

Heart Attack Cases

HA

Causation

- No Presumption
- Clmt still has Burden of Proof
 - ▶ Causal Connection to employment

HA

Causation

- Location is not determinative
 - ▶ Just because a HA is sustained at the work place does not in and of itself constitute a causal relationship
 - Clmt still must prove a substantial connection between the HA and employment (e.g. stress, physical exertion...)
 - However, this is a liberal system where questionable claims are found in favor of clmt, thus the propensity to find compensability if the HA occurs while clmt is in the course and scope of employment
 - ▶ A HA can be compensable even if clmt not at work

HA

Causation

■ Required Elements

- ▶ Exertion or stress must be a substantial contributing cause to HA
- ▶ Pretty easy: Did clmt's employment "in any manner" aggravate, accelerate or contribute to the HA?
- ▶ Exertion or stress must be "greater than the ordinary wear and tear of life" to which every person is subjected who is not at bed rest

HA

Causation

- **Medical Evidence/Testimony is Paramount**
 - ▶ Even though this issue is liberally construed for the clmt, the factual issues are determined by medical experts and the Commission
 - Compensation cannot be awarded without medical evidence proving causal connection
 - Dr's opinion has to be based upon a "reasonable degree of medical probability"
 - Cannot be premised upon a "possibility", speculation or conjecture

HA

Apportionment

- Potential causes: cardiovascular or coronary artery disease....
- Even if the HA is compensable, you have a good opportunity to have the Award Apportioned
- Apportionment is simply a term of art to reduce permanent disability benefits due to a preexisting condition
 - ▶ 71-3-7

HA

Apportionment

- *Stuart's Inc. v. Brown*, 543 So.2d 649 (Miss. 1989)
 - ▶ Supreme Ct addressed Apportionment and set forth the elements, which included proof of a prior occupational disability.
 - ▶ However, the Ct exempted HA cases from having to prove same.
 - ▶ Issue also addressed in subsequent cases without any change to the requirements.

HA

Apportionment

- The case law appears to be clear that Apportionment in a HA case does not require proof of prior occupational disability; however, the Commission has previously not always had the same opinion.

HA- Apportionment

Brown v. Delphi Packard Elec. Corp., 2005 WL 2977318

- On October 21, 2005, the Commission issued an opinion finding there should not be a different standard for Apportionment in HA cases and the Commission would require a showing of prior occupational disability in order for Apportionment to be applicable.
 - ▶ Case ultimately settled before ruling by Cir Ct.

HA-Appportionment

Barnett v. Wilson Auto, MWCC # 04 08378-J-0385

- The clmt had a HA and died.
- The AJ, *inter alia*, found Appportionment to be applicable in the amt of 70%.
- The FC reversed the Appportionment issue and found it was not applicable since there was no showing of prior occupational disability.
- Motion for Reconsideration was denied
- The Circuit Court reversed; claim settled.

HA-Appportionment

Damon Walker, dec. , MWCC # 03 11703-H-8322-A

- Same issue. Clmt had HA, clmt had no prior occupational disability, AJ found claim compensable, but Appportioned benefits by 25%.
- The FC entered an Order in this matter 15 days after *Barnett*, but this time they Affirmed the Appportionment without comment.
- Difference from *Barnett*? Nothing

Death Claim

Elements, Dependent Beneficiaries, Benefits

Death Claims

Establishing Compensability

- Clmt (dependents) still have the burden of proving each element
 - ▶ Course and scope of employment
 - ▶ Causal connection
 - Similar to “injury”, there can be a “partial connection” to the employment though this will cause you to buy the entire claim, e.g. only aggravated, accelerated or contributed to the death
 - Suicide

Death Claim

Found Dead Presumption

- 71-3-3(b) [No evidence about what caused death]
- Gen Rule: *Washington*, 223 So2d 642 (1969)
 - ▶ EE “is found dead at a place where his duties require him to be or where he might properly be in the performance of his duties during work hours in the absence of evidence that he was not engaged in his [ER’s] business, there is a presumption that the accident arose out of and in the course of his employment.”

Death Claim

Found Dead Presumption

- It also applies when onset of Sxs begin at work, even though death subsequently occurs after EE has left work.
- This is a “rebuttable” presumption; therefore, the burden of producing evidence that the EE’s death “was wholly unrelated to his work activities” shifts to the E/C.
 - ▶ See *Road Maintenance Supply, Inc*, 493 So.2d 318, 322 (Miss. 1986)

Death Claim

Rebutting the Found Dead Presumption

- The E/C must produce **substantial credible evidence** which is inconsistent with the Presumption
 - ▶ The evidence cannot be premised upon mere **possibility, speculation or conjecture**
- Medical Evidence is absolutely necessary
 - ▶ Must prove: (1) cause of death and (2) that there is not a causal relationship to the employment.
 - Conflicting medical opinions found in favor of clmt

Death Claim

Rebutting Found Dead Presumption in HA cases

- Previous requirements still apply; and
- (3) E/C must also “fully develop [clmt’s employment activities leading up to the HA] to show that such activities did not cause or contribute to the heart attack.” *Nettles v. Gulf City Fisheries, Inc.*, 629 So.2d 554, 556-57 (Miss. 1993); *MS Baptist Med. Ctr. v. Mullet*, 856 So.2d 612 (COA 2003)
 - ▶ This is very difficult!!!

Death Claim

Rebutting Found Dead Presumption in HA cases

- Medical opinions have to be very specific
 - ▶ Opinion is not sufficient if it only states there is no causal relationship.
 - Opinion has to be premised on specific employment acts of the decedent on the date of death or onset of Sxs.
 - Opinion must be more than possibility, speculation or conjecture.
 - Opinion can't be based on a “defective” hypothetical question

Death Claim

Cases

- Barnett
- Harbin v. Heatcraft

Death Claim

Classifying Death Beneficiaries

- Are not the same as or premised upon Wrongful Death beneficiaries or heirs-at-law
- Claims are individual and independent of one another, and are not assets of the Dec's estate
- Beneficiaries under the Act must have some form of “dependency”, while the classification is premised upon their relationship with the dec **at the time of injury/death**
- Statute, Statute, Statute, Statute ...

Death Claims

Classifying Death Beneficiaries

- There are 2 tiers of beneficiaries
 - ▶ 1st Tier: Surviving Spouse and Child
 - Surviving Spouse (obtain marriage certificate)
 - Legal Spouse
 - Spouse living apart from dec for less than 3 yrs and dependent
 - Does not include
 - Common Law, unless validly entered in another state
 - Spouse who remarried
 - Spouse who has lived in open adultery with another after separating from decedent

Death Claim

▶ 1st Tier continued

– Child

- Natural child: notwithstanding divorce or remarriage; but losses rt to claim if adopted by another
- Posthumous child
- Legally adopted prior to injury/death
- *Loco Parentis*: Dec stood in the place of a parent for at least 1 yr prior to injury/death
 - “Any person who takes a child of another into his home and treats it as a member of his family, providing parental supervision support and education, as if it were his own child”
W. R. Fairchild Const. Co. v. Owens, 224 So.2d 571,575 (1969)
- Stepchild
- Acknowledged Illegitimate
- Does not include: (1) child over 18, unless wholly dependent and incapable of self-support by reason of physical or mental disability or (2) child who is married, unless wholly dependent on decedent

Death Claim

Classifying Death Beneficiaries

- ▶ 2nd Tier:
 - Grandparents: no definition; analogize to “parent”
 - Grandchild: almost identical to “child”
 - Parent:
 - Natural, step, adoptive, parents-in-law and any person who stood in place of a parent for more than 3 yrs prior to death
 - Brother/Sister:
 - Natural, step, half, and adoptive
 - Does not include brother/sister who is married, unless wholly dependent on the decedent

Death Claim

Establishing Dependency

- Beneficiary must be “dependent” upon the decedent **at of the time of the death**
- “Dependency” is liberally interpreted and includes whole and partial dependency
 - ▶ Benefits are designed to substitute support that was lost and where there was a reasonable anticipation for future support
 - Doesn’t matter if support was at irregular times or different amounts, or that it was a service rendered and not cash money in hand

Death Claim

Establishing Dependency

- Dependency is presumed for
 - ▶ Surviving Spouse
 - ▶ An unmarried child under age of 18 (except stepchild)

Death Claim

Establishing Dependency

- Partial Dependency must be proved
 - ▶ Child
 - Who is unmarried between 18-23 yrs old AND pursuing a full-time education
 - Stepchild
 - ▶ Grandchild
 - who is unmarried and under 18 yrs old
 - ▶ Grandparent
 - ▶ Parent
 - Remember this can be in the form of manual labor, buying of goods, giving of money, etc
 - ▶ Brother/Sister
 - Who is unmarried and under 18 yrs old

Death Claim

Establishing Dependency

- Total Dependency must be proved
 - ▶ Child
 - Who is 18 yrs old or older, and not full time student must have been wholly dependent upon decedent and incapable of self support by reason of mental or physical disability
 - A married child must have been wholly dependent upon decedent
 - ▶ Grandchild and Brother/Sister
 - Have same criteria as “Child”

Death Claim

Payments

- \$250 lump sum to surviving spouse, if applicable
- Medical
- Reasonable funeral expense up to \$2K
- Contribution to 2nd Injury Fund
 - ▶ With dependents: \$300
 - ▶ Without dependents: \$500

Death Claim

Calculating Benefits

- Benefits are paid for 450 wks
- Establish AWW and compensation rate
 - Remember maximum wkly amts and recovery still apply
- Determine whether Apportionment is applicable
 - If yes, this only pertains to the wkly benefits paid and not the benefits noted on the previous slide

Death Claim

Calculating Benefits

- Determine who qualifies under the 1st tier
 - ▶ Spouse: 35% of AWW
 - ▶ Child:
 - If surviving spouse: 10% of AWW
 - If spouse dies or remarries: increases to 15% of AWW
 - If no spouse: 25% of AWW
- Add %s and if less than 66 2/3 of AWW, then do calculation
 - ▶ Ex. AWW is \$300, with C/R of \$200. Surviving spouse (35% X \$300 = \$105) and 2 children (10% X \$300 = \$30/each or total of \$60).
 - Total wkly benefit is \$165 for 450 wks

Death Claim

Calculating Benefits

- If %s are greater than $66 \frac{2}{3}$, then each will receive proportionate share.
 - ▶ Ex. same AWW..., but now have a spouse (35%) and 4 children (total of 40%). The aggregate percentage (AP) is 75%.
 - Maximum Benefit payable (MB) [aka comp rate] is \$200
 - $x = MB / (AP \times 100)$
 - $x = \$200 / (.75 \times 100)$
 - $x = \$2.67$

Death Claim

Calculating Benefits

- Then calculate the Individual Benefits (y) using the Individual Percentages (IP) and x.
 - $y = x(IP \times 100)$
 - Spouse: $y = 2.67(.35 \times 100)$
 - \$93.45
 - Child: $y = 2.67(.10 \times 100)$
 - \$26.70 per child [or \$106.80 for all 4 children]
 - Total wkly payout: \$200.25

Death Claim

Calculating Benefits

- If % is less than $66 \frac{2}{3}$ of AWW, then determine who qualifies under 2nd tier
 - Parent, Sister/Brother, Grandparent and Grandchild: all receive 15% of AWW
- If all %s under 1st & 2nd Tiers are less than $66 \frac{2}{3}$, then simply perform the calculation.
- If all %s are greater than $66 \frac{2}{3}$, then beneficiaries under 1st Tier receive full benefits, while those under 2nd Tier receive prorata share of what is left over after 1st Tier has been paid.