



# Emotional Health and Employer Responsibility

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## INTRODUCTION

For many years it has been fashionable to debate the question: What, if anything, is the company's social responsibility for the emotional health of its employees? A vociferous band of critics has condemned the Tayloristic division of labor which, they say, has created a society of "industrial robots," "apathetic and non-involved workers," and "maladjusted and immature employees." Technology, as best exemplified by the Detroit assembly-line, has been pictured as "blowing out the candle of life." This concern for the human effects of the rationalization of work has preoccupied the behavioral sciences for many years.

But, while academicians have been boxing with these shadows, there has emerged, quietly and all but unnoticed, an entire complex of public and private law which renders the question moot. Acting through various neutrals, society over the past few years has converted the business organization from a purely short-run profit maximizer into a quasi-social benefit organization, economically responsible for a broad range of emotional and physical impairments of its employees. Social responsibility, whether it ever existed or not, has been replaced by fiscal liability.

It is the purpose of this bulletin to explore the emergence and some of the dimensions of this new financial responsibility. Specifically, we will examine the following: (1) how the workmen's compensation insurance concept of protection against the physical injury risks which inhere in jobs has been broadened to include psychological injury risks as well; (2) how arbitrators have severely restricted the use of discharge and discipline and encouraged treatment and rehabilitation as a prime responsibility of man-

agement; and (3) some of the emotional health risks which appear to rise out of the nature of jobs in organizations. Pulling these thoughts together in the final section, we discuss the usual, though often inadequate, methods used to deal with this new responsibility and offer a viable approach to preventing the problem.

Many persons have contributed to this study. Miss Irma ten Kate searched out the workmen's compensation and arbitration cases cited, Mrs. Norma Landen edited the manuscript, and Mrs. Marilyn Hickok typed it. Our appreciation is especially due to those who took time to complete questionnaires and read and evaluate drafts of the report. Their names must remain anonymous for obvious reasons.

## WORKMEN'S COMPENSATION AND EMOTIONALLY DISTURBANCES

In the early years of the 20th century, state legislatures established the principle that the cost of physical injury due to employment should be borne not by the injured worker, but by tort law, nor by public relief agencies. Responsibility was embodied in the workmen's compensation act, which sought to protect an employee from financial loss due to physical injury, and the costs of medical care because of job-connected illnesses or injuries. The act put the responsibility clearly on the employer to provide safe working conditions and to pay the cost of medical care. Thus, as early as 1911, in the first National Compensation Act, physical injuries received on the job were

### From Physical Injury to Mental Disturbance

Initially, the statutes dealt with physical injury on the job. It was assumed that physical injury often resulted in severe emotional disturbances, and that the cost of wages and medical expenses. For example,

1. Melvin N. Newquist, "Medical Aspects of Workmen's Compensation," *Archives of Environmental Health*, vol. 1, no. 1, 1952.

2. The purpose of workmen's compensation is to righting a wrong. See A. Larson, *Law of Workmen's Compensation* (Matthew Bender & Co., 1952), vol. 1.

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## CHAPTER I

### WORKMEN'S COMPENSATION AND THE EMOTIONALLY DISTURBED EMPLOYEE

**I**n the early years of the 20th century, spurred by the horrifying tales of maimed men and women, state legislators throughout the country established the principle that the cost of injuries suffered in the course of employment should be borne not by the employee, as was common under tort law, nor by public relief agencies, but by industry itself. This philosophy was embodied in the workmen's compensation statutes. These laws sought to protect an employee from the loss of wages, both present and potential, and the costs of medical treatment which became necessary because of job-connected illnesses or injuries.<sup>1</sup> These statutes also sought to put the responsibility clearly on the employer in order to encourage him to provide safe working conditions and to protect the health of his employees. Thus, as early as 1911, in the first New York act, the financial liability for physical injuries received on the job was firmly fixed on the employer.<sup>2</sup>

#### From Physical Injury to Mental Disturbance

Initially, the statutes dealt with physical disability which arose out of an accidental injury on the job. It quickly became apparent that physical injury often resulted in severe emotional disturbances and that the debilitating effects of such disturbances, in their own right, often led to lost wages and medical expenses. For example, the person who suffered the loss

<sup>1</sup>. Melvin N. Newquist, "Medical Aspects and Implications of Workmen's Compensation," *Archives of Environmental Health*, vol. 5, 1962, pp. 505-509.

<sup>2</sup>. The purpose of workmen's compensation, thus, was social protection rather than righting a wrong. See A. Larson, *Law of Workmen's Compensation* (New York: Matthew Bender & Co., 1952), vol. 1.

of several fingers in a machine sometimes developed a severe neurosis about working with any moving equipment. Even though he recovered from his physical injury, he was still emotionally incapable of returning to his former occupation and suffered a loss of earnings attributable to this emotional disturbance. At first cautiously and then decisively, the courts moved to extend the benefits of workmen's compensation coverage to cases of this kind.<sup>3</sup> Apparently, the courts accepted the doctrine that certain emotional health risks may arise from physical injury. As long as the physical injury occurred in the course of employment and the emotional disturbance could be traced directly to the physical injury, compensation was granted. Furthermore, the emotional disturbance need not appear immediately. In some cases as much as five years intervened between physical injury and the emotional upset. Thus, mental illness has long been compensable under workmen's compensation statutes if it occurred as a result of a previous physical injury.<sup>4</sup>

Since mental illness is compensable if it occurs after a physical injury, it is only a short step to include, under the expanding umbrella of workmen's compensation, those mental illnesses which occur before and precipitate a physical injury.

### The Heart Case Analogy

This principle is most clearly enunciated in a long line of heart attack cases. It has been held that job-induced strain, stress, anxiety, or pressure which led to a heart attack could result in a valid compensation claim. To be compensable the emotional strain need not be the sole or primary cause of a disability; it need only aggravate a pre-existing psychological condition.<sup>5</sup> The Mississippi Supreme Court in 1950 wrote:

<sup>3</sup>. There are several excellent treatments of the problem of "traumatic neurosis" in the literature. See particularly Alex D. Pokowy and Floy J. Moore, "Neuroses and Compensation," *Archives of Industrial Hygiene* (now the *Archives of Environmental Health*), vol. 8, December 1953, pp. 547-563; M. Colier, "Workmen's Compensation Awards for Psychoneurotic Reactions," *Yale Law Journal*, vol. 70, June 1961, pp. 1129-1150.

<sup>4</sup>. See particularly, *Bailey v. American General Insurance Co.*, 154 Texas 430, 279 SW 2d 315.

<sup>5</sup>. Considerable literature and a substantial body of compensation law supports this conclusion. For a particularly good review of the literature in this area, see *National Association of Claimants' Compensation Attorneys Law Journal*, vol. 29, pp. 223-233. In this article the editors of the *Journal* discuss a New Jersey compensation case, *Dwyer v. Ford Motor Company*, 36 N.J. 487, 178 A 2d 161. For a good court discussion of the problems raised in this case, see *Lumbermens Casualty Company v. Industrial Accident Commission*, 29 Cal 2d 492, or *Klimas v. Trans Caribbean Airways, Inc.*, 10 NY 2d 209, 176 NW 2d 714, 219 NYS 2d 14.

It would be unthinkable that a physical or mental distortion of physical as causative [and compensable] emotional.<sup>6</sup>

In 1951 the Ohio Court of Appeals who sustained a heart attack which and anxiety caused by unusual succinctly:

... as long as it has been shown that the decedent's employment and his death

Similarly, the New York Supreme Court ruled that the stress and strain of an emergency landing, an act which show aggravated a pre-existing heart basis.<sup>8</sup>

The heart attack cases highlight workmen's compensation coverage. The cardiac disorders may result indirectly or emotional incident, particularly heart disease. On the other hand, lesions which cannot be induced under compensation, since it is impossible these two kinds of heart lesions, the importance is the apparent fact that an injury arise out of an accident compensable when it can be caused by the usual exertion connected with coverage has been extended to include as heart conditions which in and of accidental in origin.<sup>9</sup>

This is not to imply that all causal connection between emotional

<sup>6</sup>. CCH Workmen's Compensation Service Clearing House, 1961), p. 259 691.

<sup>7</sup>. CCH, 1951-1952, par. 1329; 101 NE 2d 1.

<sup>8</sup>. CCH, 1964-1965, par. 1465; 101 NE 2d 425.

<sup>9</sup>. Eliot L. Sagall, "Heart Disease Causality," *Tennessee Law Review*, v

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It would be unthinkable that if hypertension may be aggravated either by physical or mental distortion that courts should be willing to accept the physical as causative [and compensable] but reject . . . the mental and emotional.<sup>6</sup>

In 1951 the Ohio Court of Appeals held to be valid the claim of a bus driver who sustained a heart attack which allegedly resulted from the mental strain and anxiety caused by unusual and difficult conditions. The court stated succinctly:

. . . as long as it has been shown that there is a causal connection between the decedent's employment and his death, compensation will be granted.<sup>7</sup>

Similarly, the New York Supreme Court awarded compensation to a sales manager who suffered a cerebral thrombosis on a business trip. The court ruled that the stress and strain of the trip, growing out of airplane trouble and an emergency landing, an active day, and no assistance at the business show aggravated a pre-existing hypertension which resulted in the thrombosis.<sup>8</sup>

The heart attack cases highlight another aspect of the expanding workmen's compensation coverage. The medical literature indicates that many cardiac disorders may result indirectly or directly from a traumatic physical or emotional incident, particularly for an individual already suffering from heart disease. On the other hand, there are also a large number of cardiac lesions which cannot be induced by trauma or occupational factors. Yet, under compensation, since it is impossible to distinguish accurately between these two kinds of heart lesions, coverage is extended to both. Of crucial importance is the apparent fact that, despite the statutory requirements that an injury arise out of an accident, courts have held that a disability is compensable when it can be causally related to the accumulated effects of the usual exertion connected with employment. As a result, compensation coverage has been extended to include various degenerative disorders, such as heart conditions which in and of themselves are not obviously traumatic or accidental in origin.<sup>9</sup>

This is not to imply that all compensable claims filed which allege this causal connection between emotional stress and disabling injury are upheld.

<sup>6</sup> CCH Workmen's Compensation Law Reports, 1958-1960 (Chicago, Ill.: Commerce Clearing House, 1961), p. 259; *Insurance Department v. Dinsmore*, 102 80 2d 691.

<sup>7</sup> CCH, 1951-1952, par. 1329; *McNess vs. Cincinnati Street Railway Company*, 101 NE 2d 1.

<sup>8</sup> CCH, 1964-1965, par. 1465; *Lobman v. Bernhard Altman Corp.* 244 NYS 2d 425.

<sup>9</sup> Eliot L. Sagall, "Heart Diseases and the Law-Medical Legal Considerations of Causality," *Tennessee Law Review*, vol. 30, 1963.