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ard has been set as a determinant of either of these capacities. A truly helpful test to fit all cases has not even been propounded. At best the test of "capability to understand the particular transaction," used by many courts, is a restatement of the problem in more definitive terms or a narrowing of the issue. It is incorrect to state that either contractual or testamentary capacity is greater or that they are the same in all instances. It is also incorrect to assume that either of the two capacities, once determined in a particular case, is applicable in other wills or contracts made by the same person. Each case must be decided on its own facts; reference to other cases gives only an insight into the problem and an indication as to what the courts in past cases have considered as having a bearing on the determination. The courts seek to understand the mental state of the individual concerned and seem willing to consider anything that may clarify the matter. They pronounce some evidence inconclusive and some inapplicable, but from it they formulate an estimate of the situation and determine whether the contracting party or testator was competent or incompetent for the particular purpose.

Regardless of the indefiniteness of the formula, the courts seem to reach plausible results in the many varied factual situations. This may indicate that it is the feeling of the court derived from the facts of the case that governs the outcome rather than strict adherence to any formula or rule of law.

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COMPENSABILITY OF MENTAL ILLNESS UNDER THE FLORIDA WORKMEN'S COMPENSATION LAW

One way in which a stigmatizing myth is perpetuated is by legal hostility toward compensability for mental illness unaccompanied by physical trauma under workmen's compensation acts. This body of law has, as has tort law, been reluctant to grant recovery for purely "mental" or "nervous" disorders without a physical occurrence. This occurrence may take the form of direct impact upon the body of a claimant, resulting in emotional shock, or of tangible, "visible" injury caused by an emotional shock incurred during the course of employment and proximately resulting from it.

There are other areas in which mental illness is viewed with jaundiced skepticism. The composite result of this skepticism is a social myopia that impedes the public awareness and understanding

necessary for complete rehabilitation and community reacceptance of people with histories of mental illness.

In spite of extensive publicity campaigns conducted by agencies such as mental health foundations, which inform the public that mental illness is just as "respectable" and curable as a *physical* illness, social prejudice regarding mental maladies lingers in the public's subconsciousness. Frequently appearing on employment forms or licensing applications are blanks devoted to any history of mental illness or psychiatric care. Often the blank requesting such information is in juxtaposition to one devoted to the applicant's history, if any, of venereal disease. It is not suggested that there is any sinister motivation in the preparation of these forms. It is rather a reflection of public attitude in general. As long as mental disorders are viewed with apprehension former mental patients will continue to be considered questionable risks in their prospective endeavors.

The effects of this subtle prejudice are manifested to some extent in the field of workmen's compensation. Awards are frequently denied when all aspects of an accident upon which a claim is predicated are mental in form. If the initial cause of a claimant's injury is mental and the subsequent injury and disability are also mental, many courts are reluctant to find that the claimant's plight resulted from an "accident" within the course and scope of his employment. That recoveries are granted in most cases when the "cause" is physical and the "effect" is mental, and vice versa, serves even further to indicate the existence of prejudice. It is recognized that the difficulty of eliciting proof to establish causation may be the reason for denial of awards in "purely mental" cases. The persistent prerequisite that a *physical* factor be present on which to base an award is evidence that the courts indulge in this discrimination among labels to prevent recoveries by malingerers. It is submitted, however, that mental illness and malingering are often equated in the minds of some, including judges.

That the fact finding task is difficult does not justify a rule of law that depends for its existence upon the label that is ascribed to a particular set of facts. This note deals essentially with the Florida attitude regarding compensability for mental illness. Primary concern is devoted to Florida decisions involving compensability of mental or emotional disorders under the Florida Workmen's Compensation Law.¹ The applicable sections of the law are those defining injury,²

¹FLA. STAT. ch. 440 (1959).

²FLA. STAT. §440.02(6) (1959): "The term 'injury' means personal injury or

disability,³ and accident.⁴

To present properly the problem of compensation for mental illness incurred in the course of employment, it is essential that discussion be devoted to various theories of recovery that are utilized when compensation is awarded. The theories are broken down by Larson⁵ into four categories: (1) physical trauma causing nervous injury, (2) mental stimulus causing physical injury, (3) mental stimulus causing nervous injury, and (4) compensation neurosis.

PHYSICAL TRAUMA CAUSING NERVOUS INJURY

Nervous injury resulting from physical trauma is a universally accepted basis for compensating mental disorders. This is understandable, since the underlying theory approximates "impact" notions under the common law and thus causation is more readily apparent.

Compensation has been awarded a claimant who was incapacitated by a "fear complex" brought on by a severe injury to her fingers from operating a drill press.⁶ This fear complex rendered her incapable of doing any work involving the use of her fingers. Early recognition was given to the fact that the nervous effects of an injury can linger after the muscular effects have ceased.⁷ A neurotic whose mental trouble stemmed from an accidental physical injury was also held entitled to compensation.⁸ The Oklahoma court used an old comprehensive term, *neurasthenia*, to classify the claimant's disorder,

death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury."

³FLA. STAT. §440.02 (9) (1959): "'Disability' means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury."

⁴FLA. STAT. §440.02 (19) (1959): "'Accident' shall mean only an unexpected or unusual event or result, happening suddenly. A mental or nervous injury due to fright or excitement only or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or narcotic drugs, shall be deemed not to be an injury by accident arising out of the employment. Where a pre-existing disease is accelerated or aggravated by accident arising out of and in the course of the employment, only acceleration of death or the acceleration or aggravation of disability reasonably attributable to the accident shall be compensable." (Emphasis added.)

⁵1 LARSON, WORKMEN'S COMPENSATION §§42.20-.24 (1952).

⁶Imperial Knife Co. v. Calise, 80 R.I. 428, 97 A.2d 579 (1953).

⁷Eaves v. Blaenclydach Colliery Co., [1909] 2 K.B. 73 (1909).

⁸Rialto Lead & Zinc Co. v. State Indus. Comm'n, 112 Okla. 101, 240 Pac. 96 (1925); see Annot., 44 A.L.R. 494 (1925).

pointing out, however, that the intervening neurasthenic condition must be shown to have proximately resulted from the accidental physical injury. Likewise, a paranoic condition found to have proximately resulted from a blow on the head was held compensable.⁹ A recent Florida case upheld an award compensating "traumatic neurosis" suffered by a claimant after being struck on the head by an eight-and-one-half ounce cardboard spool thrown by a fellow employee.¹⁰ The court stated that traumatic neurosis by definition was an injury within the meaning of the statute. In arriving at its decision the court seemed to emphasize the fact of the blow. Part of the distinction between this case and a prior one which disallowed an award¹¹ lies in the fact that in this case a *blow* was received, whereas in the previous case the claimant had received merely a jolt. The common law impact theory of recovery is thus seemingly engrafted on workmen's compensation law.

It can be conceded, however, that once "impact" or "trauma," at least outwardly physical, is established, compensation will be awarded practically everywhere, including Florida, for mental or emotional¹² disorders proximately resulting therefrom. Those cases denying recovery on this ground usually do so because of insufficient proof to establish causation or of conflicting medical testimony.¹³

MENTAL STIMULUS CAUSING PHYSICAL INJURY

There is considerable authority for supporting compensation awards when physical injury and disability result from a purely mental stimulus experienced during the course of employment. Courts will permit awards when injury or "impact" to the mind causes a distinct physical disability.

Compensation has been awarded to a bus driver who suffered a cerebral hemorrhage as a result of excitement caused by a minor col-

⁹Ford Motor Co. v. Industrial Comm'n, 355 Ill. 490, 189 N.E. 498 (1934); *accord*, Campana v. Hogan, 7 App. Div. 2d 815, 180 N.Y.S.2d 1005 (3d Dep't 1958); Chicklowski v. Hotel Syracuse, 5 App. Div. 2d 704, 168 N.Y.S.2d 641 (3d Dep't 1957); Rodriguez v. New York Dock Co., 256 App. Div. 875, 9 N.Y.S.2d 264 (3d Dep't 1939).

¹⁰Watson v. Melman, Inc., 106 So. 2d 433 (3d D.C.A. Fla. 1958).

¹¹City Ice and Fuel Div. v. Smith, 56 So. 2d 329 (Fla. 1952).

¹²No attempt has been made to distinguish the meaning of "mental" from that of "emotional" or "nervous." For the sake of clarity these terms should be lumped as non-physically manifested disorders.

¹³See Quillen v. O. D. Purington Co., 80 R.I. 165, 94 A.2d 247 (1953).

lision,¹⁴ to a cab driver who suffered a cerebral hemorrhage resulting from nervousness brought on by observing a policeman forcibly arresting three men,¹⁵ to an employee of a dry cleaner for a stroke suffered after a berating by an irate customer,¹⁶ and to the estate of a trolley driver who died from coronary thrombosis brought on by the severe mental strain and excitement of his employment.¹⁷

Florida's workmen's compensation act excludes recovery for mental or nervous injury caused only by fright or excitement. The language of the act does not specifically preclude recovery for a *physical* injury or disability caused by "fright" or "excitement." There are, however, no reported Florida cases deciding this precise question. *Superior Mill Work v. Gabel*¹⁸ held that there must be a physical injury upon which to predicate a claim for a disabling neurosis. It is submitted that the scope of the term *physical injury*, as therein used, is broad enough to include "physical impact." The case involved an original *physical* injury, but compensation was denied because it was not shown that the subsequent neurosis proximately resulted therefrom. This holding should be construed to mean that an initial physical injury is required only if the disabling affliction is mental, emotional, or nervous. In view of the general holding elsewhere and the non-exclusionary language of the statute, it should not be construed to prohibit recovery when physical disability is the result of mental impact. The few other Florida decisions allowing awards when the mental factor was involved rested heavily on an initial *physical* "injury" or "impact" incurred in the course of employment upon which to predicate liability for the subsequent physical or mental disability.¹⁹ None of these cases squarely decided that compensation should or should not be granted for physical disorders resulting from emotional disturbances. When an award is thought to be justified the Court will find *physical* trauma or "impact" at the outset. In

¹⁴Reynolds v. Public Serv. Co-ordinated Transport, 21 N.J. Super. 528, 91 A.2d 435 (App. Div. 1952).

¹⁵Eagan's Case, 331 Mass. 11, 116 N.E.2d 844 (1954).

¹⁶Aetna Ins. Co. v. Hart, 315 S.W.2d 169 (Tex. Civ. App. 1958).

¹⁷McNees v. Cincinnati St. Ry., 90 Ohio App. 223, 101 N.E.2d 1 (1951); *accord*, Wachsstock v. Skyview Transportation Co., 5 App. Div. 2d 1028, 173 N.Y.S.2d 405 (3d Dep't 1958); Church v. Westchester County, 253 App. Div. 859, 1 N.Y.S.2d 581 (3d Dep't 1938).

¹⁸89 So. 2d 794 (Fla. 1956).

¹⁹Lyng v. Rao, 72 So. 2d 53 (Fla. 1954); Watson v. Melman, Inc., 106 So. 2d 433 (3d D.C.A. Fla. 1958).

*Lyng v. Rao*²⁰ there was a finding of physical impact because lightning struck the building in which the claimant was working with her feet on a wet floor. The effort to establish physical impact can be explained in that the claimant was clearly disabled but her incapacitation was caused solely by mental strain.

Consistency in the opinions can be established only if the requirement of a physical injury, as in *Superior Mill Work v. Gabel*, is limited to cases in which claims are predicated solely on mental disorders. Since nothing in the statute expressly forbids compensation for physical disabilities resulting from mental causes, Florida should not disallow a claim based on such a fact pattern.

MENTAL STIMULUS CAUSING NERVOUS INJURY

When the initial injury or impact and the resulting disabling disorder are both *labeled* mental, emotional, or nervous, some courts,²¹ including Florida,²² do not recognize the disability as caused by an "accident" within the meaning of the compensation acts. The issue was faced squarely in a recent New York case²³ in which the claimant cab driver suffered an emotional shock after striking a pedestrian with his cab. Although the claimant was not harmed physically, the shock exaggerated²⁴ a pre-existing emotional disorder, culminating in paranoid schizophrenia. The court did not deny that the claimant could be just as disabled as one suffering from a physical disability but held as a matter of law that purely excessive emotions, unaccompanied by physical force or exertion, cannot be the basis of an accident on which to predicate a compensable disability. It is inconsistent to regard an emotional shock as sufficient impact to establish causation for a disabling *physical* disorder²⁵ but not to so regard it for a *mental* one.

A 1955 Texas decision²⁶ resolved this inconsistency. The claimant,

²⁰72 So. 2d 53 (Fla. 1954).

²¹*Chernin v. Progress Serv. Co.*, *infra* note 23; *Lewter v. Abercrombie Enterprises*, 240 N.C. 399, 82 S.E.2d 410 (1954).

²²*City Ice and Fuel Div. v. Smith*, 56 So. 2d 329 (Fla. 1952).

²³*Chernin v. Progress Serv. Co.*, 9 App. Div. 2d 170, 192 N.Y.S.2d 758 (3d Dep't 1959).

²⁴Generally, aggravation or exaggeration of a pre-existing disorder, if resulting from employment and otherwise compensable, is sufficient basis for an award.

²⁵*Wachsstock v. Skyview Transportation Co.*, 5 App. Div. 2d 1028, 173 N.Y.S.2d 405 (3d Dep't 1958).

²⁶*Bailey v. American General Ins. Co.*, 154 Tex. 430, 279 S.W.2d 315 (1955); *accord*, *Aetna Ins. Co. v. Hart*, 315 S.W.2d 169 (Tex. Civ. App. 1958).

an iron worker, had observed the death of a fellow workman in a fall from a scaffold on which both were working. The claimant had thought that he himself would be killed. The experience disrupted his nervous system so that he was unable to perform the only work for which he was trained, because it had to be carried on at considerable height. The Texas court tailored mental shock causing nervous injury to fit a statute²⁷ defining injury as damage or harm to the physical structure of the body. The court refused to limit the definition of physical structure to bones and tissue but regarded it as including the functioning of the entire organism. Since the claimant had slipped himself and had been kept from falling by a cable, the court could have found physical impact on which to peg its decision. That this fact was bypassed indicates that psychic impact alone that causes a purely mental disorder resulting in a claimant's disability permits an award in Texas notwithstanding a statute seemingly requiring a physical occurrence.²⁸ It must be noted, however, that the Texas court achieved this result by giving an identical meaning to "psychic trauma" and physical injury.

Presumably, Florida could not achieve such a result by stretching its statute,²⁹ since the express language precludes recovery for a nervous injury caused by fright or excitement. It is submitted, however, that were the facts of the Texas case presented to the Florida Court, the same result would obtain but it would be based on a finding of *physical* impact. Florida has denied recovery to a trucker who sustained nothing more physical than a jolt when his truck was sideswiped but a day later suffered an emotional shock causing him to become disabled.³⁰ There was considerable evidence that the emotional condition was caused by personal factors not connected with employment. Instead of basing its decision on the lack of causation, the Court relied on the statute precluding recovery for mental disability caused by fright or excitement. Had causation been more readily apparent it is likely that the mere jolt would have been looked upon as a physical impact, with no reference to fright or excitement. The availability of reliable medical testimony and the responsibility of the court to uncover the facts so that genuine compensable disabilities do not go uncompensated make this discrimination among labels un-

²⁷TEX. WORKMEN'S COMP. LAW art. 8306, §20 (1959).

²⁸*Accord*, Peavy v. Mansfield Hardwood Lumber Co., 40 So. 2d 505 (La. App. 1949).

²⁹See note 4 *supra*.

³⁰*City Ice and Fuel Div. v. Smith*, 56 So. 2d 329 (Fla. 1952).

realistic. The resulting confusion can only obscure issues and make the fact finding task more complicated.

COMPENSATION NEUROSIS

This form of mental disorder is usually temporarily disabling. The afflicted claimant is rendered incapacitated by reason of apprehension over the outcome of compensation litigation itself. Before compensation can be awarded for this malady, however, any required causation and initial trauma tests must first be met. In theory, at least, this neurosis should disappear when litigation terminates.³¹ The award, when granted, covers the period of disability caused by the compensation neurosis. One Florida case³² is cited by Larson³³ as basing an award on this ground. The claimant suffered an electric shock. Because of peculiar spiritual beliefs he thought that the shock was a punishment from God and that only an award of total disability would show that he had been given a heavenly pardon. Temporary total disability was awarded, the Court noting, however, that although the claimant was suffering from a psychosis and not from a neurosis, this particular manifestation would not have arisen but for the electric shock received on the job. Decisions denying recovery for compensation neurosis are often grounded on a break in the chain of causation after the original injury.³⁴

CONCLUSION

In Florida, mental disabilities resulting from physical impact,³⁵ and probably physical disabilities resulting from mental impact,³⁶ are compensable under the Workmen's Compensation Law. However, if both the cause and the result are *labeled* mental, compensation will be denied.³⁷

It cannot be seriously doubted that in this highly competitive world people often succumb to mental pressures resulting from their employment. If employment causes a mental condition or aggravates

³¹Hood v. Texas Indemnity Ins. Co., 146 Tex. 522, 209 S.W.2d 345 (1948).

³²Moses v. R. H. Wright & Son, Inc., 90 So. 2d 330 (Fla. 1956).

³³1 LARSON, *op. cit. supra* note 5.

³⁴*E.g.*, Kowalski v. New York, N.H. & H.R.R., 116 Conn. 229, 164 Atl. 653 (1933); Swift & Co. v. Ware, 186 S.E. 452 (Ga. App. 1936).

³⁵Watson v. Melman, Inc., 106 So. 2d 433 (3d D.C.A. Fla. 1958).

³⁶Superior Mill Work v. Gabel, 89 So. 2d 794 (Fla. 1956).

³⁷City Ice and Fuel Div. v. Smith, 56 So. 2d 329 (Fla. 1952).

a pre-existing one, there is no reason why a resulting mental disability should go uncompensated notwithstanding the absence of an *outwardly* physical effect on the body. Denial of awards in these cases thwart the whole purpose of workmen's compensation, which seemingly should be to compensate an employee for *any* debilitation of his person resulting from employment. Actually there is no distinction between bodily and mental ills. In simple terms, the mind is of necessity part of the body, separated only by metaphysical contemplation of such concepts as soul or psyche. Since the two are thought separate by so many, however, they must, for the present, be dealt with in that manner.

It is submitted that proper results can be achieved in compensation cases without discriminating among labels. Denials of compensation awards should be grounded on malingering if found as fact, or on insufficient proof to establish causation, but not per se because an employee receives an emotional shock or becomes mentally ill, resulting in mental disability. That expanding recognition has been given to mental disabilities is evidenced by the judicial treatment accorded compensation neurosis, albeit there is a necessity for a physical occurrence on which to base a recovery. If awards can be based on this outwardly tenuous ground, it seems that the law should go the second mile and permit awards for any mental injury or disability resulting from employment, notwithstanding the absence of a physical occurrence.

Mental or nervous injury resulting from fright or excitement is listed in the statute,³⁸ along with disability caused by accidental acceleration or aggravation of venereal disease and conditions caused by alcohol and drug addiction, as not constituting a compensable injury by accident. As long as the statute is so worded, the stigma attaching to mental ills from mental causes will remain glaringly apparent. Florida courts, however, will continue to permit recoveries in proper cases by finding a constructive physical impact to the person when mental or emotional disorders are the disabling catalysts. Both the stigma and the anomaly would be eliminated if the words "a mental or nervous injury due to fright or excitement only . . . shall be deemed not to be an injury by accident arising out of the employment"³⁹ were removed from the statute.

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³⁸See note 4 *supra*.

³⁹*Ibid*.