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Mental and Nervous Injury in Workmen's Compeusation

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I. INTRODUCTION

"[H]ow could it be real when . . . it was purely mental?"[1]

This poignant judicial cry out of the past, which I occasionally quote to put down my psychiatrist friends, contains the clue to almost all of the trouble that has attended the development of workmen's compensation law related to mental and nervous injuries. This equation of "mental" with "unreal," or imaginary, or phoney, is so ingrained that it has achieved a firm place in our idiomatic language. Who has not at some time, in dismissing a physical complaint of some suffering friend or relative, airily waved the complaint aside by saying, "Oh, it's all in his head?"

The impact of this pervasive preconception on compensation decisions can be briefly stated. A high proportion of the cases display a search for something—anything—that can be called "physical" to supply the element of "reality" in the injury. If the courts find this element, they are quite happy to award compensation even though the injury viewed as a whole is preponderantly mental or nervous. But if no such "physical" component can be identified, even some of the more sophisticated appellate courts still find themselves unable to justify compensation for a work-connected mental or nervous disability.

The cases may be thought of in three groups: (1) mental stimulus causing physical injury; (2) physical trauma causing nervous injury; and (3) mental stimulus causing nervous injury. The first two categories are by now almost universally accepted as compensable. The third is the battleground where new law, reflecting the increasing ability of medicine and psychiatry to speak authoritatively on the causes and consequences

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1. Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 537, 209 S.W.2d 345, 354 (1948) (Smedley, J., dissenting joined by Brewster & Folley, JJ.).

of mental and nervous injury,[2] is currently being developed. It must be understood that the use here of such words as mental, nervous, emotional, stimulus, psychic, and the like is only a rough expedient adopted in order to sort out an almost infinite variety of subtle conditions and relationships for compensation law purposes, and especially in order to narrow down the range of situations where controversy seems to persist.

II. MENTAL STIMULUS CAUSING PHYSICAL INJURY

The first category is that in which a mental, as distinguished from a physical, impact or stimulus results in a distinct physical injury. Here the decisions uniformly find compensability.[3] There appears to be, on the law, only one recent contrary holding in the reports.[4]

2. On the medical aspects of the relation of mental, emotional, and nervous stimuli to physical illness see the following articles: W. CURRAN, LAW AND MEDICINE 550-75 (1960); J. MASSERMAN, PRINCIPLES OF DYNAMIC PSYCHIATRY (2d ed. 1961); R. MEZER, DYNAMIC PSYCHIATRY IN SIMPLE TERMS (1956); Burtner, *Stress, Strain and Trauma of the Heart: Medical Considerations*, NACCA 13TH ANNUAL CONVENTION TRANSCRIPT 81-109 (1959); Kornblitt, *Cardiac Susceptibility of Lawyers*, 6 CURRENT MEDICINE FOR ATTORNEYS 2 (Nov. 1959); Page, *Reviews of Leading Current Cases*, 28 NACCA L.J. 296 (1961-1962); Rosch, *Stress—Its Relationship with Illness*, in 3 TRAUMATIC MEDICINE & SURGERY FOR THE ATTORNEY 261 (P. Cantor ed. 1960); Schwartz, *Neurosis Following Trauma*, 1 TRAUMA 31 (1959); Wasmuth, *Psychosomatic Disease and the Law*, 7 CLEV.-MAR. L. REV. 34 (1958); Wasmuth, *Stress and Psychosomatic Diseases*, in 3 LAWYERS' MEDICAL CYCLOPEDIA 107 (C. Frankel ed. 1959).

3. For a state by state listing of cases awarding compensation where a mental impact or stimulus causes a distinct physical injury see Appendix I.

4. Toth v. Standard Oil Co., 160 Ohio St. 1, 113 N.E.2d 81 (1953). Police suspected that the employee, a truck driver, was a hit and run driver and questioned him. He submitted to a lie detector test which the police said indicated he was not telling the truth. He suffered partial paralysis from cerebral hemorrhage allegedly caused by anxiety and worry resulting from the investigation. Compensation was denied on the ground that an injury must be physical or there must be a traumatic damage accidental in character. This is a judicial limitation, since the statute defines injury as including any injury received in the course of and out of the employment. The dissent said that this was unusual worry over an incident growing out of his employment since the claimed hit and run death occurred while he was driving for his employer. The majority, however, said that worry and anxiety alone do not constitute injury. *Cf.* McNees v. Cincinnati St. Ry., 90 Ohio App. 223, 101 N.E.2d 1 (1951).

Two recent Pennsylvania cases also leave some doubt as to where that state stands. In Bussone v. Sinclair Ref. Co., 210 Pa. Super. 442, 234 A.2d 195 (1967), the claimant suffered a heart attack during an argument with his foreman. The attack was caused by the employee's emotional reaction to the event, rather than by any physical contact, which was minimal or nonexistent. Compensation was denied for lack of an accident. In the later case of McGaw v. Bloomsburg, 214 Pa. Super. 342, 257 A.2d 622 (1969), decedent suffered a fatal heart attack after making an arrest, which appeared to involve no physical exertion, but possible emotional excitement. Death benefits were held not recoverable because there had been no unusual physical exertion. *Compare* Bussone v. Sinclair Ref. Co., *supra, and* McGaw v. Bloomsburg, *supra, with* Yunker v. Leechburg Steel Co., 109 Pa. Super. 220, 167 A. 443 (1933), *and* Hunter v. Saint Mary's Natural Gas Co., 122 Pa. Super. 300, 186 A. 325 (1936).

The easiest type of case in which to connect the stimulus and the physical injury is that in which the precipitating event is sudden and the physical result immediate. In this group fall such cases as those involving a sudden noise or flash resulting in paralysis, heart attack, and the like,[5] accidents or near-accidents precipitating heart attacks or cerebral hemorrhages,[6] and assorted other sudden frights accompanied by direct physical consequences.[7]

The result also is clear when the extreme fright or emotional disturbance, instead of being momentary, is somewhat protracted. Thus, in *Egan's Case*,[8] the cab driver's ordeal was not a matter of a few moments. He was stopped by a policeman who was holding three men at bay with a gun and was asked by the policeman to seek help. At one point during the episode, the policeman warned one of the men that if the man did not remove his hands from his pockets he would be shot. The claimant became very nervous and began to have trouble swallowing and talking. His cerebral hemorrhage followed a short time later. In this same category may be mentioned the collapses of employees as the result of repeated browbeating by a customer,[9] of sustained fear of mob violence at the United States embassy in Formosa,[10] of severe cross-examination in a personal injury action at which the employee was testifying in his employer's behalf,[11] of threats by robbers in the course of a holdup to throw acid in the face of a 60-year-old employee if he did not surrender the money in his possession,[12] and of continuing to operate an elevator in a smoke-filled building after a fire had broken out.[13]

The character of the case does not change in kind but only in degree when the stimulus takes the form of sustained anxiety or pressure leading

5. *E.g.*, Robert v. Dredge Fund, 71 Idaho 380, 232 P.2d 975 (1951); Charon's Case, 321 Mass. 694, 75 N.E.2d 511 (1947); Moray v. Industrial Comm'n, 199 P. 1023 (Utah 1921).

6. *E.g.*, George L. Eastman Co. v. Industrial Accident Comm'n, 186 Cal. 587, 200 P. 17 (1921); Morotte v. State Compensation Ins. Fund, 145 Colo. 99, 357 P.2d 915 (1960); Miller v. Bingham County, 79 Idaho 87, 310 P.2d 1089 (1957); J. Norman Geipe, Inc. v. Collett, 172 Md. 165, 190 A. 836 (1937); Reynolds v. Public Serv. Coordinated Transp., 21 N.J. Super. 528, 91 A.2d 435 (Super. Ct. App. Div. 1952); Geltman v. Reliable Linen & Supply Co., 128 N.J.L. 443, 25 A.2d 894 (Ct. Err. & App. 1942); Pickerell v. Schumacher, 242 N.Y. 577, 152 N.E. 434 (1926) (mem.).

7. *E.g.*, Klein v. Len H. Darling Co., 217 Mich. 485, 187 N.W. 400 (1922); Hall v. Doremus, 114 N.J.L. 47, 175 A. 369 (Sup. Ct. 1934); Pukaluk v. Insurance Co. of N. America, 7 App. Div. 2d 676, 179 N.Y.S.2d 173 (1958); Hunter v. Saint Mary's Natural Gas Co., 122 Pa. Super. 300, 186 A. 325 (1936); Yuuker v. W. Leechburg Steel Co., 109 Pa. Super. 220, 167 A. 443 (1933).

8. 331 Mass. 11, 116 N.E.2d 844 (1954).

9. Aetna Ins. Co. v. Hart, 315 S.W.2d 169 (Tex. Civ. App. 1958).

10. *In re* Truit, No. 61-131 (Employees Compensation App. Bd., May 11, 1961).

11. Church v. Westchester County, 253 App. Div. 859, 1 N.Y.S.2d 581 (1938).

12. *In re* Weiner's Case, 345 Mass. 761, 186 N.E.2d 603 (1962).

13. Schwartz v. Hampton House Management Corp., 14 App. Div. 2d 936, 221 N.Y.S.2d 286 (1961).

to a heart attack or cerebral hemorrhage. One of the leading cases in this group is *Klimas v. Trans Caribbean Airways, Inc.*,[14] decided by the New York Court of Appeals in 1961. The story reads like the typical tragedy of a modern executive struggling with the impossible strains of high-pressure competition and high-level personal frictions. The decedent was the director of maintenance and engineering of Trans Caribbean Airways. He was only 33 years old and had no history of heart disease. In November 1955, because of corrosion on one of the wings of a Trans Caribbean plane, the damaged plane was grounded by the CAA and taken to Texas for repairs. The president of the corporation blamed the decedent's negligence for this damage. At a Christmas party the president, in the presence of the decedent's associates, made no secret of this belief or of the fact that there would be trouble for the decedent if the plane were not fixed by the end of February. This set the decedent off on a frantic series of trips to speed up the repair work in Texas and to try to find replacement parts in California, parts which he finally obtained from an airline in Oklahoma. February came and went, and on March 7, 1956, the chief pilot turned up in Texas expecting to fly the plane back, only to find that the repair process was not even close to completion. On the same day, the decedent got a repair bill totaling 266,000 dollars. He turned white, according to the chief pilot. He wrote a letter to his wife, saying he felt "as if it's my money I'm spending." The pressure continued to mount. For three days the decedent struggled to get the bill reduced, until he told his wife he was on the verge of engaging in physical violence with the man on the other side of the negotiations. He also told her the president was going to "blow his stack." He got orders to stay in Texas two more days, made an agitated phone call to the vice president, and shortly thereafter suffered a myocardial infarction.

The Board made an award; the Appellate Division reversed; and the Court of Appeals, with three dissents, reinstated the award, clearly recognizing that compensation may be awarded for physical injuries resulting from emotional strain.

The dissent opens with this statement:

> This is an unprecedented decision. I have not found anywhere a holding by a New

14. 10 N.Y.2d 209, 176 N.E.2d 714, 219 N.Y.S.2d 14 (1961), *rev'g* 12 App. Div. 2d 551, 207 N.Y.S.2d 72 (1960). *See* Schwartz v. Hampton House Management Corp., 14 App. Div. 2d 936, 221 N.Y.S.2d 286 (1961); Schwartz v. Robin Hats, Inc., 9 App. Div. 2d 972, 193 N.Y.S.2d 689 (1959); Pukaluk v. Insurance Co. of N. America, 7 App. Div. 2d 676, 179 N.Y.S.2d 173 (1958); Krawczyk v. Jefferson Hotel, 278 App. Div. 731, 103 N.Y.S.2d 40 (1951); Church v. Westchester County, 253 App. Div. 859, 1 N.Y.S.2d 581 (1938); Pickerell v. Schumacher, 242 N.Y. 577, 152 N.E. 434 (1926). *See also* Antonini v. Progressive Electronics, 15 App. Div. 2d 842, 224 N.Y.S.2d 481 (1962), and other emotional heart attack cases in IA A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 38.64(a) (1967).

> York appellate court that anxiety and worry associated with employment constitute without more an accidental injury justifying an award of workmen's compensation because the injury and anxiety has caused physical deterioration.[15]

This is a curious statement. It would be nearer the mark to say, as the summary of authorities above indicates, that there is *not* to be found anywhere a case not holding as the *Klimas* case holds—with one or two exceptions. The selection of the particular words "anxiety and worry," rather than "fright" or "excitement," may help to explain the statement. But what was it that the man experienced whose brakes failed as he was rolling backward, if not anxiety and worry in concentrated form?—and this grounded an award in 1926.[16] What brought on the heart attack of the employee testifying at his employer's trial[17] and of the cook watching the fight between co-employees,[18] if not worry and anxiety? Evidently what the dissent really wanted, but did not quite say, was that the anxiety and worry should be neatly crammed into a very short period of time. But here, as in compensation law generally,[19] there is no real validity to this distinction between sudden and protracted injuries.

Among other decisions in accord with the *Klimas* case are the following: the exhaustion of an overworked claims adjuster which brought on angina pectoris;[20] the stroke and paralysis of a negotiator as a result of 65 days of tension;[21] the cerebral thrombosis of a deputy commissioner of insurance as the result of job pressures;[22] the heart attack of a woman with preexisting hypertension when her accounts did not balance;[23] and the heart attack of an employee who became emotionally upset over clerical errors in his office.[24]

Against this backdrop the *Toth*[25] case from Ohio stands out as distinctly out of line. It is odd that Ohio insists on reading into the statute a limitation to injuries that are physical or traumatic with no statutory compulsion to do so, since the statute includes any injury

15. 10 N.Y.2d at 216, 176 N.E.2d at 717-18, 219 N.Y.S.2d at 19.
16. Pickerell v. Schumacher, 242 N.Y. 577, 152 N.E. 434 (1926).
17. Church v. Westchester County, 253 App. Div. 859, 1 N.Y.S.2d 581 (1938).
18. Krawczyk v. Jefferson Hotel, 278 App. Div. 731, 103 N.Y.S.2d 40 (1951).
19. *See* A. LARSON, *supra* note 14, at § 39.
20. Hoage v. Royal Indem. Co., 90 F.2d 387 (D.C. Cir. 1937).
21. Fireman's Fund Indem. Co. v. Industrial Accident Comm'n, 39 Cal. 2d 831, 250 P.2d 148 (1952).
22. Insurance Dep't v. Dinsmore, 233 Miss. 569, 102 So. 2d 691 (1958).
23. Coleman v. Andrew Jergens Co., 65 N.J. Super. 592, 168 A.2d 265 (Essex County Ct. L. Div. 1961).
24. Little v. J. Korber & Co., 71 N.M. 294, 378 P.2d 119 (1963).
25. For a discussion of Toth v. Standard Oil Co., 160 Ohio St. 1, 113 N.E.2d 81 (1953), see note 4 *supra*.

received in the course of and arising out of the employment. Even by Ohio's own terms, however, there is certainly physical injury enough to suit anyone in a cerebral hemorrhage resulting in partial paralysis. The injury must be understood to embrace the total episode from start to finish. By contrast, Idaho starts out with a statute[26] that limits recovery to injury by violence to the physical structure of the body. Nevertheless, Idaho had no difficulty in awarding compensation for a cerebral hemorrhage that occurred eight hours after the claimant underwent an emotional strain when he nearly collided with a car containing several children.[27] The Ohio decision is made more perplexing by the fact that only two years before *Toth* Ohio had produced a decision in the *McNees* case[28] placing it squarely in the mainstream of compensation law on this topic.

It is quite another matter to arrive at a denial of compensation in this type of case on grounds other than limitations imposed by the concept of injury. One such ground is the failure to satisfy conventional tests of "by accident" or "arising out of the employment," as when the emotional strain is no greater than that of everyday life.[29] The other familiar ground is simple inadequacy of evidence of causal connection betwcen the mental, emotional, or nervous stimulus and the physical result.[30]

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26. IDAHO CODE ANN. § 72-201 (1949).

27. Miller v. Bingham County, 79 Idaho 87, 310 P.2d 1089 (1957).

28. McNees v. Cincinnati St. Ry., 90 Ohio App. 223, 101 N.E.2d 1 (1951).

29. *See* Coleman v. Guide-Kalkhoff-Burr, Inc., 10 N.Y.2d 857, 178 N.E.2d 912, 222 N.Y.S.2d 689 (1961) (holding that the emotional strain on a proofreader with a heart condition who got into 2 short arguments was no greater than countless irritations to which all workers occasionally are subjected without untoward results); Santacroce v. Fortieth W. 20th St., Inc., 10 N.Y.2d 855, 178 N.E.2d 912, 222 N.Y.S.2d 689 (1961) (holding heart failure not compensable in spite of contention that failure was precipitated by emotional strain of employee's argument with a superior); Samolin v. Trans World Airlines, Inc., 20 App. Div. 2d 160, 245 N.Y.S.2d 628 (1963) (denying compensation for heart attack caused by argument between claimant and foreman on ground that this was not an "accident").

In *In re* Korsun's (Dependent's) Case, 354 Mass. 124, 235 N.E.2d 814 (1968), the decedent found an empty liquor bottle in his desk. He started yelling at some other employees, telling them that he was afraid he would lose his job if the boss found out about it. Shortly thereafter, the decedent began to suffer the symptoms of a heart attack and later died. Although Massachusetts awards compensation for disability resulting from fright or emotional shock, the court held that in this case emotional strain over the prospects of losing one's job did not arise out of the "nature, condition and obligations, or incidents of the employment," and therefore that the death was not compensable.

30. Amaral's Case, 341 Mass. 133, 167 N.E.2d 493 (1960) (holding no causal connection between the death of a taxicab driver caused by ruptured blood vessels in the esophagus, and the shock caused by his hitting 2 school girls, killing one and injuring the other); Campbell v. Colgate-Palmolive Co., 134 Ind. App. 45, 184 N.E.2d 160 (1962) (affirming denial of compensation benefits based on conflicting medical testimony of emotional upset as cause of fatal coronary occlusion); Harley v. War Dep't, F.S.A., No. 48-95 (Employees Compensation App. Bd., Apr. 20, 1949) (finding no medical proof of connection between overwork and ulcers).

It is worth noting in this connection that even tort law, which does not carry with it the beneficent and remedial character of compensation law, has recognized the propriety of damages when the defendant's negligence creates mental disturbance that in turn produces physical injury.[31] For example, a father while looking out of a window saw a large truck crash through the basement of his house. His fright and concern for the safety of his small boys who were then in the basement, as well as for his own safety and that of his house, led to physical illness.[32] Similarly, liability was recognized when a driverless truck crashed into the side of a house near the bedroom where decedent was sleeping with the result that his terror produced a fatal heart attack.[33]

III. PHYSICAL TRAUMA CAUSING NERVOUS INJURY

It is now uniformly held that the full disability including the effects of the neurosis is compensable when there has been a physical accident or trauma and the claimant's disability is increased or prolonged by traumatic neurosis, conversion hysteria, or hysterical paralysis. Dozens of cases, involving almost every conceivable kind of neurotic, psychotic, depressive, or hysterical symptom or personality disorder, have accepted this rule.[34] Thus, compensation has been awarded when, after all the physical effects of a fall of rock on claimant's shoulder had cleared up, complete paralysis of one arm, attributable entirely to hysteria, remained.[35] The same result was reached when a woman got an electric shock in her arm while ironing and lost the use of the arm due to a neurotic condition.[36]

There is almost no limit to the variety of disabling "psychic" conditions that have already been recognized as legitimately compensable—conditions which not many years ago would have received little understanding or recognition on the part of the courts. For example, in a New York case, the claimant was bitten by a cat and developed a psychoneurotic fear of rabies, for which he was

31. Purcell v. St. Paul City Ry., 48 Minn. 134, 50 N.W. 1034 (1892).

32. Bowman v. Williams, 164 Md. 397, 165 A. 182 (1933).

33. Colla v. Mandella, 1 Wis. 2d 594, 85 N.W.2d 345 (1957).

34. For a state by state listing of cases holding that when there has been a physical accident or trauma and claimant's disability is increased or prolonged by traumatic neurosis, conversion hysteria, or hysterical paralysis, the full disability including the effects of the neurosis is compensable see Appendix 11.

35. American Smelting & Ref. Co. v. Industrial Comm'n, 59 Ariz. 87, 123 P.2d 163 (1942).

36. Lee v. Lincoln Cleaning & Dye Works, 145 Neb. 124, 15 N.W.2d 330 (1944); *cf.* Garvin v. Philadelphia Transp. Co., 173 Pa. Super. 15, 94 A.2d 72 (1953) (compensation was terminated on showing of no loss of earnings in spite of a similar neurosis).

compensated.[37] In a Maryland case, the claimant was compensated after being disabled by a neurasthenia in the form of a conviction that his backbone, which had been injured, was relentlessly decaying.[38] Florida granted compensation for a neurosis that occurred when a slight blow on the head activated the claimant's memory of the accidental death of her son from a head injury.[39]

A striking but by no means unusual type of condition is represented by a Louisiana case[40] in which the claimant, who had been a "chipper," suffered a shoulder injury when the scaffold upon which he had been standing collapsed. Some months later, while working in an unrelated employment, he picked up a "chipper gun," held it for about three or four minutes, and then threw it down. Immediately, he suffered a reaction which induced temporary blindness and vomiting. An award of total and permanent disability was affirmed.

As in other compensation areas, a preexisting weakness in the form of a neurotic tendency does not lessen the eompensability of an injury that precipitates a disabling neurosis.[41] Thus, when an employee had previously suffered from schizophrenia, the precipitation of a recurrence of this mental disease by a severe heat stroke was held a compensable personal injury.[42] Those cases denying compensation generally have done so not on the theory that traumatic neurosis is not compensable as such,[43] but either on the ground that the evidence failed to establish a

37. Kalikoff v. Lucas & Co., 271 App. Div. 942, 67 N.Y.S.2d 153, *aff'd*, 297 N.Y. 663, 76 N.E.2d 324 (1947).

38. Bramble v. Shields, 146 Md. 494, 127 A. 44 (1924).

39. Watson v. Melman, 106 So. 2d 433 (Fla. Ct. App. 1958).

40. Ladner v. Higgins, Inc., 71 So. 2d 242 (La. Orleans Ct. App. 1954).

41. Tatman v. Provincial Homes, 94 Ariz. 165, 382 P.2d 573 (1963) (while only 10% of claimant's total disability from mental disorder attributed to employment accident, total disability benefits awarded for aggravation of a preexisting condition); Subsequent Injuries Fund v. Industrial Accident Comm'n, 53 Cal. 2d 392, 348 P.2d 193, 1 Cal. Rptr. 833 (1960) (preexisting schizophrenic condition sufficiently severe to classify employee as disabled person within meaning of the Subsequent Injuries Fund statute); Old King Mining Co. v. Mullins, 252 S.W.2d 871 (Ky. 1952) (preexisting neurosis aggravated by bump on head held compensable); Farran v. Curtis Publishing Co., 276 Pa. Super. 92, 193 A. 117 (1937); Hartford Accident & Indem. Co. v. Gladney, 335 S.W.2d 792 (Tex. Civ. App. 1960) (award sustained where claimant hospitalized for schizophrenic reactions of a paranoid type in spite of allegations that such conditions were caused by lifelong process rejected).

In Meador v. Industrial Comm'n, 2 Ariz. App. 382, 409 P.2d 302 (1966), the claimant returned to his old job, but was later released because the employer felt he could no longer perform his assigned work. A psychiatric report stated that the claimant had hypochondriacal tendencies, and for this reason the Commission denied recovery, stating that the claimant had fooled his employer as to his physical condition. Denial of benefits was held to be error, since the employer must take the employee as it finds him.

42. Jacobson v. Department of Labor & Indus., 224 P.2d 338 (Wash. 1950).

43. *Cf.* Streeter v. New England Box Co., 106 N.H. 146, 217 A.2d 423 (1965) (denying

causal connection between the injury and the neurosis,[44] or on the ground that there was no disabling neurosis at all.[45] For example, in a Colorado case,[46] a seventeen-year old boy, after amputation of three fingers, had been unable to get dates, was cross with his brothers, argued with his mother, and insisted that he was "grown up." It was held that such difficulties were the natural biological developments of a teenager and not traumatic neurosis. The award was limited to the schedule loss.

IV. MENTAL STIMULUS CAUSING NERVOUS INJURY

In each of the above two categories, there is something to satisfy the old-fashioned legal insistence upon something "physical." A few cases, however, have appeared in a third category involving a mental or emotional stimulus resulting in a primarily "nervous" injury.

Cases in this third category are quite evenly divided on the issue of compensability.[47] As in the first category, the fact situations include as stimulus both sudden fright and protracted stress. Among the sudden fright cases,[48] *Burlington Mills Corp. v. Hagood*[49] is one of the pioneers. It is reminiscent of the case of the "chipper," discussed above, who was

recovery when impartial medical expert testified that claimant's alleged disability was post-traumatic neurosis).

44. For a state-by-state survey of cases denying compensation on the ground that the evidence failed to establish a causal connection between the injury and the neurosis see Appendix III.

45. *See* Koch v. Industrial Comm'n, 70 Ariz. 283, 219 P.2d 773 (1950) (denying compensation for conversion hysteria following trauma was based entirely on the absence of disability); Corral v. Crawford Homes, Inc., 113 So. 2d 820 (La. 1st Cir. Ct. App. 1959) (accepting the compensability of traumatic neurosis under Miller v. United States Fidelity & Guar. Co., 99 So. 2d 511 (La. 2d. Cir. Ct. App. 1958), the court nevertheless held that the conclusions of medical witnesses based on the assumption that claimant was sincere could rightly be held inadequate to demonstrate a true neurosis when the court thought the claimant was insincere in his claims of symptoms of back and leg pain); Erwin v. L. & H. Constr. Co., 192 Pa. Super. 632, 161 A.2d 639 (1960) (discontinuing compensation benefits on medical testimony that claimant's vision had improved to 20/50 in spite of his allegations that a blow on the head resulted in restrictive vision which, when superimposed upon his previous neurotic personality, set into motion a psychoneurotic reaction with conversion features).

46. Industrial Comm'n v. Saffeels, 150 Colo. 41, 371 P.2d 438 (1962).

47. For a survey of the case law on this point see Appendix IV.

48. *See* Lyng v. Rao, 72 So. 2d 53 (Fla. 1954); Simon v. R.H.H. Steel Laundry, 25 N.J. Super. 50, 95 A.2d 446 (Hudson County Ct. L. Div.), *aff'd*, 26 N.J. Super. 598, 98 A.2d 604 (Super. Ct. App. Div. 1953); Bailey v. American Gen. Ins. Co., 254 Tex. 430, 279 S.W.2d 315 (1955); Yates v. South Kirkby & Collieries, Ltd., [1910] 2 K.B. 538; *cf.* Shivers v. Liberty Mut. Ins. Co., 75 Ga. 409, 43 S.E.2d 429 (1947) (where a woman who alleged that after a particular explosion she suffered a nervous collapse from persistent fear of another such explosion was denied compensation on the ground that the alleged explosion had in fact never taken place); Hackett v. Travelers Ins. Co., 195 So. 2d 758 (La. 3d Cir. Ct. App. 1967). *Contra*, Bekeleski v. O.F. Neal Co., 141 Neb. 657, 4 N.W.2d 741 (1942); Liscio v. Makransky & Sons, 147 Pa. Super. 483, 24 A.2d 136 (1942).

49. 147 Va. 204, 13 S.E.2d 291 (1941).

felled by the associations attending a chipper gun.[50] In the *Hagood* case, the claimant was violently frightened by an electric flash caused by a short circuit in a motor about fifteen feet from her. She fainted and began to fall but was caught by a co-employee. As a result of the association thus created, the next time she happened to see this co-employee, she promptly fainted again. Compensation was awarded since it was impossible for her to work because of this neurosis.

There are, in addition, several decisions confirming the compensability of a disabling nervous condition brought on gradually by strain and worry.[51] A clean-cut illustration is the Michigan case of *Carter v. General Motors Corp.*[52] Here we have the modern industrial tragedy, not at the executive level, but at the level of the assembly line, with a set of facts recalling Charlie Chaplin's losing battle with this inhuman antagonist in *Modern Times*. The claimant, who had considerable emotional trouble in his background, simply could not keep up with the assembly line, as a result of which he found himself constantly berated by his foreman. This in turn filled him with dread of losing his job, and the final result was a disabling psychosis. The Supreme Court of Michigan upheld an award.

Probably the most significant case yet to appear on the subject of "nervous" injury is the Texas decision in *Bailey v. American General Insurance Co.*[53] The claimant and another workman were on a scaffold when one end gave way. The other workman, in sight of the claimant, plunged to his death. The claimant thought he himself was about to be killed, but he was caught in the cable and did not fall. He managed to jump to the roof of another building. After this experience, he tried to resume his employment, but, although he had trained for it all his life and was considered one of the better structural steel workers, he could not continue. He had periods of "blanking out"; once he literally "froze," undergoing complete paralysis when trying to work at a height; he had trouble sleeping and experienced violent nightmares; his blood pressure was affected; he became hypersensitive to pain; he had a tremor of the eyelids; and his reflexes were underactive.

This, then, was a perfect example of the category of mental shock causing "nervous" injury. What makes the *Bailey* case especially noteworthy is the fact that the award was made under a statute defining

50. Ladner v. Higgins, Inc., 71 So. 2d 242 (La. Orleans Ct. App. 1954).

51. *See* American Nat'l Red Cross v. Hagen, 327 F.2d 559 (7th Cir. 1964); *In re* John T. Wade, No. 61-122 (Employees Compensation App. Bd., May 9, 1961); Carter v. General Motors Corp., 361 Mich. 577, 106 N.W.2d 105 (1960).

52. 361 Mich. 577, 106 N.W.2d 105 (1960).

53. 154 Tex. 430, 279 S.W.2d 315 (1955).

"injury" as "damage or harm to the physical structure of the body." The Supreme Court of Texas met this issue head-on, by stating at the outset: "The question here is: Has Emery Eugene Bailey suffered damage or harm to the physical structure of his body?" The court gave an unqualified answer of "yes" to this question, reversing the Court of Civil Appeals. In supporting its conclusion, the court, in effect, said: look at this man's symptoms; obviously his body no longer functions properly; therefore, can you say as a matter of law that a body which no longer functions properly has suffered no harm to its physical structure? The physical structure is not just bones and tissues considered as if they were mechanical objects; it is the entire interrelated, living, functioning organism. The opinion is valuable both for its analysis of the precedents from all jurisdictions, and for its well-reasoned, up-to-date analysis of the real nature of injury.

The net result is that, if other jurisdictions would follow this lead, the categories into which this article divides the cases could and should be reduced by combining "mental stimulus causing physical injury," and "mental stimulus causing nervous injury," since there is no really valid distinction between physical and "nervous" injury. Certainly modern medical opinion would support this view and insist that it is no longer realistic to draw a line between what is "nervous" and what is "physical." It is an old story in the history of law to observe legal theory constantly adapting itself to accommodate new advances and knowledge in medical theory. Perhaps in earlier years, when much less was known about mental and nervous injuries and their relation to "physical" symptoms and behavior, there was an excuse, on grounds of evidentiary difficulties, for ruling out recoveries based on such injuries, both in tort and in workmen's compensation. But the excuse no longer exists. Consequently, a state that would withhold the benefits of workmen's compensation from a man who, before an obvious industrial mishap, was a competent, respected iron-worker, and after the mishap was totally incapacitated to do the only job for which he was trained, would nowadays be doing unjustifiable violence to the intent of the workmen's compensation act, for reasons that are without support in either legal or medical theory. If Texas can reach this result under its "physical-structure" definition, then a fortiori states having no such statutory hurdle should be expected to find protection under their laws for this very real kind of injury.

Unfortunately, at this writing, the Court of Appeals of New York has been unable, in spite of a golden opportunity, to accomplish this simple step into the twentieth century. The story begins with *Chernin v.*

Progress Service Co.[54] The majority of the court of appeals held that the evidence did not support a finding that a taxicab driver sustained an accidental injury when he developed paranoid schizophrenia after his taxicab struck a pedestrian. The court specifically reserved opinion on whether an occurrence "which causes psychological trauma may in any case be compensable even though there was no physical injury." Next came *Straws v. Fail.*[55] The claimant, on his employer's orders, accompanied a sick co-worker to a hospital in a taxicab. The co-worker died en route in the claimant's arms. The claimant suffered psychological disablement for a year, including headaches, dizziness, weakness, pain, nausea, and insomnia. The appellate division held that "mental injury precipitated by mental cause provided no basis for an award of disability benefits." The claim was denied.

The court of appeals on February 21, 1963, refused to review *Straws v. Fail.* This refusal rounded out a regrettable series of accidents of timing in the interplay between the three decision-making levels in New York. First, a majority of the Workmen's Compensation Board rejected the *Straws* claim on the authority of the appellate division's decision in the *Chernin* case. Later the court of appeals, in affirming the *Chernin* case, expressly left open the compensability of a nervous injury caused by mental stimulus, as indicated in the quotation from the opinion cited above. Next, the appellate division decided the *Straws* case—but in so doing completely ignored the court of appeals reservation on this point, and instead cited the appellate division's own *Chernin* opinion, although the court of appeals had affirmed on a different ground. As a result, the application for review of the *Straws* case arrived in the court of appeals with adverse decisions in both the Board and appellate division, decisions which were made without reference to the court of appeals' express indication that the mental-cause-mental-result issue was open. At this point, it would have been a simple matter for the court of appeals to set matters straight once and for all. Instead, it adopted the perplexing course of refusing to review the *Straws* case, thus deliberately perpetuating the very uncertainty it had declared to exist in the *Chernin* opinion.

It might be a good thing to remind our appellate courts from time to time that, under a system of law made up in large degree of case decisions, the building up of a reasonably complete body of law often depends on the accident of whether a suitable set of facts gets into

54. 9 N.Y.2d 880, 175 N.E.2d 827 (1961).
55. 17 App. Div. 2d 998, 233 N.Y.S.2d 893 (1962).

appellate litigation. When a perfect opportunity to clear up an important unsettled point does at last happen to come along—as it did in the *Straws* case—the refusal of the court of last resort to discharge its decisional responsibility is inexcusable. How long will it be before another clean-cut case of mental stimulus creating mental injury reaches the court of appeals? In the meantime, the court has left the bar, the claimants, the defendants and, not least, the writers of articles and texts with an indefinite period of confusion, since the last express word from the court of appeals (in *Chernin*) is that the point is undecided.

It is difficult to see why the New York courts in 1963 should be indecisive about a concept that the King's Bench accepted without difficulty in 1910,[56] and that Texas in 1955 was able to embrace even under the handicap of statutory language requiring "damage or harm to the physical structure of the body." A statement going to the heart of this entire question occurs in the opinion in *Indemnity Insurance Co. of North America v. Loftis*.[57] The court said:

> The human body consists of bones, flesh, ligaments, and nerves, controlled by the brain. The law does not state which of these particular elements must produce the disability. If a disability exists, whether or not it is psychic or mental, if it is real and is brought on by the accident and injury, this being a humane law and liberally construed, it is nevertheless compensable.[58]

The device of leaning on any tiny evidence of bones-flesh-and-ligaments injury as a crutch to avoid standing up to the true issue is wearing thin. The claimant in *Watson v. Melman, Inc.*[59] received a slight tap on the head, and because of reactivation of memories of her son's death she was brought down by a disabling neurosis. Yet what, in reality, was the injury? The physically innocuous blow? Suppose she had been *almost* hit on the head by a force a hundred times as great and the same memories had been reactivated. Should compensation have been denied because of the absence of actual contact with flesh or bone? Once more it is necessary to belabor the obvious, which is that the injury is to be understood as the effect of the total episode from first to last on the total organism, including brain and nervous system.

V. "COMPENSATION NEUROSIS"

The most provocative mental-injury question is that of the compensability of "compensation neurosis." "Compensation

56. Yates v. South Kirkby & Collieries, Ltd., [1910] 2 K.B. 538.
57. 103 Ga. App. 749, 751, 120 S.E.2d 655, 656 (1961).
58. *Id.* at 751, 120 S.E.2d at 656.
59. 106 So. 2d 433 (Fla. App. 1958), *cert. denied*, 111 So. 2d 40 (Fla. 1959).

neurosis," which must be distinguished from conscious malingering, may take the form of an unconscious desire to obtain or prolong compensation, or perhaps of sheer anxiety over the outcome of compensation litigation. In either case a genuine neurosis disabling the claimant is produced.

Of the comparatively small number of cases that have been reported, a majority accept the compensability of genuine compensation neurosis.[60] In *Hood v. Texas Indemnity Insurance Co.*,[61] for example, where both sides of the case were well presented in the majority opinion and in the three-judge dissent, the controlling medical testimony was to the effect that the claimant's disability would probably clear up as soon as the litigation was over, but that he was for the time being genuinely disabled by a neurosis caused in part by an "unconscious desire for compensation." The majority awarded compensation on the theory that this unconscious desire was only one contributing cause of the neurosis, and its presence was not fatal to the award since the injury need not be the sole cause of the disability. The dissent, on the other hand, viewed the neurosis as an independent intervening cause. Awards have been made on somewhat similar testimony in Washington,[62] where the court said, "[c]lassifying his case as a 'desire neurosis' it is still traumatic in origin," and in Minnesota,[63] where the medical testimony was that if the case could be settled and the claimant gotten back to work, his limp would disappear. Some support in principle for this view may be found in a New York case[64] which held compensable a case of dementia praecox caused in part by the workman's brooding over delay in receiving compensation payments.

On the other hand, some cases have denied compensation for neurosis attributable to an unconscious desire for compensation. In one, the claimant, who had already received one compensation award and recovered, relapsed into paralysis because of the "defense reaction" of producing the symptoms which previously had brought compensation.[65] In another, nervous symptoms caused by anxiety over pending compensation litigation and uncertainty of continuance of payments were held to be an independent cause and not compensable.[66]

60. For a survey of case law on this point see Appendix V.

61. 146 Tex. 522, 209 S.W.2d 345 (1948).

62. Peterson v. Department of Labor & Indus., 178 Wash. 15, 33 P.2d 650 (1934).

63. Welchlin v. Fairmont Ry. Motors, 180 Minn. 411, 230 N.W. 897 (1930).

64. Rodriguez v. New York Dock Co., 256 App. Div. 875, 9 N.Y.S.2d 264, *leave to appeal denied*, 280 N.Y. 852, 20 N.E.2d 398 (1939).

65. Swift & Co. v. Ware, 53 Ga. App. 500, 186 S.E. 452 (1936).

66. Kowalski v. New York, N.H. & H.R.R., 116 Conn. 229, 164 A. 653 (1933).

As a matter of compensation theory, the cases awarding compensation are better reasoned, since, assuming that the anxiety over compensation and the accompanying neurosis are genuine, the line of causation from the original injury to the present disability is unbroken. The denial of compensation is probably dictated less by causation theory than by a fear that the extremely fine line between malingering and "compensation neurosis" cannot as a practical matter be successfully drawn. In any case, it will not do in these times to brush aside such claims by asking the question with which this article began: "[H]ow could it be real when, as shown by Dr. Cline's testimony, it was purely mental . . . ?"[67] While it lasts, the neurotic mental disability is as real as any other disability and, in the absence of evidence of malingering, is as much a personal injury.[68]

The phrase "in the absence of malingering," however, opens up one of the most elusive fact-finding difficulties in the law of workmen's compensation—or in the law of personal injuries generally, for that matter. Great pains have been taken here to stress that mental injury is real; it must by the same token be stressed that malingering is real. A considerable number of reported cases show denials of compensation attributable to the finding of malingering or its equivalent;[69] a substantial number reject the allegation of malingering, sometimes with a trace of diffidence.[70] The number of legal guidelines that can aid in this problem is limited, but several may be briefly noted.

67, Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 209 S.W.2d 345 (1948) (Smedley, J., dissenting joined by Brewster & Folley, JJ.).

68. "To nullify the commission's right to take into consideration claimant's fear and anxiety as a proper basis of award of compensation is to deny claimant's right to establish the existence of a very real injury. Fear and anxiety constitute as great an influence on human behavior and health as is known to either psychology or medicine, and in this ease was not merely a subjective mental symptom." National Lumber & Creosoting Co. v. Kelly, 101 Colo. 535, 539, 75 P.2d 144, 146 (1937).

69. For a survey of case law on this point sce Appendix VI.

70. American Compressed Steel Corp. v. Blanton, 357 S.W.2d 888 (Ky. 1962) (traumatic neurosis compensable); Joseph v. Southern Pulpwood Ins. Co., 140 So. 2d 725 (La. 3d Cir. Ct. App. 1962) (holding that evidenee that the 29-year old man maintained an adulterous relationship and had been in jail for drinking and fighting did not discredit the medical testimony that he was not malingering); Doucet v. Ashy Constr. Co., 134 So. 2d 665 (La. 3d Cir. Ct. App. 1961); Williams v. Bituminous Cas. Corp., 131 So. 2d 844 (La. 2d Cir. Ct. App. 1961); Sims v. Times-Picayune Publishing Co., 128 So. 2d 444 (La. 4th Cir. Ct. App. 1961) (compensation awarded since the fact that claimant suffered 3 compensable injuries in a short period "refutes any suspicion of malingering [but] might create the impression and suspicion that the plaintiff suffers from 'compensationitis' "); Istre v. Molbert Bros. Poultry & Egg Co., 125 So. 2d 436 (La. 3d Cir. Ct. App. 1961); Reyer v. Pearl River Tung Co., 219 Miss. 211, 68 So. 2d 442 (1953) (majority denied compensation deeming it unnecessary to go into the question of traumatic or compensation neurosis, whereas the dissent felt such compensation neurosis was a question of fact within the sole

The one unquestionably reliable statement on the topic, which may serve as a basic text, is that "the line between neurosis and malingering is not always sharply defined."[71] Having put this understatement on the record, one next may suggest that, in drawing this difficult line, a heavy burden should be upon the party that alleges malingering. This rule has been strongly stated by the Louisiana court: "The courts will stigmatize a claimant as a malingerer only upon positive and convincing evidence justifying such a conclusion."[72] There are several reasons for such a rule. One is that a mistaken inference here works a particularly severe hardship, for if the claimant is in fact genuinely disabled, he suffers the double blow of being deprived of compensation and of being publicly labeled a liar and a cheat. Another is the pervading remedial character of the legislation. Still another is the imperfect state of medical knowledge in many of the fields here involved, in spite of spectacular advances in recent decades. This consideration was given full and sympathetic attention by the Mississippi court in *Reyer v. Pearl River Tung Co.*[73] Here, although the doctor who treated the claimant attributed her condition to a neuritis, a neurologist could find no neurological disease that would prevent the claimant from working. Neither doctor could account for her pain. At the same time, neither doctor would controvert the fact that she had pain. The court, in reversing a denial of compensation, said:

> The fact of disability by reason of pain, therefore, exists. The inability of doctors to put their fingers on the exact physical cause should not result in casting the claim overboard. With all of the knowledge now possessed by the great medical profession, it is a matter of common knowledge that sometimes the diagnosis of human ailments baffles the greatest medical minds.[74]

Sometimes a supposed malingering case can be disposed of by intensifying the search for a medical cause, as in a New York case in which the Board's own medical examiner found that the claimant was indeed suffering from a mild permanent partial back injury.[75] Usually,

province of the Commission); Montclair v. Griffith, 19 App. Div. 2d 918, 243 N.Y.S.2d 963 (1963) (question of hysterical neurotic reaction or malingering settled by Board medical examiner's testimony that the claimant was suffering from a mild permanent partial back injury); Foster v. Daystrom Furniture, Div. Daystrom, Inc., 18 App. Div. 2d 745, 235 N.Y.S.2d 521 (1962) (the Board did not find the claimant was malingering, although the employer's doctors had a different opinion of the cause of claimant's slow recovery).

71. American Compressed Steel Corp. v. Blanton, 357 S.W.2d 888, 889 (Ky. 1962).

72. Istre v. Molbert Bros. Poultry & Egg Co., 125 So. 2d 436, 440 (La. 3d Cir. Ct. App. 1961).

73. 219 Miss. 211, 68 So. 2d 440 (1953).

74. *Id.* at 217, 68 So. 2d at 442.

75. Montclair v. Griffith, 19 App. Div. 918, 243 N.Y.S.2d 963 (1963).

however, the issue comes down to the presence of responsible conscious volition on the part of the claimant to invent, protract, misrepresent, or exaggerate his complaint. At one end of the spectrum is the true victim of conversion hysteria, helpless in the grip of a condition he cannot control. At the other end is the true malingerer, the kind of which the Louisiana court said, employing a term not in *Stedman's Medical Dictionary* but still plain enough: "The court believes this plaintiff is a faker."[76]

In between are cases in which all kinds of mixtures of neurosis and "cussedness" occur, leaving the psychiatrists and fact-finders with the unenviable task of sorting out which is the really operative fact. Thus, in another Mississippi case, it was found that a claimant, who had a history of neurotic tendencies in childhood, "simply seized on a minor accident as an excuse to express (his neurosis) in pain and other physical symptoms."[77] Compensation was accordingly denied, on the ground that the accident did not in fact cause, precipitate, or aggravate the psychoneurosis. In an Arizona case, a specialist in neuropsychiatry testified that no psychiatric disability was attributable to the accident and that the psychogenic factors were not related to the accident. Rather, he testified, "I would pinpoint it [the claimant's condition] as a poor frame of mind toward his disability which the man has elected to adopt."[78] Compensation was denied. A similar line of testimony on attitude toward work was decisive in a Florida case. It was found that the claimant had suffered all his life from a personality weakness described as "markedly passive dependent" and that the trauma produced an anxiety from which he could escape using a "defense mechanism of hysteria." In other words "the claimant's problem was not an inability to work, but rather a lack of desire to work," which would be overcome if he were placed under great stress or pressure.[79] Compensation was again denied.

In the last analysis, the problem of malingering is one of fact, which must be left to the skill and experience of medical and psychiatric experts, and of compensation administrators, who usually manage in time to develop considerable facility in detecting malingerers at the fact-finding level.

76. Lyons v. Maryland Cas. Co., 158 So. 2d 392, 393 (La. 3d Cir. Ct. App. 1963).

77. International Paper Co. v. Wilson, 243 Miss. 659, 672, 139 So. 2d 644, 649 (1962).

78. Minton v. Industrial Comm'n, 90 Ariz. 254, 256, 367 P.2d 274, 276 (1961). *See also* Davidson v. Industrial Comm'n, 72 Ariz. 314, 235 P.2d 1007 (1951).

79. Johnny's Welding Shop v. Eagan, 142 So. 2d 470, 472 (Fla. 1962).

VI. CONCLUSION

Compensation law's record of keeping legal remedies abreast of medical advances in the handling of mental and nervous injury has been, on the whole, a reasonably good one. As we have seen, if there is any element of the "physical" present, either in the cause or in the effect, compensability is the virtually universal rule. Against the rather old-fashioned clinging to some shred of the "physical" in these cases must be balanced the fact that, once this shred has been found, awards issue that require recognition of some of the most sophisticated theories of the interaction of mind and body and of some of the most complex neurotic conditions including "compensation neurosis." As to the category of mental stimulus causing nervous injury, with no "physical" involvement, although the cases are now sharply divided, the strength of the trend toward coverage suggests that the time is perhaps not too far off when compensation law generally will cease to set an artificial and medically unjustifiable gulf between the "physical" and the "nervous." The test of existence of injury can then be greatly simplified. The single question will be whether there was a harmful change in the human organism—not just its bones and muscles, but its brain and nerves as well.

Appendix I

Following is a listing, by jurisdiction, of cases awarding compensation where a mental impact or stimulus causes a distinct physical injury.

Federal: Hoage v. Royal Indem. Co., 90 F.2d 387, *cert. denied,* 302 U.S. 736, (1937) (exhaustion of overworked claims adjuster brought on angina pectoris); *In re* Truit, No. 61-131 (Employees Compensation App. Bd., May 11, 1961) (heart attack as result of fear during mob violence at United States embassy in Formosa).

California: Fireman's Fund Indem. Co. v. Industrial Accident Comm'n, 241 P.2d 299 (Cal. App. 1952), *aff'd,* 39 Cal. 2d 831, 250 P.2d 148 (1952) (65 days of tension while negotiating labor contract caused "stroke" and paralysis); George L. Eastman Co. v. Industrial Accident Comm'n, 186 Cal. 587, 200 P. 17 (1921) (excitement caused truck driver's heart attack).

Colorado: Marotte v. State Compensation Ins. Fund, 145 Colo. 99, 357 P.2d 915 (1960) (compensation awarded because the emotional strain of being in an automobile accident was found to have precipitated a policeman's heart attack, and killing a garter snake two days later aggravated the condition).

Idaho: Miller v. Bingham County, 79 Idaho 87, 310 P.2d 1089 (1957) (recovery allowed where cerebral hemorrhage occurred 8 hours after claimant narrowly averted a collision with an automobile carrying several small children); Roberts v. Dredge Fund, 71 Idaho 390, 232 P.2d 975 (1951) (cardiac arrest resulting from shock to nervous system when deceased heard a loud noise and witnessed a large ball of fire 4 feet in diameter caused by an electrical short occurring during the replacement of a fuse held sufficient to satisfy the "violence-to-the-physical-structure" requirement).

Maryland: J. Norman Geipe, Inc. v. Collett, 172 Md. 165, 190 A. 836 (1937) (compensation allowed for paralysis brought on by driver's excitement in attempting to avoid accident).

Massachusetts: Egan's Case, 331 Mass. 11, 116 N.E.2d 844 (1954); *see* text accompanying note 8 *supra; In re* Weiner's Case, 345 Mass. 761, 186 N.E.2d 603 (1962) (recovery allowed for total disability following heart attack suffered by 60-year-old employee who, on his way to make a bank deposit, was accosted by 2 men threatening to throw acid in his face if he did not surrender the money); Charon's Case, 321 Mass. 694, 75 N.E.2d 511 (1947) (compensation awarded for paralysis caused by fright when lightning blew out 3 motors near claimant with a loud noise and startling flash of light).

Michigan: Klein v. Len H. Darling Co., 217 Mich. 485, 187 N.W. 400 (1922) (accidentally causing co-worker's death led to fatal shock).

Mississippi: In Insurance Dep't v. Dinsmore, 233 Miss. 569, 102 So. 2d 691, *aff'd on rehearing,* 104 So. 2d 296 (1958), the cerebral thrombosis of a 60-year-old deputy commissioner, with preexisting high blood pressure, was held causally related to pressures of job. The majority said: "It 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." *Id.* at 579, 102 So. 2d at 694.

New Jersey: Geltman v. Reliable Linen & Supply Co., 128 N.J.L. 443, 25 A.2d 894 (Ct. Err. & App. 1942) (heart attack caused by fright at being forced to side of road while in automobile held compensable); Hall v. Doremus, 114 N.J.L. 47, 175 A. 369 (Sup. Ct. 1934) (recovery allowed for skull fracture suffered by a worker who fainted as

the result of witnessing a particularly difficult delivery of a calf); Reynolds v. Public Serv. Coordinated Transp., 21 N.J. Super. 528, 91 A.2d 435 (App. Div. 1952) (recovery allowed for cerebral hemorrhage of bus driver as result of excitement following minor collision); Coleman v. Andrew Jergens Co., 65 N.J. Super. 592, 168 A.2d 265 (Essex County Ct. 1961) (heart attack of woman with history of hypertension and family troubles held compensable as related to her emotional disturbance when her accounts did not balance).

New Mexico: Little v. J. Korber & Co., 71 N.M. 294, 378 P.2d 119 (1963) (heart attack suffered when employee became emotionally upset over clerical errors in his office held compensable).

New York: Klimas v. Trans Caribbean Airways, Inc., 10 N.Y.2d 209, 176 N.E.2d 714, 219 N.Y.S.2d 14 (1961), *rev'g* 12 App. Div. 2d 551, 207 N.Y.S.2d 72 (1960), *discussed in* Page, *Reviews of Leading Current Cases,* 28 NACCA L.J. 296, 297-312 (1961-1962); Pickerell v. Schumacher, 242 N.Y. 577, 152 N.E. 434 (1926) (cerebral apoplexy resulted from claimant's fright when his vehicle rolled backwards and the emergency brake failed); Schwartz v. Hampton House Management Corp., 14 App. Div. 2d 936, 221 N.Y.S.2d 286 (1961) (recovery based solely on the psychic trauma without requiring a finding of an original physical trauma was allowed to the claimant who continued to operate an elevator in a smoke-filled, burning building for subsequent massive hemorrhage of an ulcer—especially since an ulcer is a "'classical' psychosomatic disease"); Schwartz v. Robin Hats, Inc., 9 App. Div. 2d 972, 193 N.Y.S.2d 689 (1959) (medical testimony supported a causal connection between the emotional condition and the heart attack occurring after the employee had a dispute with his employer); Pukaluk v. Insurance Co. of N. America, 7 App. Div. 676, 179 N.Y.S.2d 173 (1958) (heart attack resulted from cleaning woman's fright at entrance of "intruder" who turned out to be forelädy); Krawczyk v. Jefferson Hotel, 278 App. Div. 731, 103 N.Y.S.2d 40 (1951) (fatal heart attack of cook resulted from watching a fight betwcen 2 co-employees); Church v. Westchester County, 253 App. Div. 859, 1 N.Y.S.2d 581 (1938) (employce testifying at employer's trial had coronary occlusion as result of excitement). *See also* Antonini v. Progressive Electronics, 15 App. Div. 2d 842, 224 N.Y.S.2d 481 (1962); 1A A. LARSON, THE LAW OF WORKMEN'S COMPENSATION, § 38.64(a) (1967).

Ohio: McNees v. Cincinnati St. Ry, 90 Ohio App. 223, 101 N.E.2d 1 (1951) (charge that mere mental strain or worry is not an injury within the meaning of the compensation law was prejudicial error where trolley driver died from coronary thrombosis after severe mental strain and excitement while driving in a dense fog); *see id.* at 275, 101 N.E.2d at 5 (Hurd, J., concurring). *But cf.* Toth v. Standard Oil Co., 160 Ohio St. 1, 113 N.E.2d 81 (1953).

Oregon: In Kinney v. State Indus. Accident Comm'n, 245 Ore. 543, 423 P.2d 186 (1967), the claimant had aortic stenosis, but it was asymptomatic until he underwent the stress and strain of trying to help another employee who was caught in an elevator shaft. As a result, he became disabled, although there was no additional damage to the heart. The court held that actual physical damage or harm was not required and awarded compensation. In reaching its decision, the court inferentially approved the analogous cases awarding compensation for nervous injury caused by mental stimulus.

Pennsylvania: Hunter v. Saint Mary's Natural Gas Co., 122 Pa. Super. 300, 186 A. 325 (1936) (heart failure due to fright when dog jumped on back of gas man in cellar); Yunker v. Leechburg Steel Co., 109 Pa. Super. 220, 167 A. 443 (1933) (heart failure from fright while splinter being removed).

Texas: Aetna Ins. Co. v. Hart, 315 S.W.2d 169 (Tex. Civ. App. 1958) (customer's berating of laundry employee caused stroke).

Utah: Moray v. Industrial Comm'n, 58 Utah 404, 199 P. 1023 (1921) (loss of vision resulted from hysteria at electric flash).

Appendix II

Following is a listing, by jurisdiction, of cases awarding compensation for traumatic neurosis, conversion hysteria, or hysterical paralysis when claimant's disability resulted from a physical accident or trauma and the neurosis complicated or prolonged the disability.

Federal: Travelers Ins. Co. v. McLellan, 302 F. Supp. 351 (E.D.N.Y. 1969) (recovery allowed for psychiatric disability to claimant who developed an occupational loss of hearing, causing him to lose his job and resulting in traumatic conversion hysteria); Jarka Corp. v. Hughes, 196 F. Supp. 442 (E.D.N.Y. 1961), *rev'd on other grounds,* 299 F.2d 534 (2d Cir. 1962) (claimant sought recovery under the Longshoremen's Act for personality disorder with conversion reaction, memory impairment, and increased frequency of convulsions following a head injury).

Arizona: Vance v. Industrial Comm'n, 94 Ariz. 142, 382 P.2d 557 (1963) (award that was limited to 15% physical functional disability reversed on evidence of greater functional overlay, partial paralysis, caused by conversion hysteria); Murray v. Industrial Comm'n, 87 Ariz. 190, 349 P.2d 627 (1960) (award solely for physical disability reversed to permit inclusion of disability resulting from traumatic psychoneurosis); Safeway Stores, Inc. v. Gilbert, 68 Ariz. 202, 203 P.2d 870 (1949); American Smelting & Ref. Co. v. Industrial Comm'n, 59 Ariz. 87, 123 P.2d 163 (1942). *But cf.* Parnau v. Industrial Comm'n, 87 Ariz. 361, 351 P.2d 643 (1960) (additional compensation denied for a change in conditions due to degeneration of functional or psychoneurotic conditions, rather than organic causes immediately related to injury to the upper vertebrae). *See also* Hatfield v. Industrial Comm'n, 89 Ariz. 285, 361 P.2d 544 (1961) (denial of compensation remanded for finding on disabling conversion hysteria).

Colorado: Arvas v. McNeil Coal Corp., 119 Colo. 289, 203 P.2d 906 (1949); National Lumber & Creosoting Co. v. Kelly, 101 Colo. 535, 75 P.2d 144 (1937).

Delaware: Fiorucci v. C.F. Braun & Co., 54 Del. 79, 173 A.2d 635 (1961) (claim remanded for consideration of claimant's post-surgical neurosis).

Florida: Bryant v. Elberta Crate & Box Co., 156 So. 2d 844 (Fla. 1963) (psychiatric evaluation to determine if the claimant's disability, "functional overlay," might be lessened—thus possibly creating an improved condition which would warrant surgery—was improperly denied); Matera v. Gautier, 133 So. 2d 732 (Fla. 1961) (10% psychiatric disability added to 30% functional disability sustained a total disability award); Watson v. Melman, Inc., 106 So. 2d 433 (Fla. App. 1958), *cert. denied,* 111 So. 2d 40 (Fla. 1959) (discussed in text accompanying note 59, *supra*).

Georgia: Liberty Mut. Ins. Co. v. Archer, 108 Ga. App. 563, 134 S.E.2d 204 (1963) (benefits continued during residual psychic disability); Indemnity Ins. Co. of N. America v. Loftis, 103 Ga. App. 749, 120 S.E.2d 655 (1961) (denial of claim for disability of a "psychic nature" reversed when neurosis arose from a physical injury). For a case in which the causal sequence runs from physical to mental and back to physical see Employers Ins. Co. v. Wright, 114 Ga. App. 10, 150 S.E.2d 254 (1966). The claimant was awarded benefits for disability due to physical injury caused by rape, although at the time of the award, the disability had ceased. Later, she again became disabled when the emotional trauma of the rape caused preexisting physical disabilities to worsen. Additional compensation was awarded.

Idaho: Skelly v. Sunshine Mining Co., 62 Idaho 192, 109 P.2d 622 (1941) (when neurosis comes some time after original injury, it is compensable as change in condition).

Illinois: Ford Motor Co. v. Industrial Comm'n, 357 Ill. 401, 192 N.E. 345 (1934).

Indiana: E.I. Du Pont De Nemours & Co. v. Green, 116 Ind. App. 283, 63 N.E.2d 547 (1945).

Kansas: Hayes v. Garvey Drilling Co., 188 Kan. 179, 360 P.2d 889 (1961) (total and permanent disability award for aggravation of preexisting traumatic neurosis following serious accident); Morris v. Garden City Co., 144 Kan. 790, 62 P.2d 920 (1936) (injured foot plus neurosis justified award of total disability).

Kentucky: Ricky Coal Co. v. Adams, 426 S.W.2d 464 (Ky. 1968) (holding that dormant conversion hysteria "brought alive" by a back injury could be considered a condition or disease, and therefore part of the liability should have been apportioned to the Special Fund); E.I. Du Pont De Nemours & Co. v. Whitson, 399 S.W.2d 734 (Ky. 1966) (recovery for total disability allowed to claimant who was injured by an explosion and later was forced to cease work because of severe pain resulting from conversion reaction rather than any physical injury); Holland v. Childers Coal Co., 384 S.W.2d 293 (Ky. 1964) (temporary total disability compensation awarded until recovery from psychosomatic condition triggered by minor compensable injury); High Splint Coal Co. v. Jones, 338 S.W.2d 208 (Ky. 1960) (back injury leading to anxiety and neurosis); Eastern Coal Corp. v. Thacker, 290 S.W.2d 468 (Ky. 1956).

Louisiana: Cripps v. Urania Lumber Co., 213 So. 2d 353 (La. 3d Cir. Ct. App. 1968) (denial of compensation held to be error where the only positive medical testimony indicated that claimant sustained a subdural hematoma, traumatic neurosis, or aggravation of a chronic schizophrenic condition as a result of a work-connected accident); Goodley v. Brunet, 150 So. 2d 804 (La. 2d Cir. Ct. App. 1963); Deboest v. Travelers Ins. Co., 138 So. 2d 646 (La. 3d Cir. Ct. App. 1962) (total permanent disability caused by neurosis following a moderately severe lumbosacral strain was held compensable); Guidry v. Michigan Mut. Liab. Co., 130 So. 2d 513 (La. 3d Cir. Ct. App. 1961) (recovery allowed where back injury aggravated a preexisting congenital spondylolysis and the possibility of recurring injury resulted in a traumatic or hysterical neurosis); Whitfield v. Firemen's Fund Ins. Co., 125 So. 2d 165 (La. 4th Cir. Ct. App. 1960) (award for traumatic neurosis following hernia operation); Patke v. Firemen's Fund Indem. Co., 119 So. 2d 859 (La. Orleans Cir. Ct. App. 1960) (claimant's post-traumatic neurosis evidenced by pain, fear of working on scaffolds and a general fear of recurring injuries held compensable); Spurlock v. American Auto Ins. Co., 101 So. 2d 756 (La. Orleans Cir. Ct. App. 1958) (award sustained where inability to move fingers was attributable to actual physical disability or employee's sincere belief that his other fingers were disabled); Miller v. United States Fidelity & Guar. Co., 99 So. 2d 511 (La. 2d Cir. Ct. App. 1957) (conversion hysteria compensable); Ladner v. Higgins, Inc., 71 So. 2d 242 (La. Orleans Cir. Ct. App. 1954); Peavy v. Mansfield Hardwood Lumber Co., 40 So. 2d 505 (La. 2d Cir. Ct. App. 1949); Wilkinson v. Dubach Mill Co., 2 La. App. 249 (2d Cir. Ct. 1925).

Maryland: Bramble v. Shields, 146 Md. 494, 127 A. 44 (1924).

Massachusetts: Hunnewell's Case, 220 Mass. 351, 107 N.E. 934 (1915).

Michigan: In Johnson v. Vibradamp Corp., 381 Mich. 388, 162 N.W.2d 139 (1968), the claimant suffered a compensable hernia, and although he was released by his physician to return to work, the employer would not reinstate him. As a result, the claimant developed a functional overlay with regard to a previous back condition and became unable to return to work. Functional overlay was held to be a compensable disability. Redfern v. Sparks-Withington Co., 353 Mich. 286, 91 N.W.2d 516 (1958)

(conversion hysteria compensable); Harris v. Castile Mining Co., 222 Mich. 709, 193 N.W. 855 (1923) (neurasthenia compensable).

Minnesota: Hartman v. Cold Spring Granite Co., 243 Minn. 264, 67 N.W.2d 656 (1954) (traumatic neurosis from cumulative effect of several injuries and corrective surgery compensable).

Missouri: Cebak v. John Nooter Boiler Works Co., 258 S.W.2d 262 (Mo. Ct. App. 1953) (compensation allowed for neurosis and Parkinsonism directly resulting from head injury).

Montana: Sykes v. Republic Coal Co., 94 Mont. 239, 22 P.2d 157 (1933).

Nebraska: Haskett v. National Biscuit Co., 177 Neb. 915, 131 N.W.2d 597 (1964) (total permanent disability award made for back injury which failed to improve due to emotional tension resulting from the original accident); Dietz v. State, 157 Neb. 324, 59 N.W.2d 587 (1953) (neurosis following blows on the head compensable); Lee v. Lincoln Cleaning & Dye Works, 145 Neb. 124, 15 N.W.2d 330 (1944).

New Jersey: Moccia v. Eclipse Pioneer Div. of Bendix Aviation, 57 N.J. Super. 470, 155 A.2d 129 (App. Div. 1959) (compensation allowed for "severe anxiety neurosis with depression associated with a chronic dermatitis affecting at various times all parts of [claimant's] body"); Smith v. Essex County Park Comm'n, 15 N.J. Misc. 227, 190 A. 45 (Workmen's Comp. Bur. 1937) (neurosis partly accentuated by economic conditions unrelated to injury).

New Mexico: In Webb v. Hamilton, 78 N.M. 647, 436 P.2d 507 (1968), the claimant had previously lost the sight of his left eye, and in an industrial accident injured his right eye, resulting in partial loss of sight. As a result of the injury, the claimant became nervous and emotionally upset, causing depressive reaction neurosis, personality changes, and a tremor in his right arm. New Mexico provides that although loss of both eyes constitutes total disability, in the event the loss of vision in one eye occurred before the compensable accident, benefits are limited to the schedule amount for loss of vision in one eye. N.M. STAT. ANN. § 59-10-18.4 (1960). The court held that since the emotional aspects of injury had left claimant totally disabled, the limitation did not apply, and he was entitled to full benefits for permanent total disability. Gonzales v. Gackle Drilling Co., 70 N.M. 131, 371 P.2d 605 (1962) (the shock or traumatic neurosis resulting from accidental severance of a leg could support award not limited to the scheduled benefits).

New York: Knief v. Great Atl. & Pac. Tea Co., 30 App. Div. 2d 748, 291 N.Y.S.2d 463 (1968) (award of benefits for permanent total disability allowed to claimant having a predisposition towards a disabling mental state, when a wrist injury precipitated conversion hysteria, causing permanent total disability); Munsie v. DiFiore, 19 App. Div. 2d 916, 243 N.Y.S.2d 988 (1963) (compensation allowed for death from delirium tremens caused by an industrial, accidental trauma and contributed to by intoxication); Pokorny v. Chadbourne, Wallace, Parkes & Whiteside, 14 App. Div. 2d 662, 219 N.Y.S.2d 130 (1961) (compensation awarded for conversion neurosis for 10 years following an injury to the stenographer's thumb); Russo v. Art Steel Co., 14 App. Div. 2d 605, 218 N.Y.S.2d 407 (1961) (recovery allowed for post-traumatic neurosis following head injuries from an explosion); Trgo v. Harris Structural Steel Corp., 13 App. Div. 2d 856, 214 N.Y.S.2d 791 (1961) (compensation awarded for traumatic neurosis, anxiety reaction, and depressive reaction following a brain concussion); Edmonds v. Kalfaian & Son, Inc., 9 App. Div. 2d 551, 189 N.Y.S.2d 456 (1959) (award granted claimant who suffered a compensable arm amputation in 1941 and was later committed to a mental institution on the basis that the arm injury was a factor in the

eventual mental breakdown); Chicklowski v. Hotel Syracuse, Inc., 5 App. Div. 2d 704, 168 N.Y.S.2d 641 (1957); Griffiths v. Shaffrey, 283 App. Div. 839, 129 N.Y.S.2d 74, *aff'd*, 308 N.Y. 729, 124 N.E.2d 339 (1954) (manic-depressive psychosis held compensable, since truck collision with train contributed to claimant's breakdown); Underwood v. Whitney, 282 App. Div. 783, 122 N.Y.S.2d 468 (1953) (compensation awarded to window-washer who, subsequent to healing of fracture, complained of stomach disorders that caused physical pain interfering with his ability to work); Wallace v. Bell Aircraft Co., 276 App. Div. 800, 93 N.Y.S.2d 162 (1949) (functional neurosis in form of stagger after blow on head); Kalikoff v. John Lucas & Co., 271 App. Div. 942, 67 N.Y.S.2d 153, *aff'd*, 297 N.Y. 663, 76 N.E.2d 324 (1947). For another mental-physical-mental sequence, comparable to that in Employers Ins. Co. v. Wright, 114 Ga. App. 10, 150 S.E.2d 254 (1966) (diseussed under Georgia in this appendix), see Daugherty v. Midland Painting Co., 14 App. Div. 2d 961, 221 N.Y.S.2d 70 (1961). The employee sustained a fractured skull and brain injury from a compensable accident. He died from an infectious ruptured gall bladder while confined in a mental hospital. The doctors testified that due to his mental condition, he had been unable to feel the pain or indicate his suffering to the hospital attendants in time for proper medical attention. The death from the rupture infection was held compensable.

Ohio: State v. Industrial Comm'n, 83 Ohio L. Abs. 114, 165 N.E.2d 211 (Sup. Ct. 1960) (compensation awarded to claimant for time lost while being treated for nervous condition on finding that back condition and nervousness were either due to or aggravated by the injury).

Oklahoma: Wade Lahar Constr. Co. v. Howell, 376 P.2d 221 (Okla. 1962); Rialto Lead & Zinc Co. v. State Indus. Comm'n, 112 Okla. 101, 240 P. 96 (1925).

Pennsylvania: Redrick v. Knapp Bros. Co., 127 Pa. Super. 92, 193 A. 117 (1937); Farran v. Curtis Publishing Co., 276 Pa. 553, 120 A. 544 (1923).

Rhode Island: Greenville Finishing Co. v. Pezza, 81 R.I. 20, 98 A.2d 825 (1953) (employee entitled to full rate for total disability resulting from traumatic neurosis following enucleation of eye); Imperial Knife Co. v. Calise, 80 R.I. 428, 97 A.2d 579 (1953) (award of partial compensation to claimant incapacitated by a "fear complex" from doing light work offered her by her employer affirmed); Wareham v. United States Rubber Co., 73 R.I. 207, 54 A.2d 372 (1947); *cf.* Fox Point Chem. Co. v. Pacheco, 91 R.I. 106, 161 A.2d 207 (1960) (although court stated that claimant might be suffering from ineapacitating psychoneurosis after full orthopedic recovery, further compensation denied on ground that the specific back injuries set out in the agreement were no longer disabling).

South Carolina: Kennedy v. Williamsburg County, 242 S.C. 477, 131 S.E.2d 512 (1963) (total disability from paranoid schizophrenia condition following head injuries held compensable).

Tennessee: Buck & Simmons Auto & Elec. Supply Co. v. Kesterson, 194 Tenn. 90, 250 S.W.2d 39 (1952) (total disability awarded for neck injury followed by traumatic neurosis).

Texas: City of Austin v. Crooks, 343 S.W.2d 272 (Tex. Civ. App.), *rev'd on other grounds*, 162 Tex. 189, 346 S.W.2d 115 (1961) (total permanent disability benefits were awarded to city employee who suffered physical disabilities and psychoneurosis from reaction to tetanus antitoxin and horse serum administered after he was bitten by a dog); Traders & Gen. Ins. Co. v. Slusser, 110 S.W.2d 598 (Tex. Civ. App. 1937).

Washington: Jacobson v. Department of Labor & Indus., 224 P.2d 338 (Wash. 1950).

Appendix III

Following is a listing, by jurisdiction, of cases denying compensation on the ground that the evidence failed to establish a causal connection between the injury and the neurosis.

Arizona: Phelps Dodge Corp. v. Industrial Comm'n, 46 Ariz. 162, 49 P.2d 391 (1935).

Kentucky: State Highway Dep't v. Hopwood, 331 S.W.2d 900 (Ky. 1960) (compensation denied to claimant who alleged neurosis from head injury sufficient at the time to knock him momentarily unconscious); Powell v. Winchester Garment Co., 312 Ky. 38, 226 S.W.2d 341 (1950).

Louisiana: Brown v. Ceco Steel Prods. Corp., 136 So. 2d 161 (La. 4th Cir. Ct. App. 1962) (evidence that claimant's backache complaints were caused by urethritis and that he was able to work at other jobs without complaint substantiated a finding that he was not suffering from a traumatic neurosis); Litton v. London Guar. & Accident Co., 133 So. 2d 858 (La. 2d Cir. Ct. App. 1961) (a single, 90 minute visit to a psychiatrist 3 days before the trial was insufficient background evidence to justify award based upon neurosis); Lambert v. Wolf's, Inc., 132 So. 2d 522 (La. 3d Cir. Ct. App. 1961) (claimant denied compensation for post-traumatic neurosis on evidence that impotency, worry about his income and welfare assistance payments, hostility toward his employer, and concern that various doctors could find nothing physically wrong were also precipitating factors); Morgan v. Farnsworth & Chambers, Inc., 119 So. 2d 576 (La. 1st Cir. Ct. App. 1960) (compensation denied to claimant whose fall of 3 stories caused no broken bones, in spite of psychiatrist's testimony that the claimant had developed a partial sexual impotence and conversion reaction).

Maryland: Greene v. Yeager, 222 Md. 411, 160 A.2d 605 (1960) (compensation denied on ground that residual pain was due to general nervous disposition rather than due to effects of injury).

Minnesota: Zobitz v. City of Ely, 219 Minn. 411, 18 N.W.2d 126 (1945).

Missouri: In Smith v. Cascade Laundry Co., 335 S.W.2d 501 (Kansas City, Mo. Ct. App. 1960), claimant alleged that impairment of use of her right arm because of an anxiety-hysteria neurosis was caused because her job in the laundry required immersion of her right hand in a "sour" solution causing her hand to become red and swollen. The court denied the claim on evidence that the same solution had been used by other employees for many years without ill effects, thus indicating that no causal relation existed between the solution and her neurosis. Patane v. Stix, Baer & Fuller, 326 S.W.2d 402 (St. Louis, Mo. Ct. App. 1959) (psychoneurosis that did not appear until a year after a blow on the head was not causally related to the blow).

New Hampshire: Condiles v. Waumbec Mills, 95 N.H. 127, 58 A.2d 726 (1948).

New York: Krasinski v. American Brass Co., 12 App. Div. 2d 827, 209 N.Y.S.2d 335 (1961) (additional benefits denied to claimant who, 4 years after an award for traumatic neurosis terminated, was hospitalized for paranoia not caused by injury); McWilliams v. Eastman Kodak Co., 9 App. Div. 2d 588, 189 N.Y.S.2d 427 (1959) (award for parasthesias was reversed, when it was found that claimant quit work 4 years after condition of her fingers and thumb, involving abnormal sensitivity without objective cause allegedly due to using snippers and screwdrivers, had been pronounced cured).

Oklahoma: Ada Coca-Cola Bottling Co. v. Snead, 364 P.2d 696 (Okla. 1961)

(when an employee is industrially injured (herniated disc) and then "worries himself into a heart attack [3 years later] because his disability makes it impossible for him to work and provide for his family," the connection to causal relationship is too remote and uncertain).

Rhode Island: Quillen v. O.D. Purington Co., 89 R.I. 165, 94 A.2d 247 (1953) (denial of compensation affirmed since medical evidence was conflicting as to causation between fall and headaches).

Washington: Berndt v. Department of Labor & Indus., 44 Wash. 2d 138, 265 P.2d 1037 (1954) (compensation denied to widow who asserted that death of her husband from coronary thrombosis was caused by fear that she would consider employment dermatitis to be a venereal disease).

Wisconsin: Miller Rasmussen Ice & Coal Co. v. Industrial Comm'n, 263 Wis. 538, 57 N.W.2d 736 (1953) (award reversed for failure to show trauma caused neurosis).

Appendix IV

Following is a listing, by jurisdiction, of case law on the issue of compensation for "nervous" injuries caused by nervous or mental stimuli.

A. Cases Awarding Compensation

Federal: American Nat'l Red Cross v. Hagen, 327 F.2d 559 (7th Cir. 1964) (compensation awarded to claimant whose acute paranoid schizophrenic reaction was found to have been causally related to the stresses of his job as a Red Cross worker, his location in Japan, personnel problems, extra work during his superior's illness, and a conflict with the local military chaplain over who was to advise servicemen of death in their families); *In re* John T. Wade, No. 61-122 (Employee's Compensation App. Bd. May 9, 1961) (remand for the taking of further psychiatric evidence as to the validity of depressive reaction allegedly due to severe emotional strain of deputy head of a supply division).

Florida: Lyng v. Rao, 72 So. 2d 53 (Fla. 1954) (although her injuries were not outwardly visible, a stenographer who was hospitalized for about 2 months for chest pains after her building had been struck by lightning while she was typing with her feet in water because the roof leaked was awarded compensation). *Contra,* City Ice & Fuel Div. v. Smith, 56 So. 2d 329 (Fla. 1952) (compensation denied trucker who was sideswiped without physical injury, but who a day later suffered from emotional shock).

Michigan: Carter v. GMC, 361 Mich. 577, 106 N.W.2d 105 (1960) (worry over not being able to keep up with assembly line triggered a psychosis).

New Jersey: Simon v. R.H.H. Steel Laundry, 25 N.J. Super. 50, 95 A.2d 446 (Hudson County Ct. L. Div.), *aff'd,* 26 N.J. Super. 598, 98 A.2d 604 (Super. Ct. App. Div. 1953) (no physical disability; but complete psychoneurotic disability following explosion of steel pipe was compensable). *Contra,* Voss v. Prudential Ins. Co. of America, 14 N.J. Misc. 791, 187 A. 334 (Workmen's Comp. Bur. 1936) (holding that a stenographer who underwent a disabling nervous spell caused by a co-worker who called her an "idiot" did not suffer accidental injury).

Oregon: Kinney v. Industrial Accident Comm'n, 245 Ore. 543, 423 P.2d 186 (1967) (dictum).

Texas: Bailey v. American Gen. Ins. Co., 154 Tex. 430, 279 S.W.2d 315 (1955), *noted in* 53 MICH. L. REV. 898 (1955) (discussed in text accompanying note 53 *supra*); *cf.* Frazier v. Employers Mut. Cas. Co., 368 S.W.2d 955 (Tex. Civ. App. 1963) (gradual increase in mental tensions resulting in the claimant's suffering spasmodic torticollis (stiff neck) which reached a climax on a given date was not an injury under the compensation act, but was an occupational disease).

Virginia: Burlington Mills Corp. v. Hagood, 177 Va. 204, 13 S.E.2d 291 (1941).

England: Yates v. South Kirkby & Collieries, Ltd., [1910] 2 K.B. 538 (nervous collapse on seeing co-worker maimed).

B. Cases Denying Compensation

Georgia: Brady v. Royal Mfg. Co., 117 Ga. App. 312, 160 S.E.2d 424 (1968) (because of absence of "accident," compensation was denied to claimant who was caused to become emotionally upset while at work and suffered a conversion reaction resulting in loss of use of her arm).

Kansas: Jacobs v. Goodyear Tire & Rubber Co., 196 Kan. 613, 412 P.2d 986

(1966) (compensation denied to claimant whose disability was due to a mental illness brought about by his attempts to meet a quota).

Louisiana: Johnson v. Hartford Accident & Indem. Co., 196 So. 2d 635 (La. 3d Cir. Ct. App. 1967) (claimant's total disability from a nervous breakdown caused by work pressures and fatigue was held not to be compensable for lack of a physical incident as a causative or contributory factor); Hackett v. Travelers Ins. Co., 195 So. 2d 758 (La. 3d Cir. Ct. App. 1967) (compensation denied to elaimant who became disabled as a result of a psychological problem that developed after 2 men he was working with were killed in a dynamite blast).

Nebraska: Bekeleski v. O.F. Neal Co., 141 Neb. 657, 4 N.W.2d 741 (1942) (shock of elevator operator from seeing passenger killed). Note, however, that Nebraska has the "violence to physieal structure" type of statute.

New York: Straws v. Fail, 17 App. Div. 2d 998, 233 N.Y.S.2d 893 (1962) (discussed in text accompanying note 55 *supra*).

Pennsylvania: Liscio v. S. Makransky & Sons, 147 Pa. Super. 483, 24 A.2d 136 (1942) (recovery denied for shock as result of flash of lightning).

Appendix V

Following is a listing, by jurisdiction, of case law on the issue of compensation neurosis.

A. Cases Awarding Compensation

Louisiana: Doucet v. Ashy Constr. Co., 134 So. 2d 665 (La. 3d Cir. Ct. App. 1961) (claimant's back injury aggravated a preexisting neurosis).

Minnesota: Welchlin v. Fairmont Ry. Motors, 180 Minn. 411, 230 N.W. 897 (1930).

New Mexico: In Ross v. Sayers Well Serv. Co., 76 N.M. 321, 414 P.2d 679 (1966), one psychiatrist could not express an opinion whether the claimant's disability was due to work-connected psychiatric problems. The other psychiatrist stated that disability was due to compensation neurosis. A finding of no compensable disability was reversed, and compensation was awarded.

New York: Rodrigues v. New York Dock Co., 256 App. Div. 875, 9 N.Y.S.2d 264, *motion for leave to appeal denied,* 280 N.Y. 852, 20 N.E.2d 398 (1939) (dementia praecox in part caused by compensation worry).

Texas: Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 209 S.W.2d 345 (1948); *cf.* Texas Employers' Ins. Ass'n v. Ham, 333 S.W.2d 438 (Tex. Civ. App. 1960) (the jury rejected medical testimony that the claimant's "glove and stocking anesthesia" was the result of psychoneurotic emotional stress caused by the litigation and found the disability was caused solely by the physical injuries); Texas Employers' Ins. Ass'n v. Hatton, 252 S.W.2d 754 (Tex. Civ. App. 1952), *rev'd on other grounds,* 152 Tex. 199, 255 S.W.2d 848 (1953). Medical witnesses called by the defendant testified that the plaintiff was suffering from hysteria or neurosis as a result of the injury and pendency of the suit which would probably improve after the termination of the litigation. Since no pleading covered such disability, plaintiff sought and was granted permission to set it up in a trial amendment. The court ruled that such disability may be considered by the jury and is compensable.

Washington: Peterson v. Department of Labor & Indus., 178 Wash. 15, 33 P.2d 650 (1934).

Wisconsin: In Gallagher v. Industrial Comm'n, 9 Wis. 2d 361, 101 N.W.2d 72 (1960), conflicting medical testimony indicated either no disability from the claimant's accident or 90% temporary disability caused by a compensation neurosis classified specifically as a conversion reaction. Based upon a doctor's opinion that the neurosis would disappear in one year, the Commission's award of 5% permanent disability in order to provide benefits for 50 weeks was affirmed.

B. Cases Denying Compensation

Connecticut: Kowalski v. New York, N.H. & H.R.R., 116 Conn. 229, 164 A. 653 (1933).

Georgia: Swift & Co. v. Ware, 53 Ga. App. 500, 186 S.E. 452 (1963).

Rhode Island: Martino v. California Artificial Flower Co., 91 R.I. 91, 161 A.2d 193 (1960) (additional compensation benefits were denied when the cause of disability was attributed to compensation neurosis).

Florida: The Florida cases are interesting but inconclusive on the main principle. In Moses v. R.H. Wright & Son, 90 So. 2d 330 (Fla. 1956), the claimant suffered an

electric shock while working. Because of his illiteracy and a peculiar spiritual philosophy, he thereafter labored under a disabling mental condition or psychosis. He believed that the electric shock was a supernatural warning or punishment. He interpreted it as an act of God indicating the displeasure of the Lord. His condition did not result from anxiety over the litigation but from his strange eoncepts. Here there was more than compensation neurosis, because settlement to him would merely mean that God had overthrown the devil. Compensation was awarded. In Tolbert v. Truly Nolen, Inc., 148 So. 2d 521 (Fla. 1963), compensation neurosis and residual emotional disability, rated at 35% loss of wage earning capacity, following accident werc not compensable when Negro claimant was motivated by a religion (Temple Islam) that, according to the opinion, teaches members to fight and deceive the white man. In Maffitt v. Henderson's Portion-Pak, Inc., 132 So. 2d 410 (Fla. 1961), a psychiatrist testified that the claimant's compensation neurosis would exist as long as she was receiving temporary disability benefits. The Deputy Commissioner awarded a lump sum settlement to provide for medical treatment and to facilitate the cure. The court held that medical treatments must be furnished by the employer, but not by awarding a lump sum payment to the claimant to be used for medical treatment expenses. Additional compensation benefits were denied on other grounds.

Appendix VI

Following is a listing, by jurisdictions, of decisions concerning the issue of malingering.

Arizona: Minton v. Industrial Comm'n, 90 Ariz. 254, 367 P.2d 274 (1961) (although the claimant contended that psychoneurotic factors should be determined on the basis of legal cause and effect rather than medical cause following an injury, the expert witness, a specialist in neuropsychiatry, testified that no psychiatric disability was attributable to the accident; compensation based on neurosis was denied); Davidson v. Industrial Comm'n, 72 Ariz. 314, 235 P.2d 1007 (1951) (a defeatist and apathetic attitude falling short of a neurosis is not a ground for finding one who has done no work since his injury totally and permanently disabled).

Delaware: Whaley v. Shellady, Inc., 52 Del. 519, 161 A.2d 422 (1960) (based upon evidence that the claimant "was at no time anxious to work," but was capable of shooting pool several times a week and going surf fishing, the court affirmed a reduction in total disability benefits to partial disability for a back injury).

Florida: Johnny's Welding Shop v. Eagan, 143 So. 2d 470 (Fla. 1962).

Louisiana: Lyons v. Maryland Cas. Co., 158 So. 2d 392 (La. 3d Cir. Ct. App. 1963) (claim based upon disabling psychoneurosis denied); Mouton v. Travelers Ins. Co., 135 So. 2d 287 (La. 3d Cir. Ct. App. 1961) (the court affirmed the denial of compensation restating extensive portions of medical testimony concerning claimant's alleged back injury and post-traumatic neurosis that could not be reconciled with his activities of plowing with a tractor and cultivating a cotton field with mules, and with his general reputation which fell short of his being known as a hard worker); Kenny v. Schuylkill Prods. Co., 130 So. 2d 696 (La. 1st Cir. Ct. App. 1961) (the claimant suffered third-degree burns in February, underwent a skin graft operation in March, and was found to be suffering merely from "compensationitis" by April 7, 1959). In Washington v. Quality Constr. Co., 124 So. 2d 151 (La. 4th Cir. Ct. App. 1960), the claimant-employee received a favorable judgment for workmen's compensation for post-traumatic neurosis that he claimed rendered him totally and permanently disabled. In spite of a disagreement between psychiatrists, the evidence was found to show a determination on the part of the employee to bolster his case with false statements and actions, indicating that he was a malingerer. Judgment was therefore reversed and the suit dismissed.

Mississippi: International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644 (1962) (claim for neurotic disability, or alternatively for conversion reaction disability, denied).

New York: Kalendowich v. Detecto Scales, 9 App. Div. 2d 979, 198 N.Y.S.2d 356 (1959) (although medical experts testified to the existence of neurosis following a back injury, the Board denied compensation on a finding of no causal relation between the two and a strong inference of malingering).

Wisconsin: The opinion in Johnson v. Industrial Comm'n, 14 Wis. 2d 211, 109 N.W.2d 666 (1961) and that in a previous appeal, 5 Wis. 2d 584, 93 N.W.2d 439 (1958), indicate the thin line between traumatic neurosis and malingering and enunciate the evidence necessary to sustain an award for the former. The court came to the conclusion that the claimant grossly exaggerated his ailments, that the medical evidence was inadequate, and that the claimant had received benefits in excess of his actual physical disabilities to such an extent that the denial of further benefits was not reversible error in any event. Compensation for neurotic disability was denied.