

# The Compensable Heart Attack

By Martin Minkowitz

When there is a sudden inadequate supply of blood to the heart muscle, there is damage to the heart muscle, and we call that a myocardial infarction, or a heart attack. When that happens as a result of a work related event and a physician can opine that the injury was causally related to an event or stress on the job, it may be covered by the Workers' Compensation Law.



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Heart attacks occur almost 800,000 times a year in the United States. Coronary artery disease is the most common cause of an attack. If the workplace did not contribute to the heart attack it is not compensable under the Workers' Compensation Law. The claimant's counsel's burden, as in any workers' compensation claim, is to prove the injury to the heart arose out of and in the course of the employment.<sup>1</sup> It is then the job of the employer's counsel or its carrier, if it disagrees, to prove that the injury was only caused by something not related to the employment. In heart attack cases this challenge is not uncommon.

If a claim is filed for a disability caused by a heart attack and the claimant later dies from the injury to the heart, even if there was an award by the Workers' Compensation Board in favor of the claimant before the death, a new claim would have to be filed for death benefits. Failing to timely file a new claim for death benefits, and proving the death arose from the previous heart attack, could result in a loss of the right to receive significant death benefits.<sup>2</sup>

In many cases of disabilities and deaths caused by heart attacks a claim is never pursued before the Workers' Compensation Board because people just don't know that such an injury can be compensable under the Workers' Compensation Law. Law firms who represent claimants, and who recognize this problem, actively advertise their services for victims of heart attacks. They will inform the prospective client that a heart attack, caused by work stress, can be compensable.

Physical or mental stress can cause a worker to have a heart attack or stroke but not all of these events are compensable. For physical stress and strain causing the attack, it only needs to be shown that it was work related, not that it was greater than that which usually occurs in the normal work environment.<sup>3</sup>

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In a mental cause of an attack it must be shown that the stress was greater than the usual wear and tear of life in the workplace. For example if a lab technician has the job of going to patients' homes to take blood samples, and tries to move faster from place to place, causing his heart attack at a patient's home, it is not compensable. It was not such greater tension or stress that would be outside of his normal work environment.<sup>4</sup>

A claim can be compensable even if the claimant has a pre-existing pathology which contributed to the attack or other risk factors such as high cholesterol. However, there must be the employee's work factors that contribute to the injury or death to be compensable.<sup>5</sup>

For lawyers who do not practice in the field of workers' compensation claims, they should be aware that these medical conditions are compensable, even when they arise in the course of representing the client in another cause of action. Be prepared to counsel the potential for benefits to the client under the Workers' Compensation Law. When in doubt they should discuss it with a lawyer familiar with the Workers' Compensation Law whose practice is representing claimants.

## Endnotes

1. WCL § 2(7).
2. WCL § 16.
3. *Loftus v. NY News*, 279 A.D.2d 657 (2001).
4. *McLoughlin v. New Rochelle Hosp.*, 34 A.D.2d 1064 (1970).
5. *Lavigne v. Hannaford Bros. Co.*, 153 A.D.3d 1067 (2017).

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