

INTER-OFFICE MEMORANDUM

TO: Attorneys & Clients
FROM: W. Joseph Truce
DATE: April 18, 2006
RE: **Applicant's Burden of Proof in Showing that his/her heart attack and/or stroke was due to job stress**

From the lobby bar at the Hyatt . . .

I have just remarked to George the bartender that in stroke and/or heart attack cases "stress is in the eye of the beholder." A famous physician once said that the "complete absence of stress equals death!"¹ Stress is actually what makes life worth living and gives us our motivation to succeed.

Heart attack and/or stroke cases allegedly induced by job stress, should be the most difficult to prove for an applicant. Unfortunately, the reverse seems to be true. However, in a recent Court of Appeal decision entitled Paradise Valley Hospital v. WCAB (Sangcap), December 23, 2005 (cited at 34 CWCR 37), the Court of Appeal reversed a decision by the WCAB and found that the applicant had not sustained her burden of proof in demonstrating that job stress caused and/or contributed to a high cholesterol level, which in turn caused her stroke. The Court rejected the opinion of applicant's medical specialist, Dr. Kramer, who found that work stress was a **contributing factor** to the applicant's stress.

Like most forensic doctors practicing in workers' compensation, Dr. Kramer simply relied on alleged scientific articles showing that workers in a particular industry had their cholesterol levels raised by being exposed to excessive stress and also articles showing that high cholesterol readings can contribute to strokes. However, any type of representative studies such as referred to by Dr. Kramer also contain individuals who did not have their cholesterol levels raised by excessive stress and also did not suffer strokes. Therefore, who is to say what group the applicant belongs to?

The Court in overturning the decision of the WCAB held that Dr. Kramer failed to present any

¹ In 1936, endocrinologist Hans Selye wrote:

"Stress is not necessarily bad for you. It is also the spice of life, for any emotion, any activity causes stress...the same stress that makes on person sick is an invigorating experience for another...Complete absence of stress is incompatible with life since only a dead man makes no demands on his body or mind."

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specific evidence that this particular applicant's cholesterol level was raised due to stress on the job. The Court called Dr. Kramer's opinion "pure speculation" and indicated that in order for Dr. Kramer to establish that stress did raise the applicant's cholesterol level the Court would deem to know what the applicant's cholesterol level was prior to the work stress.

The same type of specific evidence, following the reasoning of the Court in the Paradise Valley Hospital case, must also be required in heart attack cases. Heart attacks or mild cardio infarctions are caused by two mechanisms: (1) due to an extreme emotional event the applicant's coronary arteries go into spasm thereby cutting off the blood supply to the heart and; (2) the build-up of plaque (coronary artery disease) eventually cuts off the blood supply or reduces the blood supply to the heart muscle and a heart attack occurs.

The most common mechanism in our industry is the build-up of plaque or atherosclerotic heart disease. Studies show that extreme stress can allegedly cause enzymes known as catecholamines to enter the blood stream and cause build up of plaque in the coronary arteries - thereby causing a heart attack.

However, in order to **prove** this type of mechanism the applicant must establish that he/or she is not only exposed to extreme emotional stress but also reacts to stress,(i.e., blood pressure goes up, the applicant becomes red in the face, the applicant starts sweating profusely, pounding headaches, etc.) Without this specific type of proof, it is my personal opinion that it is almost impossible for one to prove a link between job stress and a resulting heart attack. The good news is that the Court of Appeal in Paradise Valley Hospital agrees with this high standard of proof. The bad news is that this case is not certified for publication and therefore is the law of this case, but not the law of the land.

WJT:ib