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Mental Stimulus And Disability Under Workmen'S Compensation

MENTAL STIMULUS AND DISABILITY UNDER WORKMEN'S COMPENSATION

The right of an injured employee to recover under the Workmen's Compensation Acts for a mental disability resulting from an accident sustained in the course of employment has been a perplexing problem since these statutes were first enacted. The cases dealing with this problem fall into three categories: (1) A physical accident or trauma produces a mental injury or disorder—the courts have uniformly held that compensation may be awarded for the resulting mental disability[1] even though the physical trauma is only slight or trivial.[2] (2) A mental stimulus, e.g., mental shock or fright, results in the death of the employee[3] or produces a distinct physical injury[4]—the great majority of jurisdictions have awarded compensation even though no physical impact or trauma occurred.[5] (3) A mental stimulus produces a mental disability—within this area the greatest conflict

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[1]Campana v. Hogan, 7 App. Div. 2d 815, 180 N.Y.S.2d 1005 (3d Dep't 1958); Chicklowski v. Hotel Syracuse, 5 App. Div. 2d 704, 168 N.Y.S.2d 641 (3d Dep't 1957); Griffiths v. Shaffery, 283 App. Div. 839, 129 N.Y.S.2d 74 (3d Dep't 1954); Underwood v. Whitney, 282 App. Div. 783, 122 N.Y.S.2d 468 (3d Dep't 1953); Wallace v. Bell Aircraft Corp., 276 App. Div. 800, 93 N.Y.S.2d 162 (3d Dep't 1949); Kalikoff v. John Lucas & Co., 271 App. Div. 942, 67 N.Y.S.2d 153 (3d Dep't 1947); Rodriguez v. New York Dock Co., 256 App. Div. 875, 9 N.Y.S.2d 264 (3d Dep't 1939); 1 Larson, Workmen's Compensation § 42.22 (1952) [Hereinafter cited as Larson].

[2]In Kalikoff v. John Lucas & Co., 271 App. Div. 942, 67 N.Y.S.2d 153 (3d Dep't 1947), claimant was bitten by a cat and developed such a fear of being stricken with rabies that he became psycho-neurotic. See generally, 5 Schneider, Workmen's Compensation Text § 1411(1946).

[3]New York: Wachsstock v. Skyview Transp. Co., 5 App. Div. 2d 1028, 173 N.Y.S.2d 405 (3d Dep't 1958); Krawczyk v. Jefferson Hotel, 278 App. Div. 731, 103 N.Y.S.2d 40 (3d Dep't 1951); Church v. Westchester County, 253 App. Div. 859, 1 N.Y.S.2d 581 (3d Dep't 1938); Thompson v. City of Binghamton, 218 App. Div. 451, 218 N.Y. Supp. 355 (3d Dep't 1926).

Other Jurisdiction: Roberts v. Dredge Fund, 71 Idaho 380, 232 P.2d 975 (1951); Johnson v. Zurick Gen. Acc. & Liab. Ins. Co., 161 So. 667 (La. App. 1935); Monk v. Charcoal Iron Co., 246 Mich. 193, 224 N.W. 354 (1929); Klein v. Len H. Darling Co., 217 Mich. 485, 187 N.W. 400 (1922); Liscio v. S. Makransky & Sons, 147 Pa. Super. 84, 24 A.2d 136 (1942); 1 Larson § 42.21.

[4]Paralysis: Miller v. Bingham County, 310 P.2d 1089 (Idaho 1957); J. Norman Geipe, Inc. v. Collett, 172 Md. 165, 190 Atl. 836 (1937); Charon's Case, 321 Mass. 694, 75 N.E.2d 511 (1947); Insurance Dep't v. Dinsmore, 233 Miss. 569, 102 So. 2d 691 (1958); Schuster v. Perryman Elec. Co., 11 N.J. Misc. 16, 163 Atl. 437 (Dep't Labor 1932). Heart Attack: Pukaluk v. Insurance Co., 7 App. Div. 2d 676, 179 N.Y.S.2d 173 (3d Dep't 1958); Pickrell v. Schumacker, 215 App. Div. 745, 212 N.Y. Supp. 897 (3d Dep't 1925), aff'd mem., 242 N.Y. 577, 152 N.E. 434 (1926).

[5]See notes 3 & 4 supra. Accord, 1 Larson § 42.21; 99 C. J. S. Workmen's Compensation § 168(b) (1958); 9 Ark. L. Rev. 185, 186 (1955); 41 Va. L. Rev. 824 (1955).

exists.[6] The New York Supreme Court was recently confronted with a case in this controversial third category in *Chernin v. Progress Service Co.*[7]

The claimant in *Chernin,* a taxi driver, hit a pedestrian who darted in front of his taxi. The accident knocked the pedestrian unconscious but caused no physical injury to the taxi driver. He did, however, become emotionally disturbed immediately following the accident and was later admitted to Bellevue Hospital suffering from a mental disorder. The Workmen's Compensation Board conceded that claimant had suffered no physical injury, but awarded him compensation for his resulting mental disability. The Board found that the excitement surrounding the accident aggravated a pre-existing emotional disorder resulting in schizophrenia, paranoid type.[8] The Supreme Court reversed, finding that claimant's mental disability was not compensable under the compensation act since no physical cause or injury was involved.

Before dealing with the problem presented in *Chernin,* it is well to consider the purpose of the statutes under which these cases arise. Workmen's Compensation Acts provide compensation to employees or their dependents when such employees are injured, disabled or killed as a result of an injury incurred in the course of employment.[9] The courts have often said that the acts are remedial in nature and should be liberally construed.[10] Thus, any doubt as to the right of a disabled employee to receive compensation should be resolved in favor of the

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[6]Nearly all writers advocate the allowance of compensation. However, there are relatively few cases reported where the disability is only mental and is produced solely by mental stimuli. Most of the cases cited in support of an allowance of compensation involve some additional element, e.g., a physical impact or trauma producing a mental disorder, or a mental stimulus that results in death, paralysis, or other distinct physical injury. Annot., 109 A.L.R. 892 (1937); Horovitz, Injury and Death Under Workmen's Compensation Laws 75 (1944); 1 Larson § 42.23; 5 Schneider, Workmen's Compensation Text § 1411 (1946); Horovitz, The Litigious Phase: "Arising out of" Employment, 4 NACCA L.J. 19, 68 (1949); 9 Ark. L. Rev. 185, 186 (1955); 5 Catholic U.L. Rev. 118, 120 (1955); 47 Ky. L.J. 437, 449 (1959); 53 Mich. L. Rev. 898 (1955); 16 Ohio St. L. J. 287, 289 (1955); 2 So. Tex. L.J. 93 (1955); 34 Texas L. Rev. 496 (1956); 41 Va. L. Rev. 824, 825 (1955).

[7]9 App. Div. 2d 170, 192 N.Y.S.2d 758 (3d Dep't 1959).

[8]"[A] pre-existing weakness in the form of a neurotic tendency does not lessen the compensability of an injury which precipitates a disabling neurosis." 1 Larson § 42.22.

[9]In the Matter of Petrie, 215 N.Y. 335, 109 N.E. 549, 550 (1915); 1 Larson § 1.00.

[10]In the Matter of Petrie, supra note 9; Security Union Ins. Co. v. McClurkin, 35 S.W. 2d 240, 243 (Tex. Civ App. 1930). See New York cases cited in 3 Schneider, Workmen's Compensation Statutes 2391 (1939).

employee.[11] The acts create a right to compensation entirely separate and distinct from the usual common law tort and contract actions,[12] and most of the confusion in the interpretation of the acts has resulted from the failure of the courts to recognize this distinction.[13]

In *Bailey v. American Gen. Ins. Co.*,[14] the leading American case awarding compensation to an employee for a mental disability precipitated by a mental cause, the Texas Supreme Court recognized this distinction and placed a liberal construction on the Texas Workmen's Compensation Act. Claimant received a severe nervous shock when one end of a scaffold, on which he and a co-employee were working, collapsed. The co-worker fell to his death, and claimant was saved from a similar fate when he became entangled in the supporting cables. Thereafter claimant was unable to return to his usual work because of a nervous condition. Neurosurgeons testified that the nervous shock had disrupted the functioning of claimant's nervous system but no damage had resulted to the physical structure of the system. The Texas Act provided that " 'personal injury' shall be construed to mean *damage* or *harm* to the *physical structure of the body*. . . ."[15] In awarding compensation, the court said that claimant was just as disabled as one who suffered a direct physical injury. The feature that makes this decision so outstanding is the liberal construction the court placed on the statute. The court stated:

> "The phrase 'physical structure of the body,' as it is used in the statute, must refer to the *entire* body, not simply to the skeletal structure or to the circulatory system or to the digestive system.
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> "This interference with use or control in an organism whose good health depends upon unified action and balanced synthesis can be productive of the same disabling signs and symptoms as direct physical injury to the cells, tissues, organs or organ systems."[16]

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[11]Jones v. Texas Indem. Ins. Co., 223 S.W.2d 286, 288 (Tex. Civ. App. 1949); Security Union Ins. Co. v. McClurkin, supra note 10; 2 So. Tex. L.J. 93, 95 (1956); 34 Texas L. Rev. 496, 498 (1956).

[12]Winfield v. New York Cent. & H. R. R.R., 216 N.Y. 284, 110 N.E. 614, 616 (1915); Horovitz, Injury and Death Under Workmen's Compensation Laws 8, 9 (1944); 1 Schneider, Workmen's Compensation Text § 6 (1941, Supp. 1958).

[13]"Almost every major error that can be observed in the development of compensation law, whether judicial or legislative, can be traced . . . to the importation of tort ideas . . . ." 1 Larson § 1.20 at 2-3.

[14]154 Tex. 430, 279 S.W.2d 315 (1955).

[15]279 S.W.2d at 318.

[16]Id. at 318-19.

Another leading case awarding compensation in a situation similar to that in *Chernin* was the English case of *Yates v. South Kirkly & Collieries, Ltd.*[17] The claimant, a collier, was working in a mine when he discovered a fellow collier who had been injured by a fallen prop. Claimant carried the fatally injured collier from the mine, and as a result suffered a disabling nervous shock. In granting compensation, Lord Justice Farwell stated that "nervous shock due to accident which causes personal incapacity to work is as much 'personal injury by accident' as a broken leg...."[18]

From the above discussion it can be seen that leading American and English cases dealing with the problem have awarded compensation to the disabled employee. Cases denying compensation may be distinguished on the following grounds: the court failed to face the essential issue and based its decision on a secondary point;[19] the court applied tort reasoning in construing the compensation statute;[20] or the court strictly construed the compensation statute. A case demonstrating this latter ground is *Bekeleski v. O. F. Neal Co.*[21] There the claimant was trapped for thirty minutes in an elevator with a dying man. Claimant's nervous system suffered such a severe shock that she

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[17][1910] 2 K.B. 538.

[18]Id. at 542. Two other often cited opinions allowing compensation should also be mentioned. In Burlington Mills Corp. v. Hagood, 177 Va. 204, 13 S.E.2d 291 (1941), a short circuit occurred in a motor near claimant resulting in a flash and loud noise. Claimant became frightened and started to fall but was caught by a co-worker. Later, whenever claimant saw the co-worker again she was reminded of the explosion and fainted. She was unable to continue her work. In affirming an award of compensation the court stated: "As a result of the accident and injury [claimant]... was incapacitated for work. Her incapacity was as effectual as if it had been caused by visible lesion." Id. at 294.

In Simon v. R.H.H. Steel Laundry, Inc., 25 N.J. Super. 50, 95 A.2d 446 (Hudson County Ct. 1953), aff'd, 26 N.J. Super. 535, 98 A.2d 605 (1953), a steampipe burst causing a violent explosion. Claimant received a nervous shock therefrom that resulted in a functional neuropsychiatric disorder. In awarding compensation the court stated: "[T]he statutory basis for a compensation award is an 'injury,' and there is nothing in the law to exclude from the import of this term such injuries from non-physical, that is, psychic, trauma." 95 A.2d at 450.

[19]In Voss v. Prudential Ins. Co., 187 Atl. 334 (N.J. Dep't Labor 1936), claimant suffered a "nervous spell" after a co-worker called her an "idiot." The court decided this derogatory remark was not an accident arising out of the course of employment. In Shivers v. Liberty Mut. Ins. Co., 75 Ga. App. 409, 43 S.E.2d 429 (1947), claimant alleged his nervous collapse was caused by an explosion and constant fear of recurring explosion. The court felt that no explosion had occurred and that the claimant's nervous state was caused by other events not connected with his employment.

[20]Chernin v. Progress Serv. Co., 9 App. Div. 2d 170, 192 N.Y.S.2d 758 (3d Dep't 1959).

[21]141 Neb. 657, 4 N.W.2d 741 (1942).

became totally disabled. The court, in strictly construing a statute similar to the one in *Bailey*,[22] denied compensation on the ground that there was no violence to the physical structure of the body. However, a strong dissent, cited with approval in later cases, advocated an interpretation of the statute similar to the liberal construction rendered by the majority in *Bailey*.[23]

Since the leading cases dealing with the problem have awarded compensation, the question remains as to the basis for the Supreme Court's denial of compensation in *Chernin*. It is apparent that the court faced the issue in *Chernin*, but it is submitted that it erred by applying tort concepts and in strictly construing the New York Compensation Act, as is evidenced by the implication that recovery would have been allowed if either of two additional factors were present: (1) claimant had received a *physical impact* and a resulting mental disorder; or (2) claimant had suffered a true *physical injury*.

As a basis for the requirement of *physical impact*, the court stated that it found "nothing in the law that connotes purely excessive emotions—anger, grief or other mental feelings—*unaccompanied by physical force* or exertion can be the basis of an accident."[24] New York is an "impact" jurisdiction denying recovery in negligence cases for in-

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[22]Neb. Rev. Stat. § 48-152 (1929): "The term 'injury' and 'personal injury' shall mean only violence to the physical structure of the body...." In City Ice and Fuel Div. v. Smith, 56 So. 2d 329 (Fla. 1952), claimant was involved in an automobile accident in which he received no physical injury. He was unable to resume work because of a nervous disorder that was diagnosed as conversion hysteria and possible dementia praecox. The court felt that claimant's condition resulted from worry over his financial status, rather than from the accident, and thus did not arise out of the course of his employment. The statutory definition of injury precluded the claimant from a compensation award even if the disability had arisen out of his employment. Fla. Stat. Ann. § 440.02 (1949): "A mental or nervous injury due to fright or excitement only... shall be deemed not to be an injury by accident arising out of the employment."

[23]"I am inclined to think that the lawmakers, by the use of the term 'violence to the physical structure of the body,' meant an animate body with a directing brain containing blood, sensitive nerves, fibers and convolutions. The brain is part of the physical structure of the body. Without it there could be no performance of an employee's duties. Accidential violence to the brain and resulting disability may be difficult to prove, but plaintiff was rational before the accident and irrational afterward." Bekeleski v. O. F. Neal Co., 141 Neb. 657, 4 N.W.2d 741, 744 (1942).

The Idaho court, in construing a violence to the physical structure of the body statute similar to Nebraska's, had this to say about the Bekeleski case: "We think the dissent is more scientifically reasoned and more worthy of our acceptance...." Roberts v. Dredge Fund, 71 Idaho 380, 232 P.2d 975, 980 (1951). The Bekeleski dissent was again cited with approval in Miller v. Bingham County, 79 Idaho 87, 310 P.2d 1089, 1093 (1957).

[24]192 N.Y.S.2d at 760. (Emphasis added.)

juries resulting from fright unless there is a physical shock or impact.[25] The physical force requirement imposed by the court is obviously an infiltration of tort law into the workmen's compensation field, contrary to the rule as stated by leading authorities.[26]

The *physical injury* requirement is indicated by the following statement from the court's opinion: "While it may accurately be claimed the facts would be sufficient to sustain the Board if the injury were of a *physical nature,* we find the present facts not compensable under the law."[27] In requiring a physical injury the court strictly construed the statute and placed a gloss on it that its plain words will not bear. The statute provides that " 'injury' and 'personal injury' mean only accidental injuries arising out of and in the course of employment and such diseases or infection as may naturally . . . result thereform."[28] Clearly there is nothing on its face that excludes mental injuries or disorders. "Personal injury" is normally defined under the compensation acts as any harm or damage to the health of the employee,[29] and to draw a distinction between physical and mental harm or damage seems unjustified.

In concluding, the court recognized that it might "logically be

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[25]Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896); McNiece, Psychic Injury and Tort Liability in New York, 24 St. John's L. Rev. 1, 22 (1949). The New York impact doctrine has influenced other workmen's compensation cases. A school janitor, greatly excited in trying to turn off a fire alarm, suffered a heart attack and died therefrom. The majority affirmed an award of compensation to his executor. Judge Kellogg, in a dissenting opinion, thought such an award violated the impact rule since the janitor had sustained no physical impact or injury. He stated: "The question was one of proximate cause. Surely if, in a negligence case, no causal relation can be found between an accident and damages caused by pure fright, no such relation can be discovered, where the facts are the same, in a workmen's compensation case." Thompson v. City of Binghamton, 218 App. Div. 451, 218 N.Y. Supp. 355, 358 (3d Dep't 1926). But see Ferrara v. Galluchio, 5 N.Y.2d 16, 152 N.E.2d 249 (1958), for a weakening of the impact rule.

[26]1 Larsen § 1.20, 2.10, 3.40; 1 Schneider, Workmen's Compensation Text § 6 (1941, Supp. 1958). This rule was correctly stated in Elihinger v. Wolf House Furnishing Co., 230 Mo. App. 648, 72 S.W.2d 144, 148 (1934): "Principles of law and deductions therefrom which might have been applicable under the old relationship of master and servant, as well as refinements of legal principles applicable to other relationships under the general law, both statutory and common, even though conveniently analogous, have no application in cases where . . . the Workmen's Compensation Law provides a clear and unambiguous definition and prescribes a complete rule to govern in the field of its operation. We must, therefore, carefully avoid applying to cases within the Workmen's Compensation Law reasonings and principles which formerly might have been proper as bases of decision, but which, since the passage of that act, are no longer applicable to such cases."

[27]192 N.Y.S.2d at 760. (Emphasis added.)

[28]N.Y. Workmen's Comp. § 2(7).

[29]Black, Law Dictionary 925 (4th ed. 1951).

argued that claimant here is just as disabled as someone suffering from a physical disability," but stated that claimant's accident "does not, at present, constitute an accident as defined by the Workmen's Compensation Law."[30] Since the purpose of compensation acts is to give compensation to employees disabled in the course of employment, it seems that if an employee is in fact disabled, the cause of such disability should be immaterial. The remedial compensation laws are to be liberally construed, with doubts resolved in favor of the claimant. In making compensation depend on the cause of the disability, the court is strictly construing the statute, with the result that a workman suffering from a broken leg will be awarded compensation, whereas a workman hospitalized with schizophrenia will be denied similar benefits, though both are in fact disabled.

Even if this strict construction requiring a physical injury is correct, there is medical authority to the effect that schizophrenia is a physical injury in the sense that the physical body no longer functions normally.[31] The nervous system is a distinct part of the physical body, and mental or emotional shock produces a definite impact on this system, which impact may produce physical harm and injury.[32] "In fact, it may be broadly stated that an emotion as a purely mental thing does not exist. It always has a physical side."[33] To make compensation depend on definitions of what is physical and what is mental seems unrealistic.[34]

In *Chernin* the court, undoubtedly influenced by the belief that mental disorders are easily simulated, was afraid that allowing compensation would open the gates to a flood of fictitious claims. Although this line of reasoning may have been valid in the past, today "skilled medical men have developed a technique for distinguishing the real sufferer from the fraudulent imposter."[35] Furthermore, the fact that compensation cases are tried before a referee who hears many such claims affords additional protection against the danger of exaggeration and malingering.

Mental disabilities resulting from mental stimuli could be made

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[30]192 N.Y.S.2d at 760.

[31]Coon, Pyschiatry for the Lawyer: The Principal Psychoses, 31 Cornell L.Q. 327, 336 (1946).

[32]Goodrich, Emotional Disturbances as Legal Damage, 20 Mich. L. Rev. 497, 507 (1922).

[33]Id. at 501.

[34]1 Larson § 42.23 (Supp. 1959); Mich. L. Rev. 898, 900 (1955); 16 Ohio St. L.J. 287, 290 (1955).

[35]Goodrich, Emotional Disturbances as Legal Damage, 20 Mich. L. Rev. 497, 505 (1922).