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COMPENSATION NEUROSIIS: A WORKERS' COMPENSATION PHENOMENON

Kathryn V. Natale*

The developing battle of workers'¹ compensation law related to mental and nervous injuries has recently expanded to include the phenomenon of compensation neurosis—one of the most controversial terms in the medico-legal lexicon.² This comment will explore the legitimacy and viability of compensation neurosis as a compensable personal injury in the compensation context. The reader should take note that compensation neurosis is in its infancy and that any vagueness with respect to the law or case analysis reflects the state of the law today.

INTRODUCTION

Modern workers' compensation statutes protect workers who suffer illnesses "arising out of and in the course of employment."³ The line of demarcation between that which does and does not "arise out of and in the course of employment," however, is oftentimes unclear. Claims for disabilities such as ulcers, heart disease and mental disorders, the etiology of which is often extremely difficult or impossible to determine with certainty, present problems when trying to show a connection between employment and the disability. Such disabilities are usually either aggravated or caused by a myriad of factors and a direct link to any one factor tends to be inconclusive. Compensation neurosis, which has been described as "an unconscious desire to prolong compensation (not conscious malingering) or a fear that compensation will not be forthcoming,"⁴ falls into this gray area where the causal relationship between the injury and the neurosis is unclear.

The term "compensation neurosis" is viewed by medical professionals as an "unfortunate term" in that it tends to shift the attention away from etiology and dynamics and towards the resulting neurotic reaction.⁵ The term evolved out of the frequency of obsessive concern

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¹ The term "workers'" compensation has replaced "workmens'" compensation throughout this comment in an attempt to reduce the use of sexist language.

² Rev. Vol. 3, *Lawyers' Medical Cyclopedia of Personal Injuries and Allied Specialties*, 243, § 20-27 (1970 and Supp. 1980).

³ See generally 1 Larson, *Workmens' Compensation*, § 6 (1980) for a summary of statutory provisions. See also 5 U.S.C. § 8101 (1976).

⁴ W. Malone and M. Plant, *Cases and Materials on Workmens' Compensation* 306 (1963).

⁵ Gray, *Attorneys Testbook of Medicine* 104-103, § 104.71 (3rd ed. 1980).

by the patient (claimant) with the prospect of receiving compensation, or with efforts to secure compensation.⁶

Whether compensation neurosis takes the form of "an unconscious desire to obtain or prolong compensation, or of sheer anxiety over the outcome of compensation litigation,"⁷ the manifestation must be of the sort that will support "a genuine neurosis disabling the claimant."⁸ Professor Larson notes that:

Of the comparatively small number of cases that have been reported, a majority accept the compensability of genuine compensation neurosis. In *Hood v. Texas Indemnity Ins. Co.*, for example, . . . the controlling medical testimony was to the effect that the claimant's disability would probably clear-up as soon as the litigation was over, but that he was for the time being genuinely disabled by a neurosis caused in part by an 'unconscious desire for compensation.'⁹

MEDICAL AND LEGAL PERSPECTIVES

It should be noted that while the legal profession has recognized and in the majority of cases compensated claims for compensation neurosis,¹⁰ most medical authorities do not recognize compensation neurosis as a "separate entity in psychiatric diagnosis and practice."¹¹ Instead, the tendency is to view compensation neurosis as one symptomatic expression of an already existing neurosis.

Medical experts have linked compensation neurosis to "the psychological soil concept," and to the "peg principle."¹² In essence, these theories suggest that a predisposition to develop severe emotional symptoms existed in the claimant's psychological profile prior to the onset of compensation neurosis. The work-related injury, be it physical or otherwise, is regarded as a convenient "peg" upon which to hang the neurosis. Presumably, if the underlying problem had not manifested in the form of compensation neurosis, another manifestation might well present itself sooner or later, given suitable circumstances and sufficient psychological trauma.¹³

⁶ *Id.*

⁷ 1B Larson, *Workmens' Compensation* 7-642, § 42.24 (1980).

⁸ *Id.*

⁹ Larson, "Mental and Nervous Injury in Workmen's Compensation," 23 *Vand. L. Rev.* 1243, 1256 (1970).

¹⁰ *Id.*

¹¹ *Supra* note 2.

¹² Cantor, *Traumatic Medicine and Surgery for the Attorney* 448 (1967).

¹³ *Id.*

Compensation neurosis presents particular difficulty for the general physician, surgeon or psychiatrist who must form a diagnostic opinion. The medical profession has observed that in cases involving industrial accidents, neurotic exaggeration of the symptoms can develop following an injury. The neurosis may develop pursuant to minor or seemingly insignificant injuries, complete with chronic aches and pains, and any of all varieties of functional limitations.¹⁴ These exaggerated symptoms increase the physician's frustration in trying to find an organic basis so that determining whether a physical injury is or ever was present becomes difficult.

The case law is unclear as to the need for a physical injury associated with compensation neurosis.¹⁵ It has long been understood, in the law of workers' compensation, that where "there is any element of the 'physical' present, either in the cause or in the effect, compensability is the virtually universal rule."¹⁶

This old-fashioned adherence to some indicia of the physical must be weighed against the complexity of this neurotic condition which is no less meritorious and no less real to the claimant without a physical element.

GENUINE NEUROSIS AS DISTINGUISHED FROM MALINGERING

Genuine compensation neurosis has been distinguished from conscious malingering and, in fact, is often defined as "an unconscious desire to prolong compensation (not conscious malingering)."¹⁷ The importance of separating the genuine sufferers of compensation neurosis from the conscious malingerers places a considerable burden on doctors, judges and compensation boards alike.

The use of the phrase in the absence of malingering, "opens up one of the most elusive fact-finding difficulties in the law of workers' compensation—or in the law of personal injury, for that matter."¹⁸ Malingering as it applies to workers' compensation has been interpreted to mean "deception, practiced by a dishonest employee, by feigning, inducing, or prolonging either sickness or injury, for the purpose of securing illegal or fraudulent compensation payments."¹⁹

¹⁴ Gray, *supra* note 5, at 104-102.

¹⁵ Schmidt's Attorneys' Dictionary of Medicine (Supp. 1980) defines compensation neurosis in part as: "manifestations of a mental disorder, as weeping, anxiety, weakness, palpitations, etc., developing in a person after an accident in which (s)he sustained no injuries." The law of workers' compensation however, tends to rely on a more stringent position with regard to a need for physical injury.

¹⁶ Larson, *supra* note 9, at 1260.

¹⁷ Malone and Plant, *supra* note 4.

¹⁸ Larson, *supra* note 7, at 7-648.

¹⁹ *Rexroat v. State*, 142 Neb. 596, 7 N.W.2d 163, 172 (1942).

Unfortunately, compensation neurosis, like hypochondria, whip-lash, certain types of back injuries and psychosomatic diseases tends to elicit distrust,²⁰ despite its debilitating effect on the claimant. As a result "a considerable number of reported cases show denials attributable to the finding of malingering or its equivalent,"²¹ and "a substantial number reject the allegation of malingering, sometimes with a trace of diffidence."²² "[H]ow could it be real and compensable when . . . petitioner was not consciously malingering, but was unconsciously doing it with what the doctor said was the same result?"²³

The above quotation adequately depicts the sentiment of many judges, lawyers and compensation boards. The assumption that "mental" is synonymous with unreal, or imaginary, or feigned is so ingrained that it has become a part of our idiomatic language. Expressions such as "it's all in her head," for example, are not uncommon.²⁴

At one extreme there is a genuine victim of conversion hysteria,²⁵ helpless in the grip of a condition he or she cannot control. At the other extreme there is the conscious malingerer, "the kind of which the Louisiana court said, 'the court believes this plaintiff is a faker.'"²⁶ In the final analysis the problem of determining whether the worker is genuinely neurotic or malingering is one of fact, which must be left to the skill and experience of medical and psychiatric experts and of compensation administrators, who usually manage in time to develop considerable facility in detecting malingerers at the fact-finding level.²⁷

OVERVIEW OF CASE LAW

The criteria for proving compensation neurosis vary from jurisdiction to jurisdiction. Because there are no established standards, compensation neurosis is best explored on a case by case basis.²⁸

²⁰ It is often difficult for medical practitioners to isolate an organic cause with regard to these physical ailments. Consequently, the possibility that a patient will feign or exaggerate his or her symptoms is always at risk.

²¹ *Minton v. Industrial Comm'n*, 90 Ariz. 254, 367 P.2d 274 (1961).

²² *American Compressed Steel Corp. v. Blanton*, 357 S.W.2d 888 (Ky. 1962).

²³ *Hood v. Texas Indem. Ins. Co.*, 146 Tex. 522, 537, 209 S.W.2d 345, 354 (1948).

²⁴ *Larson*, *supra* note 9.

²⁵ Conversion hysteria has been defined as the conversion of psychic conflicts into physical disorders. Anxiety, rather than being consciously experienced, is converted to functional systems throughout the body that are innervated by the sensory-motor nervous system. 6 *Traumatic Medicine and Surgery for the Attorney* 168 (1962).

²⁶ *Larson*, *supra* note 7, at 7-653 (treatise cited).

²⁷ *Lucky v. State Accident Ins. Fund*, 27 Ore. App. 565, 556 P.2d 712 (1976).

²⁸ The following is a listing, by jurisdiction, of case law on the issue of compensation neurosis. This updates a listing compiled by *Larson*, *supra* note 7 at 1273.

The line between genuine compensation neurosis and conscious malingering (as described earlier in this comment) is difficult to draw, and the party alleging malingering has the burden of proof. The state court of Louisiana, for example, will "stigmatize a claimant as a malingerer only upon positive and convincing evidence justifying such a conclusion."²⁹ This rule attempts to protect the already traumatized claimant from additional suffering that could arise in the wake of being labeled a liar and a cheat.

A less sympathetic standard has been applied in Mississippi where a claimant who had a history of neurotic tendencies during childhood was found to have "simply seized on a minor accident as an excuse to express (his neurosis) in pain and other physical symptoms."³⁰ Compensation was denied because malingering was established through conclusive evidence.³¹

Because it is difficult to measure the effects of anxiety and aggravation associated with one's employment, a thoroughly documented psychiatric diagnosis/prognosis can help to establish a "genuine" case

Cases Awarding Compensation

California: *Detjen v. Workmens' Comp. App. Bd.*, 422 Cal. App. 3d 470, 116 Cal. Rptr. 860 (1974); Illinois: *United Airlines, Inc. v. Industrial Comm'n*, 81 Ill.2d 85, 405 N.E.2d 789 (1980); *Allis Chalmers Mfg. Co. v. Industrial Comm'n* 57 Ill.2d 257, 312 N.E.2d 280 (1974); Louisiana: *Doucet v. Ashy Constr. Co.*, 134 So.2d 665 (La. App. 1961); Minnesota: *Welchlin v. Fairmont Ry. Motors*, 180 Minn. 411, 230 N.W.897 (1930); New Mexico: *Ross v. Sayers Will Servicing Co.*, 76 N.M.321, 414 P.2d 679 (1966); New York: *Rodriguez v. New York Dock Co.*, 256 App. Div. 875, 9 N.Y.S.2d 264 (1939), leave to appeal denied, 280 N.Y. 852, 20 N.E.2d 398; Texas: *Texas Employers' Ins. Ass'n v. Wilson*, 522 S.W.2d 192 (Tex. 1975), rev'd 513 S.W.2d 892 (Tex. Civ. App. 1974); *Texas Employers' Ins. Ass'n v. Ham*, 333 S.W.2d 438 (Tex. Civ. App. 1960); *Texas Employers' Ins. Ass'n v. Hatton*, 252 S.W.2d 754 (Tex. Civ. App. 1952), rev'd on different grounds, 152 Tex. 199, 255 S.W.2d 848 (1953); Washington: *Peterson v. Department of Labor & Indus.*, 178 Wash. 15, 33 P.2d 650 (1934); Wisconsin: *Gallagher v. Industrial Comm'n* 9 Wis.2d 361, 101 N.W.2d 72 (1960).

Cases Denying Compensation

Arizona: *Motorola, Inc. v. Industrial Comm'n*, 125 Ariz. 211, 608 P.2d 788 (1980); *Cheatham v. Industrial Comm'n*, 27 Ariz. App. 709, 558 P.2d 737 (1976); Connecticut: *Kowalski v. New York, N.H. & H.R.R.*, 116 Conn. 229, 164 A. 653 (1933); Georgia: *Swift & Co. v. Ware*, 53 Ga. App. 500, 186 S.E. 452 (1963); Rhode Island: *Martino v. California Artificial Flower Co.*, 91 R.I. 91, 161 A.2d 193 (1960); Virginia: *Keller Mfg. Co. v. Hoke*, 215 Va. 525, 211 S.E.2d 82 (1975).

While the above-mentioned cases may seek to approach compensation neurosis as a viable cause of action, the judicial opinions fall short of offering a conclusive set of elements which can be used by the practitioner when attempting to prove or defeat a claim.

²⁹ *Istre v. Molbert Poultry & Egg Co.*, 125 So. 2d 436 (La. App. 1961).

³⁰ *International Paper Co. v. Wilson*, 243 Miss. 659, 139 So.2d 644, 649-50 (1962).

³¹ Conclusive evidence was based on expert testimony that claimant was psychoneurotic prior to an alleged work-related accident, and that, in fact, if the accident "had not occurred the psychoneurosis would have manifested anyway." (*Id.* at 650).

of compensation neurosis. Expert medical testimony can be a determining factor in either proving or defeating a claim for compensation neurosis. Not surprisingly, judges and compensation boards, who recognize that "the line between (compensation) neurosis and malingering is not always sharply defined,"³² rely on medical testimony, sometimes to the claimant's unfair disadvantage. The Mississippi court in *Reyer v. Pearl River Tung Co.*,³³ recognized this problem of imperfect medical testimony when no doctor who had examined the claimant could account for her alleged pain. In reversing a denial of compensation the court said:

The fact of disability by reason of pain, therefore, exists. The inability of doctors to put their fingers on the exact physical cause should not result in casting the claim overboard. With all of the knowledge now possessed by the great medical profession, it is a matter of common knowledge that sometimes the diagnosis of human ailments baffles the greatest medical minds.

In New York, a question of compensation neurosis or malingering was finally settled in *Montclair v. Griffith*³⁴ when the Board's own medical examiner discovered that the claimant was suffering from a mild partial back injury.

Both the Mississippi court and the New York Board exhibited an unusual degree of concern in an attempt to give the claimant the benefit of the doubt. Generally, however, courts will heed the advice implanted in expert medical testimony, as in Arizona, where a specialist in neuropsychiatry testified that "I would pinpoint it [the claimant's condition] as a poor frame of mind toward his disability, which the man has elected to adopt."³⁵ Compensation was, not surprisingly, denied.

In Oregon, the Court of Appeals rejected a claim with all of the attributes of compensation neurosis because of insufficient convincing medical evidence. The court reasoned: "In complicated medical situations, only expert evidence can determine the causal relationship between an industrial injury and psychiatric problems."³⁶ In addition to affirming the need for medical testimony, the Oregon court touched on another consideration in attempting to prove compensation neurosis—the need for establishing that "the line of causation from the original injury to the present disability is unbroken."³⁷

³² *Supra* note 20.

³³ 219 Miss. 211, 68 So.2d 442, 444-445 (1953).

³⁴ 19 A.D.2d 918, 243 N.Y.S.2d 963 (1963).

³⁵ *Supra* note 19 at 7-654.

³⁶ *Middleton v. State Accident Ins. Fund.*, 31 Ore. App. 313, 570 P.2d 406 (1977).

³⁷ *Larson, supra* note 9, at 1257.

Arizona recently denied compensation to a claimant who allegedly suffered from a compensation neurosis after having received a notice of termination for benefits which were awarded for a prior industrial injury. The court held that "the claimant's reaction to notice of claim status terminating her benefits was an independent superseding event which broke the chain of causation between the initial industrial injury from which she had completely recovered and her present psychological problems which were the result of her underlying personality traits; that is, an industrial claimant's admittedly stationary condition cannot be rendered unstationary because of her reaction to a notice of claim status."³⁸

The claimant, in support of her position relied on a California case³⁹ bearing factual similarity. Arizona declined to follow the California court because "Arizona would not, absent unexpected, unusual, or extraordinary stress, hold such neurosis to be compensable."⁴⁰

The standards for proving and defeating a claim for compensation neurosis are still evolving. Courts differ from jurisdiction to jurisdiction and from case to case (within the same jurisdiction) in their willingness to recognize compensation neurosis as a genuine personal injury.

CONCLUSION

Compensation neurosis has emerged as a viable personal injury under the law of workers' compensation. While there are no precise standards for proving or defeating a claim for compensation neurosis, the following considerations consistently appear in favorable decisions and are offered as a guideline:

1. conclusive evidence that a traumatic neurosis is genuine (supported by expert testimony);
2. a showing that the neurosis is related to the claimant's employment;
3. a physical injury or illness arising out of the employment that is directly associated with the neurosis.

Because workers' compensation law is yet unsettled with respect to claims of compensation neurosis, it is not surprising that with the above-mentioned considerations present, a favorable decision is not imminent. An Arizona court illustrated this point in 1976 when a

³⁸ Motorola, Inc. v. Industrial Comm'n 125 Ariz. 211, 608 P.2d 788 (1980).

³⁹ Detjen v. Workmen's Compensation Appeals Board, 42 Cal. App.3d 470, 116 Cal. Rptr. 869 (1974).

⁴⁰ Cohen, *supra* note 3 citing Sloss v. Industrial Comm'n 121 Ariz. 10, 588 P.2d 303 (1978).

claimant who was injured at work was able to show the existence of a genuine psychological manifestation (neurosis) stemming from a physical injury. Expert testimony, however, was introduced to show that the best therapy for the condition would be to require the claimant to return to work with no compensation benefits. The court so ordered.⁴¹

Although steps have been made to further understand compensation neurosis in the law of workers' compensation, the "surface has barely been scratched on the subject of neurosis in medico-legal work."⁴²

The trend toward coverage suggests that the time is perhaps not too far off when compensation law generally will cease to set an artificial and medically unjustifiable gulf between the physical and the nervous. . . . The single question will be whether there was a harmful change in the human organism—not just its bones and muscles, but its brain and nerves as well.⁴³

⁴¹ Cheatham v. Industrial Comm'n, 27 Ariz. App. 709, 558 P.2d 737 (1976).

⁴² Gray, *supra* note 5, at 104-101.

⁴³ *Supra* note 9.

