

Work-Related Stress Claims:
The Pendulum Swings Back to Simpler Times

Jeffrey L. Salisbury
PICHA & SALISBURY
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Stress and its relationship to cardiovascular injury (heart attacks, strokes, etc. ...) is well recognized in the medical community. When that stress is (allegedly) related to the work place environment, the Industrial Commission is called upon to sort through a myriad of personal risk factors, pre-existing conditions and the character of the stress to determine if compensation is to be awarded under the Workers' Compensation Act. The latest Supreme Court pronouncement on this issue, Baggett v. Industrial Commission (2002), 201 Ill.2d 187, 775 N.E.2d 908, 266 Ill.Dec. 836, focused on the nature of proof required to demonstrate the injury arose out of employment and rejected a line of Appellate cases dating back to 1988 requiring proof of higher levels of stress in comparison to co-workers, rather than in comparison to the general public.

A brief review of the historical development of the law on stress and cardiovascular injuries may be helpful to frame the issues discussed in Baggett. The Supreme Court had occasion to discuss the proof requirements of this type of case in 1977 in County of Cook v. Industrial Commission (1977), 69 Ill.2d 10, 370 N.E.2d 520, 12 Ill.Dec. 716. The Industrial Commission awarded compensation to the widow of an employee who had a pre-existing heart condition and who suffered a fatal heart attack following a work week which was one of the busiest times of the year in the County Treasurer's Office. Decedent was employed as a clerical worker. His job duties required him to sit at a statement counter to receive real estate tax bills from taxpayers who came into the office to make payments. He met with the taxpayer, added the amount due, clipped the adding machine tape to the bill, initialed the bill and returned it to the taxpayer, then directed the taxpayer to the cashier's cage where the actual payment was made. Evidence demonstrated that each day 2,000 to 3,000 taxpayers went through that office and 4 or 5 men sat at the statement counter, as did the decedent, to perform that work. (In other words, decedent was one of 4 or 5 individuals who performed the same type of work during that period.) It was undisputed that this was the busiest time during the year for that office with regard to tax payments.

Evidence established that claimant was hospitalized on four occasions with a heart condition prior to the events leading to his death from a heart attack on July 6, 1973. He was 63 years old, overweight, and had a history of hypertension, diabetes and mild glaucoma. However, the diabetes problem had been apparently cured and the weight problem had been brought somewhat under control. Medical experts disagree,

but claimant did present medical opinion evidence that the activities during the week preceding his death could have precipitated the decedent's heart attack. The Court initially noted that an employer takes his employees as he finds them (Rock Road Construction Co. v. Industrial Commission (1967), 37 Ill.2d 123, 227 N.E.2d 65), and that a compensable injury will be found on a showing that a pre-existing illness was aggravated or accelerated by the employment (Illinois Valley Irrigation v. Industrial Commission (1977), 66 Ill.2d 234, 5 Ill.Dec. 868, 362 N.E.2d 339.) If an employee's existing physical structure gives way under the stress of his usual labor, his death is an accident which arises out of employment. The employee need only prove that some act or phase of employment was a causative factor of the resulting injury. (Wirth v. Industrial Commission (1974), 57 Ill.2d 475, 312 N.E.2d 593.)

However, where it is shown that the employee's health has so deteriorated that any normal daily activity is an overexertion, or where it is shown that the activity engaged in presented risks no greater than those to which the general public is exposed, compensation will be denied. (County of Cook v. Industrial Commission (1977), 68 Ill.2d 24, 11 Ill.Dec. 546, 368 N.E.2d 1292.)

The Court noted that this case presented facts clearly distinguishable from cases in which benefits had been denied where the employee suffers a heart attack or stroke after walking four blocks (Illinois Bell Telephone Co. v. Industrial Commission (1966), 35 Ill.2d 474, 220 N.E.2d 435,) after arising from a chair (County of Cook v. Industrial Commission (1977), 68 Ill.2d 24, 11 Ill.Dec. 546, 368 N.E.2d 1292,) or after climbing a set of stairs (D. Lelewer & Son v. Industrial Commission (1965), 33 Ill.2d 118, 210 N.E.2d 543.) "In those cases there was nothing to distinguish the work activity complained of from any other daily activity which was at least as stressful. Here, the Commission could have reasonably inferred that the decedent was subjected to a greater degree of stress than that to which he was normally exposed, and that this stress constituted a contributing factor which accelerated his subsequent state of ill being." County of Cook, supra, page 19. The Court did not offer any further guidance on how to distinguish "normal" stress from the "greater degree" of stress required to prove the claim.

The Supreme Court next reviewed this issue in Sears, Roebuck & Company v. Industrial Commission (1980), 79 Ill.2d 59, 402 N.E.2d 231, 37 Ill.Dec. 341. The Industrial Commission had awarded compensation benefits to the widow of a deceased employee of Sears after that employee suffered a fatal heart attack while undergoing treatment for a condition of alcoholism. The Circuit Court of Cook County reversed and on further appeal, the Supreme Court reversed the Circuit Court reinstating the award of the Industrial Commission. Evidence demonstrated that the decedent suffered a heart attack immediately before an appointment scheduled to meet with his therapist and his supervisor during inpatient treatment of alcoholism. A necessary connection to work was established by the employer providing and

essentially insisting on treatment for alcoholism by threatening termination. (The Workers' Compensation Act was later changed to specifically exclude injuries incurred while participating as a patient in a drug or alcohol rehabilitation program. 820 ILCS 305/11.) Medical evidence was presented to establish that the stress anticipated by the decedent in meeting with his employer might or could have precipitated the heart attack. The Court made only two comments regarding the character of that stress. "When employment activities create a higher than normal degree of stress, and that stress contributes to the employee's death, the necessary causation is established." Citing County of Cook v. Industrial Commission, supra and Wirth v. Industrial Commission, supra. The Supreme Court concluded with a comment about the rehabilitation program and the stress resulting from the scheduled session with the employer, noting that both combined to cause the heart attack. "Both factors were connected with his employment and presented risks greater than those to which the general public is exposed." Citing County of Cook v. Industrial Commission, supra. Once again, the Court failed to go into any meaningful discussion about the characterization of the stress in comparison with activities of daily living or stress encountered in the work place in general.

In 1988 the Industrial Commission division of the Appellate Court considered two cases that seemed to further define the nature or character of work-related stress. In Vesco Ventilation & Equipment Sales v. Industrial Commission (1st Dist. 1988), 168 Ill.App.3d 959, 523 N.E.2d 111, 119 Ill.Dec. 643, the Appellate Court affirmed denial of benefits in a claim for an alleged work-related myocardial infarction. Petitioner was an office manager for the employer over a period of 20 years and was involved in supervision of personnel and numerous other functions. Among other activities, she was required to calculate quarterly sales commissions. She testified that she was under pressure from the salesmen to finish that task at the time she experienced the onset of symptoms resulting in a diagnosis of myocardial infarction. The petitioner's superior testified and characterized petitioner as a workaholic and a perfectionist. A co-worker testified that petitioner's job was demanding and that salesmen were often hostile to petitioner at the end of the quarter. Petitioner testified about lifting large ledger books in the course of her employment, but the Court found that there was no evidence that any physical activities she was engaged in at work constituted more strenuous or stressful activities than the type of acts required in normal daily activities. On the issue of alleged emotional stress, the Court noted that there was no evidence that the work of preparing commission checks which she had done over the course of 20 years of employment was unusual. The Court concluded the Commission was entitled to find that no unusually strenuous pressures were placed on petitioner prior to the heart attack.

Unlike the Vesco case in which the Commission was affirmed, the Industrial Commission Division of the Appellate Court reversed a Commission award of permanent total disability benefits in Esco Corporation v. Industrial Commission (4th

Dist. 1988), 169 Ill.App.3d 376, 523 N.E.2d 589, 119 Ill.Dec. 833. The claimant in Esco sought workers' compensation benefits following a heart attack suffered after playing 18 holes of golf, five months after he had been discharged by his employer. The Industrial Commission affirmed an Arbitrator's award for permanent total disability benefits finding that tension and stress caused by a demotion, termination and other work-related events continued beyond the termination date.

Claimant had worked as a personnel manager for 26 years for respondent. In April, 1978, claimant was replaced as Director of Industrial Relations. His new boss told him that he would have to prove he was valuable and would have six months to hold down the cost of workers' compensation and control absenteeism. His boss agreed that claimant was threatened with termination. Claimant testified he felt shock and nervousness and began sending out resumes, even though he was not terminated for more than two years thereafter. It was unrebutted that business went into decline and a number of employees were terminated over the next two years. Claimant's job duties and responsibilities were reduced and he became nervous and depressed. Shortly before he was terminated, the plant manager suggested that claimant retire early because business was not doing well. He refused because of a dispute over whether he would receive a full pension. Eight days later he was terminated. Petitioner testified that he was in complete shock, extremely depressed and upset. He also testified there was a dispute over severance pay and he did not receive what he was promised. Claimant testified that he began experiencing minor chest pains after his termination and approximately five months later, he suffered a myocardial infarction after playing 18 holes of golf.

Petitioner's family doctor testified there was a causal relationship between the work-related stress and his cardiac disease. His cardiac surgeon testified similarly that employment stress was the most pronounced risk factor in claimant's situation. An expert hired by respondent testified that he could not completely rule out stress as a cause, but believed the demotion and termination were only minor risk factors and that claimant's family history and elevated cholesterol levels were the most important factors in the onset of symptoms.

Initially, the reviewing Court found that a heart attack occurring five months after termination of employment falls outside a period of reasonable time after the actual employment ended so as to permit an award of benefits. In other words, the injury did not occur in the course of employment.

The Court could probably have left well enough alone without creating any uncertainty for future cases, but also chose to discuss whether the injury arose out of employment, that is, whether the injury had its origin in some risk so connected with or incidental to employment as to create a causal connection between the employment and the injury. Citing Orsini v. Industrial Commission (1987), 117 Ill.2d

38, 109 Ill.Dec. 166, 509 N.E.2d 1005, the Court noted that the risk of injury must be peculiar to the work such that the employee is exposed to it to a greater degree than the general public by reason of the employment. A risk is incidental to the employment when it is connected with what the employee has to do in fulfilling his duties. An injury is not compensable if it is the result of a personal risk or a hazard to which the employee would have been equally exposed apart from the employment.

The Court concluded that, as a matter of law, claimant's disability was not compensable because the myocardial infarction constituted a subjective reaction to normal working conditions. "The standard defining what is normal or usual permits comparison to the usual stress in employment generally for all workers, or to the usual stress in claimant's particular job. The stress here was not unusual when compared with the stress found in employment life generally. Claimant found himself in a situation which had no greater dimensions than the situations which all employees potentially face, causing mental stresses and tensions. "The Court cited a number of cases from other jurisdictions in which benefits had been denied in cases involving transfers, demotions, new responsibilities, layoffs and terminations. The Court classified those as "normal and expected conditions of employment life, along with the accompanying insecurity and worry." Aside from the characterization or source of stress, the Court noted that there was no unusual amount of stress compared with the normal stress experienced while performing work activity. "In the present case, the employment itself imposed no additional or unusual stresses on claimant. He was not, for example, asked to do more physically or intellectually exhausting work. The stress was directly referable, not to employment duties, but to the inevitable transfers, demotions and terminations which are necessarily attendant to economic declines in a business, and which frequently occur during the several years just prior to a manufacturer's shutdown."

Ten years after the decisions in Esco and Vesco, the Industrial Commission Division confirmed that work-related emotional stress must be higher than normal for it to be considered a risk or a causative factor of the heart attack. Flynn v. Industrial Commission (1st Dist. 1998), 302 Ill.App.3d 695, 707 N.E.2d 208, 236 Ill.Dec. 363. The widow of an employee who suffered a fatal heart attack appealed from the Industrial Commission's denial of workers' compensation benefits. She argued that prolonged, chronic stress related to decedent's work was a causative factor of his heart attack. Four months prior to his death, decedent was subjected to a number of stressful circumstances of both a personal and work-related nature. His pregnant daughter was diagnosed with Hodgkin's disease and the claimant (decedent's wife) was diagnosed with breast cancer. Unrebutted evidence indicated that decedent was also facing the busiest period of the year in his work as vice president of material control and data processing. The period from June to August was called the "launch period" or "change over" because of retooling and redesign of seatbelt components to satisfy new models introduced by clients of the employer. Other testimony

indicated that period was not any busier than past years; rather, it was actually one of the easier launch periods the employer had seen. Nevertheless, the decedent's job was classified as "demanding." He died of a fatal heart attack on July 30, 1989. Other evidence indicated that decedent was not under any specific deadline or involved with any specific project other than launching the new product line as he had done in the previous years. Finally, evidence indicated that decedent worked the same number of hours as he typically did throughout the course of his employment in the weeks leading up to his fatal heart attack.

Medical opinion evidence differed on the role of stress as a causative factor for myocardial infarctions. The petitioner's expert argued that prolonged, chronic stress could be a causative factor. Respondent's expert argued there were no medical studies to substantiate that link, but otherwise acknowledged that acute stress could play a role in a myocardial infarction. Finally, he offered an opinion that the stress decedent was subjected to prior to his death was not out of the ordinary compared to decedent's work habits spanning his career and that this routine would not be a factor in causing coronary heart disease.

The Court cited Sears, Roebuck & Co., Esco Corp. and Vesco Ventilation & Equipment Sales for the proposition that work-related emotional stress must be higher than normal for it to be a "risk" or a causative factor of the heart attack. "To determine whether the emotional stress was "higher" than normal, Illinois Courts have compared the employee's stress to that which all workers are subjected to occasionally." [citation deleted.] They determined that there was ample evidence supporting the Industrial Commission's decision that work-related stress was not a causative factor leading to the fatal heart attack. "The manifest weight of the evidence shows that decedent was faced with normal working conditions when compared to employment in general." Although testimony showed that decedent succumbed to his heart attack during the employer's busiest time of the year, the "launch period," many workers in numerous settings also faced "busy" periods that demand more time and effort as compared to other periods of the year. Consequently, decedent's work load prior to his death falls within the range of reasonableness when compared to employees in general. They concluded that decedent was under no more stress prior to his death than he was throughout his career with the employer and that he was not confronted with any unusually strenuous or stressful occurrences. The Industrial Commission's decision denying benefits was affirmed.

It seems apparent after reviewing decisions spanning over 20 years that the Appellate Court essentially created a new test for determination of work-related stress, especially in the Esco Corporation case. The Supreme Court finally had occasion to revisit this issue in Baggett v. Industrial Commission (2002), 201 Ill.2d 187, 775 N.E.2d 908, 266 Ill.Dec. 836, and categorically rejected any interpretation of its prior

decisions that require claimants to show they suffered a higher level of stress than their co-workers. Rather, any reference to a higher than normal degree of stress in Sears merely relates to normal stress levels experienced by the general public and that phrase refers neither to stress levels suffered by co-workers nor to an unusual or elevated level of stress at the moment of injury.

The claimant in Baggett sought review of a decision of the Industrial Commission denying benefits. The Appellate Court had agreed with the Industrial Commission's denial of benefits, but was reversed by the Supreme Court which held that claimant was not required to show that his stress exceeded the stress of co-workers, nor that he was required to prove increased or unusual stress at the time of his injury. (The Court also considered medical causation and determined that the claimant was not required to prove "a strict, scientific causal relationship between stress and the physical cause of injury." However, that issue is beyond the scope of this review of cases.)

Darwin Baggett worked as a high school industrial arts teacher and collapsed at work as a result of gastrointestinal tract bleeding on March 13, 1990. As a result of reduced blood volume, he also suffered a myocardial infarction resulting in brain damage and rendering him permanently and totally disabled. At the hearing before the Arbitrator, fourteen witnesses testified on his behalf, including his wife, former students and fellow faculty members. Those witnesses testified to his supervisory duties, other job demands, time deadlines and the hazardous nature of the construction activities involving young students. A number of witnesses for respondent testified that all teachers labored under varying degrees of stress and that Baggett was not working under any significantly different type of stress than other teachers, nor was there any change of stress demonstrated at or near the time of the collapse. As indicated above, medical evidence on causation was conflicting, but ultimately resolved in favor of claimant. The Supreme Court noted that their review of the record indicated that members of his building trades class were required to build houses under strict deadline pressures. His employer eliminated half of the time he could spend with student workers and the project was delayed for reasons beyond his control. Evidence further indicated that the students were inclined to horseplay and Baggett's disciplinary duties further interfered with completing the home construction projects on time. Baggett's students worked around scaffolding, power tools and other hazardous construction conditions requiring strict supervision. Evidence suggested that under approaching deadlines, Baggett became pale and tired and complained to his wife of substantial stress about completing the project on time.

He complained of gastrointestinal pain and eventually collapsed at work. The Industrial Commission had determined that Baggett failed to prove he was subjected to a greater degree of emotional strain than that to which all workers are occasionally subjected. They specifically found the evidence presented by claimant failed to show

that his job provided unusual stress in general, and that he failed to demonstrate any increased stress around the time of his collapse. The decision from the Industrial Commission certainly appears to be in keeping with the type of analysis employed in Vesco, Esco and Flynn. Respondent argued that the decision in Sears, Roebuck & Co. departed from the rules articulated in the prior Supreme Court decisions in County of Cook v. Industrial Commission (1977), 69 Ill.2d 10, 12 Ill.Dec. 716, 370 N.E.2d 520 and Wirth v. Industrial Commission (1974), 57 Ill.2d 475, 312 N.E.2d 593. Respondent pointed out the observation in Sears that “when employment activities create a higher than normal degree of stress, and that stress contributes to the employee’s death, the necessary causation is established.” The Court acknowledged that Vesco, Esco and Flynn interpreted Sears as requiring that claimant show that they suffered a higher level of stress than their co-workers, but rejected that interpretation. They declined to impose any new requirements over those enunciated in County of Cook and Wirth. “Under the District’s rationale, a work force as a whole could be uniformly and regularly subjected to outrageous working conditions of extreme stress and no single worker could sustain a claim for injury because all co-workers were subjected to the same extreme levels of stress. We refuse to extend County of Cook and Wirth to reach such a misguided conclusion.” Baggett, supra, p. 196. The only comparison allowed by the Supreme Court would be the comparison of stress in the work place to stress experienced by the general public. They concluded that the evidence clearly demonstrated that Baggett faced stress different from the stress generally experienced by the public and that continuing stress over a period of time affected him cumulatively similar to repetitive physical work. The Court concluded that the Commission erred by requiring Baggett to establish he was subjected to a greater degree of emotional strain than his co-workers and that he should not have been required to prove his job provided “unusual stress” or that his stress was increased around the time of his collapse. They reinstated the Arbitrator’s award of benefits to claimant.

There is no doubt that the Supreme Court meant to sweep away additional hurdles to compensability imposed by the Industrial Commission Division of the Appellate Court in Vesco, Esco and Flynn. However, they did not specifically overrule those cases and it remains uncertain whether any part of the analysis in those cases may still provide support for the defense of a claim for work-related stress leading to a cardiovascular event. The Supreme Court rather broadly states that the concept of “a higher than normal degree of stress” merely requires comparison to normal stress levels experienced by the general public. How can that be quantified or effectively compared? Does that assume the general public is made up of working individuals or is the comparison to non-working individuals? Certainly if it includes working individuals, it would be difficult to refute that all employment creates some level of stress. Simply getting to work in congested traffic and on time creates stress for any number of working individuals. All workers at least occasionally face “busier” times, deadlines, increased responsibilities or concerns over employment security. Perhaps

a better analysis would be to compare the nature of the stress arising from activities required to be performed in the job held by claimant compared to stresses incidental to employment in general, such as transfers, demotions or concerns over job security. That type of analysis might better define those risks incidental to the employment of a particular claimant versus risks incidental to employment in general. The decision in Baggett clearly requires some characterization of work-related stress in comparison to stress suffered by the general public, but fails to provide any guidance in making that comparison.