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## WORKMEN'S COMPENSATION—An Injury Caused by the Mental Strain of Employment is Compensable in Oklahoma.

*[W]e should be just before we are generous.*<sup>1</sup>

In the recent case of *Bill Gover Ford Company v. Roniger*,<sup>2</sup> a heart attack caused by the mental strain of employment was held to be a compensable accidental injury as contemplated by the Workmen's Compensation Act.<sup>3</sup> In previous decisions concerning heart attacks caused by employment-related mental or emotional strain, the Oklahoma Supreme Court has not allowed compensation.<sup>4</sup> Heart attacks were not considered "accidental injuries" as contemplated by the Act.<sup>5</sup> The *Roniger* case raises the problem inherent in workmen's compensation cases involving heart attacks. It centers on the question of whether the heart attack was caused by the employment or by a nonemployment hazard. The problem becomes more complex where the precipitating cause depends upon the subjective mental strain of employment rather than an objective physical act.

In the *Roniger* case, the claimant's duties consisted of general clerical work and dealing with customers. Two weeks prior to the alleged injury, the claimant was required to assume additional duties which consisted of the daily posting of accounts and the reproducing of statements at the end of the month. While copying these statements, the claimant suffered sharp pains in her chest, causing her to be hospitalized for ten days. The diagnosis was that the

<sup>1</sup> *Ben Hur Coal Co. v. Orum*, 366 P.2d 919, 921 (Okla. 1961) (Halley, J., dissenting).

<sup>2</sup> 426 P.2d 701 (Okla. 1967).

<sup>3</sup> OKLA. STAT. tit. 85 (1961).

<sup>4</sup> *Bossert v. Pittsburg Plate Glass Co.*, 405 P.2d 14 (Okla. 1965); *Ada Coca-Cola Bottling Co. v. Snead*, 364 P.2d 696 (Okla. 1961).

<sup>5</sup> OKLA. STAT. tit. 85, § 3(7) (1961).

claimant had suffered a heart attack. The claimant testified that as a result of her increased duties, she experienced a "strain, a different strain." The claimant's doctor testified as a medical expert "that the 'stress and strain' claimant was under was the 'precipitating factor' causing the heart attack."<sup>6</sup> The petitioner's physician, however, testified "her disability was 'not caused by any work she (claimant) was doing, or any nervous or mental strain that she says is associated with her work'."<sup>7</sup>

The court unanimously acknowledged the causative factor of employment-related mental strain and sustained the award of the State Industrial Court as having been supported by competent evidence. The court held:

That over exertion or strain causing the death or disability of an employee is more mental than muscular does not preclude an award of compensation, since the term "exertion" or "strain" is not confined in its use to muscular efforts, but means the act of putting some power or faculty into vigorous action; a strong effort, either of the body or the mind.<sup>8</sup>

In support of this decision, the court cited decisions by jurisdictions which follow the "unusual strain" doctrine.<sup>9</sup> However, Oklahoma had previously abandoned the "unusual strain" doctrine. Proof that an unusual strain occurred was no longer required to justify a compensatory award.<sup>10</sup> In

<sup>6</sup> 426 P.2d at 703.

<sup>7</sup> *Id.*

<sup>8</sup> 426 P.2d at 702 (syllabus by the court).

<sup>9</sup> *Fink v. City of Paterson*, 44 N.J.Super. 129, 129 A.2d 746 (Super. Ct. 1957); *Lobman v. Bernhard Altmann Corp.*, 19 App. Div. 2d 931, 244 N.Y.S.2d 425 (1963); *Monahan v. Seeds & Durham*, 134 Pa. Super. 469, 3 A.2d 998, *rev'd*, 336 Pa. 67, 6 A.2d 889 (1939). See Larson, *The "Heart Cases" In Workmen's Compensation: An Analysis And Suggested Solution*, 65 MICH. L. REV. 441, 445-48 (1967), for a detailed critique of those jurisdictions following the "unusual strain" doctrine.

<sup>10</sup> *Safeway Stores, Inc. v. Evans*, 376 P.2d 336 (Okla. 1962); *Kelley v. Enid Terminal Elevators*, 372 P.2d 589 (Okla. 1962).

support of its holding, the court cited *Monahan v. Seeds and Durham*.<sup>11</sup> In that case, the deceased suffered a heart attack after spending long hours searching for and worrying about a mistake made in payroll figures. However, the Supreme Court of Pennsylvania reversed the *Monahan* case and stated "the record convinces us that the evidence completely fails to support the conclusion that there was a casual connection between the alleged over-exertion and his death."<sup>12</sup> Even if one is to disregard the overruling of the *Monahan* case, the reintroduction of the "unusual strain" doctrine conflicts considerably with prior decisions of the Oklahoma courts. To comprehend fully the basis for the *Roniger* decision, one must examine the underlying judicial development of cases awarding compensation for heart attacks. The development of case law concerning heart attacks has centered upon the understandable fear that abuse of the Workmen's Compensation Act might occur if it were difficult to determine whether the "accidental injury" was a result of natural causes or a result of the employment.

In order to resolve the evidential problem of the causation of a heart attack, the courts first required that the cause of an accidental injury be attended by a strain or an unusual exertion.<sup>13</sup> The effect of this was to place the accidental quality upon the cause rather than the resulting injury. "To say that it was accidental merely because it was unexpected could be to authorize a judgment based upon conjecture, surmise and speculation."<sup>14</sup>

The requirement that an accident precede an injury was subsequently reviewed by the Oklahoma court in

<sup>11</sup> 134 Pa. Super. 469, 3 A.2d 998, *rev'd*, 336 Pa. 67, 6 A.2d 889 (1939).

<sup>12</sup> 336 Pa. at 67, 6 A.2d at 890.

<sup>13</sup> *See, e.g., Oklahoma Leader Co. v. Wells*, 147 Okla. 294, 296 P. 751 (1931).

<sup>14</sup> *National Biscuit Co. v. Lout*, 179 Okla. 259, 262-63, 65 P.2d 497, 502 (1937).

*Carden Mining and Milling Co. v. Yost*.<sup>15</sup> In this case the claimant suffered a heart attack as the result of the strenuous effort required in climbing "chat" or "tailing" piles. On the day when the heart attack occurred, he had been required to make numerous trips to the top of the piles. The court held this to be the precipitating cause of the heart attack. Since the claimant climbed the chat piles as part of his *usual* employment, the distinctive issue raised in this case was the interpretation to be placed upon "accidental injury." The *Yost* case held the question of whether there was an "accident" was inapplicable and defined an accident as " 'an event happening without human agency, or if happening through human agency, an event which, under the circumstances, is unusual and not expected to the person to whom it happens. In the term "accidental injury," the substantive "injuries" expresses the notion of a thing or event; that is, the wrong or damage done to the person, while "accidental" qualifies and describes the noun by ascribing to "injuries" a quality or condition of happening, or coming by chance or without design . . . . ' " <sup>16</sup> Thus, one may define an "accidental injury" as an unexpected *result* of employment. However, the *Yost* case still required proof of an unusual strain, even though the injury might occur in the course of his *usual* employment.

*Farmers Cooperative Association v. Madden*<sup>17</sup> was the first important Oklahoma case to depart from the unusual strain requirement. The *Madden* case held that the *normal* strain of employment may be the precipitating cause of an

<sup>15</sup> 193 Okla. 423, 144 P.2d 969 (1943).

<sup>16</sup> 193 Okla. at 425, 144 P.2d at 972, quoting *Andrews Mining & Milling Co. v. Atkinson*, 192 Okla. 322, 323-24, 135 P.2d 960, 961-62 (1943); accord *Rigdon & Bruen Oil Co. v. Beerman*, 346 P.2d 169 (Okla. 1959); *Gulf Oil Corp. v. Kincannon*, 203 Okla. 195, 218 P.2d 625 (1950).

<sup>17</sup> 356 P.2d 741 (Okla. 1960); accord, *Ben Hur Coal Co. v. Orum*, 366 P.2d 919 (Okla. 1961).

accidental injury. The court sustained an award for the claimant and rejected the petitioner's argument that an award could not be made where there was no unusual or unaccustomed physical activity by the claimant. The decision set forth the evidentiary steps necessary to show proof of an accidental injury from strain. That proof includes:

- (a) lay testimony as to the nature of the labor performed by the workmen when injured;
- (b) expert opinion that the exertion attendant upon such physical activity as shown was sufficient in degree to, and did produce the strain which resulted in the workman's disability.<sup>18</sup>

*H. J. Jeffries Truck Line v. Grisham*<sup>19</sup> rejected the contention that the claimant must show that an unusual strain occurred in the course of his normal employment. The court held the basis for compensation to be an injury accidental in effect rather than an injury caused by an accident.

[A]n internal injury of a sudden, unusual and unexpected nature may nevertheless be accidental in character, although its external cause is attributable to ordinary work performed in a normal manner and without any untoward incident connected therewith.<sup>20</sup>

The court pointed out that:

. . . The impact of a strain develops from an inter-play of a multitude of variable factors which depend largely on the individual reaction of a given human organism to the physical forces in action. Strain or overexertion relates exclusively to the person injured. As applied to that person, its principal ingredient is unusual effect rather than unusual cause.<sup>21</sup>

<sup>18</sup> 356 P.2d at 744.

<sup>19</sup> 397 P.2d 637 (Okla. 1964).

<sup>20</sup> *Id.* at 640.

<sup>21</sup> *Id.* at 641.

The court concluded:

. . . It was sufficient to show factually and medically that there was a causal relation between the heart attack and the sum total of claimant's antecedent efforts of labor which for *him* must be deemed "unusual" or stressful . . . . Whether a heart attack is provoked by employee's labor or is a result of natural causes is a question of fact, and before recovery for a heart attack is allowed *it must be apparent to the rational mind, upon consideration of all the circumstances, that there is a causal connection between the labor and the resulting injury.*<sup>22</sup>

The Oklahoma courts, therefore, allow recovery under the Workmen's Compensation Act for a heart attack suffered by an employee as a result of the normal strain of his employment.

Prior to the *Roniger* case, the Oklahoma courts had not allowed recovery where the claim was based upon the alleged *mental* or *emotional* strain as the precipitating, employment-related cause of an accidental injury. It is difficult to determine, however, if this has been primarily a result of indecision, whether mental strain, with its evidentiary problems, may cause a heart attack; or if it was merely because the courts were not presented with a satisfactory situation on which to base such a decision. In *Ada Coca-Cola Bottling Co. v. Snead*,<sup>23</sup> the claimant was not allowed to recover for a heart attack caused by his worrying about his inability to work. The claimant had ceased working due to an injury incurred *three years prior* to the heart attack. The court gave an indication that even in a more reasonable fact situation the result might be the same. "No case has been called to our attention in which worry was a factor; however, it would seem that such is not a 'risk reasonably incident to the employment' . . ." <sup>24</sup> In *Bossert v. Pittsburg Plate Glass Company*,<sup>25</sup> the claimant

<sup>22</sup> *Id.* (emphasis added).

<sup>23</sup> 364 P.2d 696 (Okla. 1961).

<sup>24</sup> *Id.* at 699.

<sup>25</sup> 405 P.2d 14 (Okla. 1965).

had been treated for hypertension prior to the heart attack. Thus, the *Roniger* case may have been the first case where it was apparent to the rational mind, upon consideration of all the circumstances, that there was a causal connection between the labor and the heart attack.

The *Roniger* case forms the basis for an award of compensation where it can be shown that the employment caused the mental strain, and that the mental or emotional strain was in fact the precipitating cause of the heart attack. This would be an acceptable criterion for granting an award. The question raised by the *Roniger* case, however, is whether the emotional or mental strain must be unusual. Previous decisions by the Oklahoma Supreme Court have given a sound basis for determining the causal connection between a claimant's employment and an injury. The court in the *Roniger* case should have relied upon its past decisions and should not have referred to jurisdictions still following the often criticized "unusual strain" doctrine.<sup>26</sup> Oklahoma courts have realized the fallibility of the unusual strain test in regard to injuries caused by physical strain. There is no reason to cause the same judicial problem over mental strain. The rationale of the approach advocated is simple—"but for the employment, the claimant would be unharmed." This approach assumes as its distinguishing factor whether the cause of the injury arose from a personal basis unrelated to the employment or arose from the demands of the employment upon the individual. This approach would best implement the liberal intent of the Workmen's Compensation Act; that is, to provide for the human cost of production.

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<sup>26</sup> For a critique on interpretations of "unusual strain" and "accident" see, Larson, *supra* note 9, at 465-68.