e.).

442. 477 S.W.2d 859 (Tex. Sup. 1972) (Steakley and Reavley, JJ., dissenting).

the requirement of a definite time, place and cause was not met; that the claimant had not related his injury to any precipitating strain, traumatic shock, or particular mental stimulus.[443] A strong dissent argued that the cumulative effect of emotional stresses arising out of job-related incidents and resulting in heart attack is comparable, as a precipitating cause, to any physical strain which produces the same result.[444] The dissent would not have drawn a distinction either between physical and mental stimuli or between one fortuitous event and a gradual buildup of stressful incidents, as precipitating causes of injury. The controlling principle, according to the dissent, would have been whether or not the claimant had met his burden of establishing a probable causal relationship between the job-related stress and the injury.[445] The minority believed that there was probative evidence of job-connected incidents, shown by medical testimony to have contributed to and precipitated the coronary occlusion.[446]

Olson has definitively established Texas' position of reluctance with regard to emotionally induced heart attacks. Texas limits liability in heart cases by imposing specificity or particularity of stimulus as the predicate of the claim. This requisite has the effect both of broadening and of limiting situations of recovery: it broadens compensability to include situations where, in the absence of unusual stress or strain, there is simply a particular event or activity which produces the injury; it excludes from recovery situations in which the heart attack cannot reasonably be traced to a specific event or activity of employment. Thus, under the Texas requirement it can hardly be asserted that workmen's compensation provides general health insurance for heart attack victims.

General Scope of Neurosis Cases

Judicial interpretation of the law in workmen's compensation claims based on neurotic disabilities is in a state of gradual development. Initially the courts were constrained to grant recovery for such a nebulous claim as a mental injury; care and precaution were exercised in view of the possibility of feigned and exaggerated mental afflictions.[447] With advances in medical science and dependable diagnosis, however, skepticism has generally given way to recognition of genuine mental or nervous injuries arising in the course of employment.[448]

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443. *Id.* at 860.
444. *Id.* at 862.
445. *Id.* at 862.
446. *Id.* at 862.
447. *See, e.g.*, Miller v. United States Fidelity & Guar. Co., 99 So. 2d 511, 518 (La. Ct. App. 1958); Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 537, 209 S.W.2d 345, 354 (1948) (dissenting opinion). *See also* Bekeleski v. O.F. Neal Co., 4 N.W.2d 741, 743 (Neb. 1942).
448. Murray v. Industrial Comm'n, 349 P.2d 627, 633 (Ariz. 1960); Baker v. Work-

In situations where the mental injury or neuroses is related to a physical injury or trauma or to a particular event, compensation for the mental disability is now almost universally allowed.[449] In these decisions the requisite to establishing a "real" injury is the physical component.[450] The heart cases discussed above are good examples of the common situations in which a physical disability is directly precipitated by nervous stress, shock, or some untoward or frightening event.[451] The obvious physical injury resulting from mental or emotional stimuli constitutes evidence tending to establish a causal relation between the incident arising out of employment and the disability, and the injury is therefore deemed "accidental" within the meaning of workmen's compensation laws. Conversely, when the employee suffers a physical injury and then develops a resultant neurosis, the causal connection may likewise be established by medical testimony to that effect.[452] In such instances where mental disability succeeds or is precipitated by physical injury or trauma, it is termed "traumatic neurosis" or "conversion reaction."[453]

An early decision awarding compensation when the neurosis was traceable to a physical traumatic event was *Skelly v. Sunshine Mining Co.*[454] in which the claimant had recovered for physical disabilities resulting from an injury to his head while working in a mine. He subsequently filed for modification of the award due to changed conditions, complaining of severe headaches, insomnia, and inability to return to work. Medical witnesses were of the opinion that his condition was not due to any organic injury, but was a traumatic neurosis traceable to his accident and injury. One doctor referred to claimant's fear of going underground again, submitting that the recurrence of headaches when he attempted to work underground was the result of nerv-

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men's Compensation Appeals Bd., 96 Cal. Rptr. 279, 283 (Ct. App. 1971); Peterson v. Department of Labor & Indus., 33 P.2d 650, 651 (Wash. 1934).

449. *See generally* 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION §§ 42.22-42.23 (1973).

450. Murray v. Industrial Comm'n, 349 P.2d 627, 633 (Ariz. 1960) (fall resulting in injury to back produced hysteria disability); Skelly v. Sunshine Mining Co., 109 P.2d 622, 624 (Idaho 1941) (traumatic psychosis developed after injury sustained in mine); Muse v. Sentry Ins. Co., 269 So. 2d 609, 614 (La. Ct. App. 1972) (traumatic neurosis traceable to vicious beating at hands of fellow worker). *But see* Phelps Dodge Corp. v. Industrial Comm'n, 49 P.2d 391, 392 (Ariz. 1935) (neurosis not induced by pulmonary injury which resulted from accident at plant).

451. *See, e.g.*, Lamb v. Workmen's Compensation Appeals Bd., 520 P.2d 978 (Cal. 1974); Ferguson v. HDE, Inc., 270 So. 2d 867 (La. 1973); Klimas v. Trans Caribbean Airways, Inc., 219 N.Y.S.2d 14 (1961).

452. See for example, Murray v. Industrial Comm'n, 349 P.2d 627 (Ariz. 1960); Skelly v. Sunshine Mining Co., 109 P.2d 622 (Idaho 1941); Muse v. Sentry Ins. Co., 269 So. 2d 609 (La. Ct. App. 1972); Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 209 S.W.2d 345 (1948); Colonial Penn Franklin Ins. Co. v. Mayfield, 508 S.W.2d 449 (Tex. Civ. App.—Amarillo 1974, writ ref'd n.r.e.); Clayton v. Employers Mut. Liab. Ins. Co., 480 S.W.2d 487 (Tex. Civ. App.—Waco 1972, no writ); Peterson v. Department of Labor & Indus., 33 P.2d 650 (Wash. 1934).

453. 3 R. GRAY, ATTORNEY'S TEXTBOOK OF MEDICINE § 104.02(4) (3d ed. 1973).

454. 109 P.2d 622 (Idaho 1941).

ous stimulation rather than a brain injury. The court then determined that Skelly's changed condition amounted to traumatic neurosis which was produced by his accidental injury; compensation for the increased disability was granted notwithstanding evidence that the neurosis was aggravated or accentuated by financial worries and marital troubles.[455]

A traumatic psychoneurosis of a somewhat different nature presented a Louisiana appellate court with the issue of whether an alleged disability was real or imaginary.[456] In *Miller v. United States Fidelity & Guaranty Co.*,[457] the employee's condition was diagnosed as "conversion hysteria," in which the loss of emotional control leads to derangement in the nervous system and resultant perversions of motor and sensory functions.[458] The claim was predicated upon an injury to the leg, resulting in a neurotic reaction exhibited by a grotesque limp, increased pain, and fatigability. The insurance company contended that the neurological and psychiatric testimony presented no objective evidence of disability, and that plaintiff's case depended solely upon subjective evidence. Under the law requiring traceability of neurosis to an accidental injury, however, a party may establish by subjective evidence the existence of a present disability if it is related to an originally physical condition.[459] Once the physical injury was established, the court's task was to determine the sufficiency of the subjective evidence. The court rejected the supposition that the claimant was a "malingerer" and concluded instead, from the positive testimony of a neurologist, that he was disabled from a genuine neurosis.[460] In view of the fact that a person so disabled may honestly simulate instantaneous physical changes upon suggestion, the court simply acknowledged the paradox that a disability is nonetheless real even though its causation is imaginary.[461] Had there not been a precedent physical injury, however, it is questionable that the court would have been willing to give the claimant the benefit of the doubt.

Additionally, the insurance company had intimated that Miller was suffering from "compensationitis."[462] Such condition has also been referred to as "desire neurosis"[463] and "unconscious desire for compensation."[464] According to Professor Larson, there is a hazy line between this "compensation neurosis"

455. *Id.* at 627.
456. Miller v. United States Fidelity & Guar. Co., 99 So. 2d 511, 515 (La. Ct. App. 1958).
457. *Id.* at 511.
458. 3 R. GRAY, ATTORNEY'S TEXTBOOK OF MEDICINE § 104.52(1) (3d ed. 1973).
459. Miller v. United States Fidelity & Guar. Co., 99 So. 2d 511, 515, 517 (La. Ct. App. 1958).
460. *Id.* at 516-17.
461. *Id.* at 520.
462. *Id.* at 519. The insurance company argued that the efficient cure of claimant's condition would be application of a "greenback poultice."
463. Peterson v. Department of Labor & Indus., 33 P.2d 650, 652 (Wash. 1934).
464. Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 526, 209 S.W.2d 345, 347 (1948).

and malingering; the former, an unconscious desire for compensation, is usually compensable while the latter, a conscious desire, is not.[465] As stated in *Miller*, however, "courts will stigmatize a claimant as a malingerer only upon positive and convincing evidence justifying such a conclusion."[466] Compensation neurosis is a genuine disability which may arise out of the strain of protracted litigation of a workmen's compensation claim, or an unconscious desire to prolong compensation payments.[467] It is a mental reaction to the claimant's present objective situation.

The Supreme Court of Texas followed this rationale in *Hood v. Texas Indemnity Insurance Co.*[468] In this case, claimant sustained an injury to his foot, and medical testimony showed that he developed a disabling neurosis, characterized by pain and shifting anesthetic zones in the foot, as a result of the injury. A medical expert opined that the neurosis was "in part influenced by an unconscious desire for compensation, and after termination of this litigation he will begin to improve."[469] The court found that the neurotic disability resulted from a physical injury and that was a sufficient fact on which to award compensation.[470] In response to the allegation of "unconscious desire for compensation," the court further declared that even if this were a contributing cause of the disability, it would not defeat an award because the unconscious desire would be merely incidental to the traumatic neurosis which was the producing cause of the injury.[471]

There is a lack of agreement among jurisdictions on the issue of awarding compensation in neurosis cases where there is absence of physical trauma, that is, where a mental disability is produced solely by mental stimuli.[472] New York case law has steadfastly held that a mental injury precipitated solely by a mental cause is not an accidental injury and is not compensable.[473] In states whose statutes require violence to the physical structure of the body,

465. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.24 (1973).

466. Miller v. United States Fidelity & Guar. Co., 99 So. 2d 511, 516 (La. Ct. App. 1958).

467. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.24 (1973).

468. 146 Tex. 522, 526, 209 S.W.2d 345, 347 (1948).

469. *Id.* at 526, 209 S.W.2d at 347.

470. *Id.* at 528, 209 S.W.2d at 348.

471. *Id.* at 526, 209 S.W.2d at 347-48; *accord*, Peterson v. Department of Labor & Indus., 33 P.2d 650 (Wash. 1934).

472. Awarding compensation: Baker v. Workmen's Compensation Appeals Bd., 96 Cal. Rptr. 279, 285 (Ct. App. 1971); Carter v. General Motors Corp., 106 N.W.2d 105, 113 (Mich. 1960). Denying compensation: MacKenzie v. General Motors Corp., 210 N.W.2d 357, 359 (Mich. Ct. App. 1973); Wolfe v. Sibley, Lindsay & Curr Co., 354 N.Y.S.2d 470, 471 (App. Div. 1974). *See generally* 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.23 (1973).

473. Wolfe v. Sibley, Lindsay & Curr Co., 354 N.Y.S.2d 470, 471 (App. Div. 1974) (claimant was first to discover body of supervisor who had killed himself at office, suffered acute depressive reaction and given shock treatments; compensation denied); *accord*, Straws v. Fail, 233 N.Y.S.2d 893, 894 (App. Div. 1962); Chernin v. Progress Serv. Co., 192 N.Y.S.2d 758, 760 (App. Div. 1959), *aff'd*, 216 N.Y.S.2d 697 (1961).

an emotionally induced mental disorder is not compensable.[474] In cases awarding compensation, the primary requirement is that of establishing a causal connection between the employment and the mental disability, regardless of whether the incident arising out of employment is emotional pressure[475] or an unexpected event.[476]

California subscribes to the view that a physical accident or trauma is not a prerequisite for recovery for psychoneurotic injury.[477] The rule prevails that a psychoneurotic injury "caused by the work environment" is compensable.[478] Thus the claimant need produce evidence tending to show only that his psychoneurotic injury was sustained in the course of his employment.[479] In *Baker v. Workmen's Compensation Appeals Board*,[480] plaintiff was a fireman whose exposure to smoke and fumes in fighting a rubber fire, combined with his knowledge that many of his co-workers were afflicted with heart disease, caused him to develop "cardiac neurosis." Medical experts testified that plaintiff in fact had no cardiovascular disease; his symptoms were emotionally induced and attributable to his employment. The court determined that the only reasonable inference from this evidence was that plaintiff was disabled from a psychoneurotic injury of industrial causation.[481] California law recognizes that a disabling physical injury "may be the result of the cumulative effect of each day's stress and strains."[482] Consequently, there is no logical basis for a different requirement as to a psychoneurotic injury which is just as real and disabling as a physical injury.

A classic case before the Supreme Court of Michigan presented the issue of compensability of psychoneurotic disability resulting from emotional pressures of employment. *Carter v. General Motors Corp.*[483] involved a claimant who suffered paranoid schizophrenic psychosis as a result of the daily pressures of his assembly line employment. Carter's physician explained that Carter had a personality predisposition towards development of paranoid schizophrenic collapse, and that the assembly line job with its attendant demands was the precipitating factor. The Board's finding of casual connection

474. Bekeleski v. O.F. Neal Co., 4 N.W.2d 741, 743 (Neb. 1942) (elevator operator denied compensation for shock occasioned by seeing passenger killed). *But see* Peavy v. Mansfield Hardwood Lumber Co., 40 So. 2d 505 (La. Ct. App. 1949) (compensation awarded for nervous disorder arising out of accident from which no demonstrable physical pathology resulted).

475. Carter v. General Motors Corp., 106 N.W.2d 105, 109 (Mich. 1960).

476. Travelers Ins. Co. v. Garcia, 417 S.W.2d 630, 631 (Tex. Civ. App.—El Paso 1967, writ ref'd n.r.e.).

477. Baker v. Workmen's Compensation Appeals Bd., 96 Cal. Rptr. 279, 285 (Ct. App. 1971).

478. *Id.* at 285.

479. *Id.* at 285.

480. *Id.* at 279.

481. *Id.* at 285-86.

482. *Id.* at 286.

483. 106 N.W.2d 105 (Mich. 1960).

was properly based on this expert opinion; the question for the court was whether Carter's mental disability was to be treated differently from a physical injury caused by employment.[484] The court surveyed its prior decisions granting recovery for mentally induced neurotic disorders on the ground that such injuries were "accidents" within the meaning of workmen's compensation law, and noted that aggravation of a pre-existing latent mental disturbance does not bar recovery.[485] Finally, the court determined that the statute does not exclude injuries which are not attributable to a single event.[486] The significant result is that under a liberal judicial construction and application of the statute, compensation of a peculiar psychoneurotic injury was awarded.

In discarding the requirement of traceability to a single event, *Carter* essentially did away with any exclusion of compensation for psychoneurotic disabilities. Thus the projected effect is that the industrial employer will become an insurer for mental breakdowns of his employees who cannot withstand further dehumanizing, depressing or emotionally pressured work. Possibly industry and the consuming public *should* be the ones to bear the cost of psychological trauma resulting to employees whose work efforts on the assembly line have produced the innumerable items of convenience upon which society has come to depend. While this issue is legislative in nature, nonetheless the courts must determine the compensability of neurotic disabilities resulting from cumulative emotional stress. As in a graduated heart case, the requisite of a particular precipitating cause arising out of employment ought to be applied in the case of a gradual mental breakdown. The requirement that the mental disability be traceable to a specific stimulus related to employment should prevent recovery for any unjustified claims. In this area Texas' requirement is in accord.

NEUROSIS CASES IN TEXAS

Texas was an early leader in extending compensation for mental disability resulting from physical injury or trauma. Under the Texas statute neurosis is considered to be among the injuries causing "damage to the physical structure of the body."[487] On the other hand, when the mental disorder has no connection with either a physical injury or a fortuitous event arising out of the course of employment, it is not compensable.[488]

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484. *Id.* at 109.
485. *Id.* at 111-12.
486. *Id.* at 113.
487. TEX. REV. CIV. STAT. ANN. art. 8306, § 20 (Supp. 1974). For an interpretation of the statute, see Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 206 S.W.2d 345 (1948).
488. *See* Olson v. Hartford Accident & Indem. Co., 477 S.W.2d 859, 860 (Tex. Sup. 1972).

Hood v. Texas Indemnity Insurance Co.[489] firmly established the principle that neurosis resulting from physical injury is compensable. The supreme court considered the unfeigned incapacity of the claimant—his pain and the shifting zones of anesthesia in his foot—which a physician testified was not an organic nerve disorder but of mental origin, and found that the neurosis was a direct result of the injury to the foot. This type of disability, traceable to an original physical injury, was found to have been clearly intended by the legislature to be covered by the statute.[490]

In a subsequent case the supreme court extended the range of situations in which compensation is to be allowed to include those where the disabling neurosis does not result from physical injury but is produced by an untoward event occurring in the course of employment.[491] *Bailey v. American General Insurance Co.*[492] definitively construed the statutory term "physical structure of the body" to include mental disorders or psychosomatic injuries arising *independently* of any prior physical injury. The plaintiff in this case witnessed a fellow workman fall to his death eight stories below. The traumatic effect of the accident resulted in disabling neurosis, or anxiety reaction, which prevented claimant from continuing employment as an ironworker. Bailey suffered symptoms of nervousness, fear of impending disaster, irritability, recurring nightmares, and paralysis when attempting to work at a height. This nervous condition was shown to be functional damage developing from his "traumatic experience" of witnessing the fall. The court relied on the testimony that this condition is "just as real and disabling" as damage to any other part of the body, and decided the statutory term referred to the *entire* body, or whole system of neural and mechanical processes.[493] A fortiori, claimant necessarily suffered harm to his body and was entitled to compensation.

Since *Bailey* the principle of recovery in psychoneurotic cases has solidified into the requirement which similarly governs heart attack cases: the injury must have been precipitated or contributed to by an untoward event that is traceable to a definite time and place arising out of the employment.[494] The

489. 146 Tex. 522, 209 S.W.2d 345 (1948).

490. *Id.* at 527, 209 S.W.2d at 348; *accord,* Colonial Penn Franklin Ins. Co. v. Mayfield, 508 S.W.2d 449 (Tex. Civ. App.—Amarillo 1974, writ ref'd n.r.e.) (claimant developed nervous aberration after sustaining injury to penis); Clayton v. Employers Mut. Liab. Ins. Co., 480 S.W.2d 487 (Tex. Civ. App.—Waco 1972, no writ) (claimant suffered chronic anxiety reaction as a result of injury to eye); Miller Mut. Fire Ins. Co. v. Ochoa, 432 S.W.2d 118 (Tex. Civ. App.—Corpus Christi 1968, writ ref'd n.r.e.) (claimant developed conversion reaction to fall from wing of airplane).

491. Bailey v. American Gen. Ins. Co., 154 Tex. 430, 279 S.W.2d 315 (1955).

492. *Id.*

493. *Id.* at —, 279 S.W.2d at 318.

494. Travelers Ins. Co. v. Garcia, 417 S.W.2d 630, 631 (Tex. Civ. App.—El Paso 1967, writ ref'd n.r.e.); Aetna Ins. Co. v. Hart, 315 S.W.2d 169, 175 (Tex. Civ. App. Houston 1958, writ ref'd n.r.e.); *see* Olson v. Hartford Accident & Indem. Co., 477 S.W.2d 859 (Tex. Sup. 1972); Insurance Co. of North America v. Kneten, 440 S.W.2d 52 (Tex. Sup. 1969),

unexpected and undesigned event, when connected with work activity, is considered a risk of employment.[495] Under this principle a risk of employment that warrants compensation is an armed robbery of a store, which event causes the clerk on duty to be "scared to death" and results in her extreme psychoneurotic reaction.[496]

This rationale requiring an untoward event as the producing cause of the mental disability excludes, however, the situation where a gradual buildup of emotional pressures precipitates a nervous collapse or mental breakdown. From a practical viewpoint, this limitation in graduated neurosis cases has well-reasoned application. Reminiscent of the *Olson* heart attack case,[497] the cumulative effect of the mental stimuli producing a mental disability is not deemed accidental, that is, it is not considered a risk of employment upon which to establish causal connection.

MEDICAL CAUSATION IN HEART AND NEUROSIS CASES

Probative evidence of causal connection between an injury and the employee's work activity lies predominantly in medical testimony. In a claim for compensation for such idiopathic injuries as heart attacks and neurasthenia, it is crucial that expert testimony establish a reasonable probability that the employee's exertion or stress, or the untoward event, was a producing or contributing cause of the disability.[498]

Reasonable medical probability is usually sufficient to establish causal relation.[499] As is usual in heart cases, the court generally relies on evidence and opinion advanced by the medical experts, and then applies the legal definition of causation to the facts. Since what constitutes a producing cause

495. Aetna Ins. Co. v. Hart, 315 S.W.2d 169, 173 (Tex. Civ. App.—Houston 1958, writ ref'd n.r.e.).

496. Travelers Ins. Co. v. Garcia, 417 S.W.2d 630 (Tex. Civ. App.—El Paso 1967, writ ref'd n.r.e.) (Psychiatrist testified that claimant's neurotic condition, characterized by nervousness, depression, nightmares, and paranoia, was with reasonable medical certainty precipitated by the holdup).

497. Olson v. Hartford Accident & Indem. Co., 477 S.W.2d 859, 860, 862 (Tex. Sup. 1972) (Steakley and Reavley, JJ., dissenting).

498. Recovery denied for lack of probative evidence of causal connection: Phelps Dodge Corp. v. Industrial Comm'n, 49 P.2d 391, 393 (Ariz. 1935); Brown v. Industrial Comm'n, 513 P.2d 1369, 1370 (Ariz. Ct. App. 1973); Messex v. Georgia-Pacific Corp., 293 So. 2d 615, 617 (La. Ct. App. 1974); Schwehn v. State Accident Ins. Fund, 520 P.2d 467, 470 (Ore. Ct. App. 1974); Webb v. Liberty Mut. Ins. Co., 501 S.W.2d 350, 352 (Tex. Civ. App.—Eastland 1973, writ ref'd n.r.e.); Whitaker v. General Ins. Co. of America, 461 S.W.2d 148, 153 (Tex. Civ. App.—Dallas 1970, writ ref'd n.r.e.); O'Dell v. Home Indem. Co., 449 S.W.2d 485, 487 (Tex. Civ. App.—Amarillo 1969, writ ref'd n.r.e.); Travelers Ins. Co. v. Smith, 448 S.W.2d 541, 545 (Tex. Civ. App.—El Paso 1969, writ ref'd n.r.e.); Dotson v. Royal Indem. Co., 427 S.W.2d 150, 156 (Tex. Civ. App.—Fort Worth 1968, writ ref'd n.r.e.); Monks v. Universal Underwriters Ins. Co., 425 S.W.2d 431, 435 (Tex. Civ. App.—Tyler 1968, writ ref'd n.r.e.).

499. Aetna Cas. & Surety Co. v. Scruggs, 413 S.W.2d 416, 421 (Tex. Civ. App.—Corpus Christi 1967, no writ).

is a legal question, conflicting medical opinion existing within the profession must give way to the inescapable legal conclusion based on the totality of the facts.[500] As one court has stated, the law endeavors to reach an "inference of reasonable medical certainty" from an event or sequence of events; while a doctor thinks in terms only of a precise medical cause for a particular condition, the law recognizes other causes toward a particular injurious result.[501] The evidence must be sufficient to raise the issue of whether or not the injury occurred while the claimant was engaged in certain activity within the course of his employment which triggered events that were the producing cause of his ultimate disability.[502]

Evidence of work effort closely followed by well recognized symptoms of injury points with force to a reasonably probable relation between the two occurences.[503] For instance, the presumption is raised by the fact that the employee was found unconscious and slumped over construction plans at his desk, that emotional stress was the producing cause of his fatal coronary occlusion.[504] A lapse of time, however, between the work effort and the disability does not necessarily preclude causal connection.[505] Ordinarily the probability of causation is established by means of a hypothetical question, directed to the medical expert, concerning his opinion as to whether the medical facts would support the presumption that the particular work activity or event was capable of precipitating the disability.[506] In his response the doctor is not allowed to predicate his opinion on assumed facts in the record.[507] If the record offers no support for the basis of the medical opinion, then it cannot be said to constitute probative evidence.[508]

In compensation claims based on traumatic neurosis, substantiation by competent expert opinion is even more necessary because of the subjective nature of the claim. Any lay testimony is "highly suspect" and must be cor-

500. Dwyer v. Ford Motor Co., 178 A.2d 161, 174 (N.J. 1962).

501. Murray v. Industrial Comm'n, 349 P.2d 627, 633 (Ariz. 1960).

502. Aetna Cas. & Surety Co. v. Scruggs, 413 S.W.2d 416, 423 (Tex. Civ. App.—Corpus Christi 1967, no writ).

503. Cossident v. Industrial Comm'n, 309 N.E.2d 569, 572 (Ill. 1974).

504. Alexander v. Campbell Constr. Co., 288 So. 2d 4, 5 (Miss. 1974).

505. Dwyer v. Ford Motor Co., 178 A.2d 161, 165 (N.J. 1962).

506. Midwestern Ins. Co. v. Wagner, 370 S.W.2d 779, 782 (Tex. Civ. App.—Eastland 1963, writ ref'd n.r.e.); Aetna Ins. Co. v. Hart, 315 S.W.2d 169, 175 (Tex. Civ. App.—Houston 1958, writ ref'd n.r.e.). *But see* Travelers Ins. Co. v. Smith, 448 S.W.2d 541, 543 (Tex. Civ. App.—El Paso 1969, writ ref'd n.r.e.).

507. Alexander v. Campbell Constr. Co., 288 So. 2d 4, 7 (Miss. 1974); Whitaker v. General Ins. Co. of America, 461 S.W.2d 148, 153 (Tex. Civ. App.—Dallas 1970, writ ref'd n.r.e.).

508. Whitaker v. General Ins. Co. of America, 461 S.W.2d 148, 153 (Tex. Civ. App. —Dallas 1970, writ ref'd n.r.e.). Doctor based his opinion on assumed fact that deceased was overexcited about going back to work after period of inactivity while recuperating from heart attack; that he was anxious to please his employer and exerted himself wiping windshields and working on cars at service station.