ADMINISTRATIVE LAW — WORKERS' COMPENSATION — EMPLOYEE COMPENSATED FOR HEART ATTACK SUFFERED DUE TO ORDINARY WORK STRAIN IN EXCESS OF DAILY WEAR AND TEAR—*Hellwig v. J.F. Rast & Co.*, 110 N.J. 37, 538 A.2d 1243 (1988).

Workers' compensation laws were created to compensate employees and their families for work-related injuries.[1] From the inception of the federal workers' compensation acts most states, including New Jersey, had similar statutes which compensated employees for injuries arising out of and in the course of employment.[2] The burden of proof was on the employer to show that the employee's injury or death did not "arise out of" or was not "in the course of his employment."[3] This language has always been construed liberally.[4] For example, a pre-existing disease or infirmity has never disqualified an employee's claim for benefits.[5]

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[1] 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION (1972); Cook, *Workers' Compensation and Stress Claims: Remedial Intent and Restrictive Application*, 62 NOTRE DAME L. REV. 879, 881 (1986). "Workers' compensation has been termed the oldest of the American social insurance programs and equivalent in its results to a species of insurance in favor of workmen." *Id.* The goal of these laws was to provide injured workers with payments under a fixed scheme without resort to litigation because proof of the employer's negligence was not required. *Id.*

[2] *See* A. LARSON, *supra* note 1, § 5.30; Note, *Occupational Disease, Mental Stress and House Bill 2271*, 24 WILLIAMETTE L. REV. 350 (1988). Forty-two state statutes use the language "arising out of and in the course of employment" to describe the required link between employment and disability. Cook, *supra* note 1, at 881-82 (citing A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 6.00, at 3-1 (1985)). In theory, the required causal link was not the requirement of proximate cause but a lesser standard. *Id.* at 882.

[3] *See* N.J. STAT. ANN. § 34:15-7 (West 1959) (repealed) which provides:

> When employer and employee shall by agreement . . . accept the provisions of this article compensation for personal injuries to, or for the death of, such employee by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, . . . and the burden of proof of such fact shall be upon the employer.

Id.

[4] *See* A. LARSON, *supra* note 1, § 6.00; Cook, *supra* note 1, at 881 (citing Continental Casualty Co. v. Haynie, 51 Ga. App. 650, 181 S.E. 126 (1935); Sole v. Kindelberger, 91 W. Va. 603, 114 S.E. 151 (1922)).

[5] A. LARSON, *supra* note 1, § 12.20. Most, if not all, heart attacks stem from pre-existing heart disease. P. BARTH, WORKERS' COMPENSATION AND WORK-RELATED ILLNESSES AND DISEASES (1980). *See, e.g.*, Canadian Gulf Line, Ltd. v. Shea, 404 F.2d 24 (5th Cir. 1968) (employee's death from arteriosclerotic heart disease compensated under workers compensation statute when worry arising out of work-related injury contributed to employee's death); Schreven v. Indus. Comm'n, 96 Ariz. 143, 393 P.2d 150 (1964) (employee suffering from spinal injury, which eventually would have caused disability, compensated when work-related accident aggravated

If the conditions of employment had aggravated, accelerated, or in any way contributed to the death or disability, compensation was awarded.[6] Thus, the employer took the employee as he found him.

New Jersey courts have had much difficulty interpreting whether injuries actually arose out of or were in the course of employment.[7] Thus, in 1979, the New Jersey Workers' Compensation Act (Statute) was amended to include specific new conditions for cardiovascular claims. The amended Statute requires that the work strain causing the injury involve a substantial condition in excess of the claimant's daily routine activity.[8]

The New Jersey Appellate Division in *Prusecki v. Branch Motor Express*[9] interpreted the amended Statute to require that the work

injury); McAllister v. Workmen's Compensation Appeals Bd., 69 Cal. 2d 408, 445 P.2d 313, 71 Cal. Rptr. 697 (1968) (fact that fireman's own cigarette smoking may have added to danger of contracting lung cancer was held immaterial since only necessary to show that employment was contributing cause); Green v. Al Green Enters., 73 N.J. Super. 132, 179 A.2d 151 (App. Div. 1962) (claimant with glandular disability compensated for skin rash over entire body, rather than merely on exposed portions after coming in contact with cleaning products); Wexler v. Lambrecht Foods, 64 N.J. Super. 489, 166 A.2d 576 (App. Div. 1960) (claimant compensated for a heart attack occurring during the course of his employment despite finding that attack was causally related to pre-existing heart disease); Lipscombe v. Loizeaux Lumber Co., 12 N.J. Super. 276, 79 A.2d 483 (App. Div. 1951) (claimant compensated for amputation of left leg due to arteriosclerotic condition after sustaining injury to left foot, however, amputation of right leg six months later not compensated because injury to left foot was not shown to have caused amputation of right leg).

6 A. LARSON, *supra* note 1, at § 12.20. *Green*, 73 N.J. Super. at 138-39, 179 A.2d at 155; *Wexler*, 64 N.J. Super. at 500, 166 A.2d at 582.

7 *See* Dwyer v. Ford Motor Co., 36 N.J. 487, 178 A.2d 161 (1962) (work effort has to be a substantial factor contributing to the heart attack); Ciuba v. Irvington Varnish & Insulator Co., 27 N.J. 127, 141 A.2d 761 (1958) (claimant merely must prove that the strain at work aggravated a pre-existing physical infirmity to establish liability); Seiken v. Todd Dry Dock, 2 N.J. 469, 67 A.2d 131 (1949) (holding that claimant must prove unusual exertion or strain beyond the employment itself to establish liability); Prusecki v. Branch Motor Exp., 206 N.J. Super. 39, 501 A.2d 100 (App. Div. 1985) (work stress must exceed stress in routine home activity to be compensable under Workers' Compensation statute).

8 N.J. STAT. ANN. § 34:15-7.2 (West 1979 & Supp. 1987).

> In any claim for compensation for injury or death from cardiovascular or cerebral vascular cases, the claimant shall prove by a preponderance of the credible evidence that the injury or death was produced by the work effort or strain involving a substantial condition, event or happening in excess of the wear and tear of the claimant's daily living and in reasonable medical probability caused in a material degree the cardiovascular or cerebral vascular injury or death resulting therefrom. Material degree means an appreciable degree or a degree substantially greater than de minimis. *Id.*

9 206 N.J. Super. 39, 501 A.2d 1006 (1985).

strain, immediately prior to the employee's accident, exceed the routine strain normally encountered by that employee at work.[10] In a subsequent decision, however, the appellate division in *Hellwig v. J.F. Rast & Co.*,[11] interpreted the Statute to require that the work effort involve a substantial condition in excess of the wear and tear of the claimant's daily living exclusive of work.[12] Due to the inconsistent appellate division interpretations of the Statute, the New Jersey Supreme Court granted certification[13] to clarify the legislative intent in enacting the Statute.[14]

Thomas Hellwig was employed by J.F. Rast & Co. (Rast).[15] On his first day back to work, following a seven-week layoff,[16] Hellwig and a co-employee were assigned the task of repairing a pasteurizer.[17] The work involved climbing a ladder at steep angles and stooping under conveyor belts in over eighty-degree heat and high humidity.[18] In addition, Hellwig had to move over 300 pounds of welding machinery from the maintenance shop, located on a lower level of the plant, to the pasteurizer.[19]

After taking a short break, Hellwig and his co-worker again climbed the ladder and began work on the pasteurizer.[20] Hellwig subsequently climbed down the ladder to adjust the welder, but never returned.[21] Co-workers found him lying unconscious on the floor beneath the pasteurizer.[22] Hellwig later died and an au-

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10 *Id.* at 49, 501 A.2d at 1011.

11 215 N.J. Super. 247, 521 A.2d 896 (App. Div. 1987), *aff'd*, 110 N.J. 37, 538 A.2d 1243 (1988).

12 215 N.J. Super. at 253, 521 A.2d at 898.

13 107 N.J. 636, 527 A.2d 459 (1987).

14 Hellwig v. J.F. Rast & Co., Inc., 110 N.J. 37, 39, 538 A.2d 1243, 1244 (1988).

15 215 N.J. Super. at 248, 521 A.2d at 896.

16 *Id.* During the layoff period Hellwig remained idle at home. *Id.* His only activities were watching television, cutting the grass and going to the store. *Id.* at 247, 521 A.2d at 896. In the hopes of obtaining work, he occasionally reported to the union hall. *Id.*

17 *Id.* at 248, 521 A.2d at 897. Repairing the pasteurizer was strenuous because it was located at an upper level of the plant. *Id.* at 249, 521 A.2d at 897.

18 *Id.* Hellwig and his co-worker had to lift fifty-pound steel doors over their heads from cramped positions because of the conveyors overhead. *Id.* The appellate court noted that decedent died in the summer, on July 31, 1983, and that his home and car were air conditioned. *Id.*

19 *Id.* The welding equipment included a large bottle of gas and a substantial quantity of welding lead which had to be moved to the pasteurizer area by pushing and pulling it under the conveyors. *Id.* Two trips were necessary to move the lead from the maintenance department to the elevator. *Id.*

20 *Id.* The ladder, placed at a seventy degree angle, separated the pasteurizer from the welder. *Id.*

21 *Id.*

22 *Id.*

topsy revealed that the cause of death was a heart attack.[23]

The compensation judge granted Mrs. Hellwig's claim for dependency benefits, finding that the decedent's work effort was "strenuous and in excess of the wear and tear of [the claimant's] daily living."[24] Consequently, the judge concluded that the work effort was a substantial cause of Hellwig's heart attack as required by the Statute.[25]

Rast appealed the award of benefits contending that to obtain dependency benefits the claimant must prove that the work effort which induced the heart attack was in excess of those stresses normally encountered at work or at home.[26] Additionally, Rast asserted that the judge committed reversible error by refusing to consider the type of work Hellwig performed at the plant prior to his layoff.[27] Although the appellate division agreed that the record was void of any evidence of the rigors of the prior work effort of the defendant, it affirmed the compensation judge's decision.[28] The appellate division disagreed with the *Prusecki* court's interpretation of section 34:15-7.2 of the New Jersey Statutes and held that the legislature only intended to require that the heart attack be caused by "the work effort or strain involving a substantial condition in excess of the 'wear and tear of the claimant's daily living' *exclusive of work*."[29] The supreme

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23 *Id.* at 249-50, 521 A.2d 897.

24 *Id.* at 250, 521 A.2d at 897.

25 *Id.* Both plaintiff and defendant called expert witnesses to determine the cause of death. *Id.* Defendant's expert testified that the death was caused from "fatal ventricular fibrillation" which was the inevitable result of Hellwig's coronary artery disease. *Id.* However, the judge accepted the opinion of plaintiff's expert that Hellwig died from a heart attack due to the increase in work effort. *Id.* at 249-50, 521 A.2d at 897.

26 *Id.* at 251, 521 A.2d at 898. *See* Prusecki v. Branch Motor Express, 206 N.J. Super. at 49, 501 A.2d at 1011. For a more complete discussion of *Prusecki* see *infra* notes 80-84 and accompanying text.

27 *Hellwig*, 110 N.J. at 251, 521 A.2d at 898. The compensation judge determined a consideration of prior work effort was irrelevant under the statute. *Id.*

28 *Id.*

29 *Id.* (quoting N.J. STAT. ANN. § 34:15-7.2) (emphasis added). The appellate division noted that the language of the original proposed amendment to the Workers' Compensation Act in 1978 required work effort in excess of the routine duties of one's employment. *Id.* at 252, 521 A.2d at 898-99. However, the court noted the adopted language of N.J. STAT. ANN. § 34:15-7.2 simply requires work effort greater than the wear and tear of claimant's daily living. *Hellwig*, 215 N.J. Super. at 252, 521 A.2d at 898. The court also cited to the JOINT STATEMENT TO SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 802 and ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 840, [hereinafter JOINT STATEMENT] stating that the purpose of the legislation was to counter the effects of the *Dwyer* decision. *Hellwig*, 215 N.J. Super. at 252, 521 A.2d at 898-99. The *Dwyer* court ruled that the claimant

court affirmed the lower court's decision in *Hellwig*, holding that the claimant established that the work effort sufficiently caused the death.[30] The supreme court based its decision upon a trilogy of workers' compensation cases involving coronary disease, together with its interpretation of the legislative intent of section 34:15-7.2 of the New Jersey Statutes.[31]

The first in this trilogy of cases was *Seiken v. Todd Dry Dock*.[32] In *Seiken*, the petitioner was employed as a laborer in a shipyard.[33] While at work, performing his usual duties, the petitioner and a co-worker were lifting a 250-pound piece of scrap metal onto a truck when petitioner suffered chest pains and shortness of breath.[34] Shortly thereafter, the petitioner collapsed.[35] He was examined by the plant physician who found his heart in satisfactory condition and advised him to see his own doctor.[36] The petitioner's physician diagnosed him as having coronary thrombosis and admitted him to the hospital.[37] Subsequently, he suffered multiple heart attacks and was unable to work.[38] The New Jersey Supreme Court determined that the petitioner failed to establish the statutory prerequisites[39] to prove a compensable injury by a preponderance of the evidence.[40] After reviewing prior

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must prove that the ordinary work effort probably contributed substantially to the acceleration of the existing heart disease and death. Dwyer v. Ford Motor Co., 36 N.J. 487, 493, 178 A.2d 161, 164. In affirming the compensation judge's decision in *Hellwig*, Judge Stern, in concurrence, emphasized that the conflict between *Hellwig* and *Prusecki* constituted express grounds for certification to the New Jersey Supreme Court. *Hellwig*, 215 N.J. Super. at 255, 521 A.2d at 900 (Stern, J., concurring).

30 *See Hellwig*, 110 N.J. at 55, 538 A.2d 1253. In addition, the supreme court also noted the importance of the testimony of medical experts to determine the causal relations between work effort and heart failure. *Id.* at 52-54, 538 A.2d 1252-53. *See also supra* note 7.

31 *Hellwig*, 110 N.J. at 42-51, 538 A.2d at 1246-51.

32 2 N.J. 469, 67 A.2d 131 (1949).

33 *Id.* at 472, 67 A.2d at 132.

34 *Id.* at 473, 67 A.2d at 132.

35 *Id.*

36 *Id.*

37 *Id.*, 67 A.2d at 132-33.

38 *Id.*, 67 A.2d at 133.

39 *Id.* at 474, 67 A.2d at 133. In 1949, the applicable statute establishing a compensable injury under the Workers' Compensation Act required that the alleged injury arise in the course of employment. N.J. STAT. ANN. § 34:15-7 (West 1959) (repealed). For a more complete version of the requirements for compensability under the Act see *supra*, note 3.

40 *Id.* at 474-75, 67 A.2d at 133 (citing Parker v. John A. Roebling's Sons Co., 135 N.J.L. 440, 52 A.2d 681 (Sup. Ct. 1947)). The preponderance of the evidence standard stems from the presumption that heart disease is a result of natural causes. *Id.* Thus, the petitioner has the burden of proving that his employment

workers' compensation case law, the court concluded that the claimant must prove unusual exertion or strain beyond that of mere employment to establish liability.[41] The court concluded that the petitioner failed to meet the test of proving that his heart attack occurred due to unusual exertion or strain beyond that of his employment.[42]

The interpretation of section 34:15-7.2 of the New Jersey Statutes formulated in *Seiken*, namely the "unusual strain" standard, was expressly overruled in the second case of the trilogy, *Cuiba v. Irvington Varnish and Insulator Co.*[43] The *Cuiba* court held that if the strain at work aggravated a pre-existing physical infirmity, the resulting injury is compensable under the Workers' Compensation Act.[44] The employee in *Cuiba* was employed as a millwright for over fifteen years.[45] The very nature of the job involved varying degrees of exertion due to the weight and dimensions of the machinery.[46] The claimant suffered a fatal heart attack shortly after installing an oven drive shaft unit weighing approximately 250 pounds.[47]

In denying the employee benefits, the deputy director of the Workers' Compensation Board concluded that the heart attack was most probably the natural result of progressive heart disease and not an incident of his employment.[48] The county court af-

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was a factor without which the injury would not have occurred. *Id.* at 475, 67 A.2d at 133 (citing Ames v. Sheffield Farms Co., 137 N.J.L. 336, 59 A.2d 811 (1948), *aff'd*, 1 N.J. 11, 12, 61 A.2d 502 (1948); Lohndorf v. Peper Bros. Paint Co., 134 N.J.L. 156, 159, 46 A.2d 439, 440 (Sup. Ct. 1946), *aff'd*, 135 N.J.L. 352, 52 A.2d 61 (1946), Grassgreen v. Ridgeley Sportswear Mfg. Co., 2 N.J. Super. 62, 72, 64 A.2d 616, 621 (App. Div. 1949); Joseph Dixon Crucible Co. v. Law, 135 N.J.L. 528, 531, 53 A.2d 215, 217 (Sup. Ct. 1947)).

41 *Seiken*, 2 N.J. at 476, 67 A.2d at 134. *See* Grassgreen v. Ridgeley Sportswear Mfg. Co., 2 N.J. Super. 62, 64 A.2d 616 (denying workers' compensation benefits to employee who suffered seizure while sorting fifty-pound bundles of cloth during his routine work duties); Ames v. Sheffield Farms Co., 1 N.J. 11, 61 A.2d 502 (denying benefits to milk driver who suffered fatal heart attack while driving milk truck on usual route); Lohndorf v. Peper Bros. Paint Co., 134 N.J.L. 156, 46 A.2d 439 (denying benefits to paint store manager for heart attack suffered after moving one hundred-pound can of paint).

42 *Seiken*, 2 N.J. at 477, 67 A.2d at 134.

43 27 N.J. 127, 141 A.2d 761 (1958).

44 *Id.* at 136, 141 A.2d at 765.

45 *Id.* at 132, 141 A.2d at 763. A millwright usually worked with a group of workers who maintained machinery throughout the plant. *Id.*

46 *Id.*

47 *Id.* at 131, 141 A.2d at 763. The work was done in an area two feet wide with an eight or nine foot ceiling above the work level. *Id.* at 133, 141 A.2d at 764. The temperature in the work area was thirty degrees higher than outside. *Id.*

48 *Id.* at 131, 141 A.2d at 763. Evidence showed that one of decedent's doctors

firmed the director on the grounds set out in *Seiken*.[49] The supreme court found that the events which occurred in *Cuiba* constituted a compensable injury within section 34:15-7.2 of the New Jersey Statutes.[50] According to the court, the work strain accelerated the progress of a pre-existing heart condition and was therefore a contributing factor in the death.[51] The court posited that whether or not the work strain was in excess of that customarily performed by the employee was not relevant.[52] To support this contention, the *Cuiba* court relied on early English decisions holding that ordinary work effort could lead to a compensable accident.[53] While the *Cuiba* court overruled *Seiken* on the issue of work effort, the court reaffirmed *Seiken's* holding that the claimant has the burden of proving, by a preponderance of evidence, that the work effort was a contributing factor in the injury or death.[54] Consequently, the majority noted that " 'reasonable probability' is the standard of persuasion."[55] Although the court stated that circumstantial or presumptive evidence may be produced to demonstrate that the offered hypothesis is a rational inference, it stressed that the reasonable probability standard requires evidence sufficient for the reasonable person to believe that the tendered hypothesis is the fact.[56]

Thereafter, in *Dwyer v. Ford Motor Co.*,[57] the last of the trilogy, this standard was again evaluated and affirmed.[58] The decedent in *Dwyer* was a forty-one-year-old laborer employed at the

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diagnosed his condition as angina pectoris fifteen years earlier. *Id.* at 133, 141 A.2d at 764.

[49] *Id.* at 131, 141 A.2d at 763. The county court found that the work effort was not more strenuous than the work for which the employee was hired and which he customarily performed. *Id.*

[50] *Id.* at 134-35, 141 A.2d at 764-65.

[51] *Id.*

[52] *Id.* at 136, 141 A.2d at 765.

[53] *Id.* (citing Clover, Clayton & Co., Ltd. v. Hughes (1910) A.C. 242, workman compensated for rupture of an advanced aneurism of the aorta while tightening nut with spanner). The *Ciuba* court determined the death was caused by ordinary work effort even though the aneurism was so advanced that anything could have brought about its rupture. *Id.*

[54] *Id.* at 138, 141 A.2d at 766-67. *Cf.* Ames v. Sheffield Farms Co., 137 N.J.L. 336, 59 A.2d 811 (1948), *aff'd*, 1 N.J. 11, 61 A.2d 502 (1948); Lohndorf v. Peper Bros. Paint Co., 134 N.J.L. 156, 46 A.2d 439 (1946), *aff'd*, 135 N.J.L. 352, 52 A.2d 61 (1946); Grassgreen v. Ridgeley Sportswear Mfg. Co., 2 N.J. Super. 62, 64 A.2d 616 (App. Div. 1949); and Joseph Dixon Crucible Co. v. Law, 135 N.J.L. 528, 53 A.2d 215 (Sup. Ct. 1947).

[55] *Ciuba*, 27 N.J. at 139, 141 A.2d at 767.

[56] *Id.* at 139-40, 141 A.2d at 767.

[57] 36 N.J. 487, 178 A.2d 161 (1962).

[58] *Id.*

Ford Motor factory.[59] After experiencing chest pains, he was diagnosed as having rheumatoid arthritis and angina pectoris,[60] and was accordingly hospitalized for a month.[61] Fourteen months after his release from the hospital, Dwyer again complained of chest pains.[62] At that time his doctor prescribed nitroglycerin pills and advised him that he could return to work.[63] Accordingly, Dwyer returned to work and performed his usual duties, although sluggishly.[64] However, shortly thereafter Dwyer died from an "acute coronary occlusion with posterior wall infarction."[65]

The application for benefits on behalf of Dwyer was denied by both the Division of Workers' Compensation and the appellate court.[66] The New Jersey Supreme Court, however, reversed and held that the work effort must have been a substantial factor contributing to the heart attack before benefits could be awarded.[67] According to *Dwyer*, the worker seeking compensation benefits must prove by a preponderance of credible evidence that the work effort contributed to the heart attack in a material way.[68] The court emphasized that the claimants must prove that

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59 *Id.* at 498, 178 A.2d at 166.

60 *Id.* The attending physician listed decedent's ailments in order of importance with angina pectoris being last on the list. *Id.* In addition, the doctor noted that decedent's anginal pains were typical and could be promptly relieved by nitroglycerin. *Id.*

61 *Id.*, 178 A.2d at 166-67.

62 *Id.* at 499, 178 A.2d at 167. The decedent's expert testified that at this time the decedent suffered an attack of acute coronary insufficiency which thereafter continued until his death. *Id.* at 503, 178 A.2d at 169.

63 *Id.* at 500, 178 A.2d at 167. The doctor testified at trial that he told decedent only to perform light duties at work and advised the decedent against heavy lifting. *Id.*

64 *Id.* One of decedents co-workers testified that decedent had trouble carrying on his work and that decedent looked white and strained. *Id.* The co-worker further testified that this was unusual given decedent's past performance at work. *Id.* at 501, 178 A.2d at 168.

65 *Id.* at 502, 178 A.2d at 168-69. Both medical experts agreed with the "basic medical principle that stress or strain can be a contributory factor in the aggravation of an existing coronary insufficiency." *Id.* However, Dwyer's expert testified that the cumulative effect of decedent's repeated exertion increased the extent of the coronary insufficiency and was a substantial contributing factor in producing his heart failure. *Id.* at 504, 178 A.2d at 169-70. Ford's expert testified to the contrary, stating "there must be a stress or strain incident just prior to the onset of his initial symptom which is usually pain" in order for a causal connection to exist. *Id.* at 504, 178 A.2d at 171.

66 *Id.* at 491, 178 A.2d at 163.

67 *Id.* at 506-07, 178 A.2d at 171.

68 *Id.* The court also noted that the probability of duplicating work stress in routine activity is irrelevant. *Id.* at 509, 178 A.2d at 172. Only exertion encoun-

the work effort was of an appreciable degree, a degree greater than de minimis, and that the work was capable of contributing to the heart attack.[69] Accordingly, the court emphasized that the mere assertion of a reasonably probable connection between the work strain and heart attack is not enough.[70] Therefore, the court concluded that such evidence must be evaluated in its totality and considered in light of the medical opinions offered.[71]

In finding that the petitioner met the preponderance of the evidence standard,[72] the court determined that the events which occurred over the last hours of the decedent's life were indicative of the damaging effect of physical strain on an ailing heart.[73] The court noted that proof of one specific incident of work stress is not essential if it is determined that the totality of the decedent's work effort contributed to the heart attack.[74] In addition, the court held that whether or not the work stress could be duplicated in routine home activity is irrelevant in awarding workers' compensation benefits.[75]

In light of the holdings enunciated in the foregoing trilogy of cases, the legislature, in 1979, amended section 34:15-7.2 of the New Jersey Statutes to include a "wear and tear" clause and a "substantial condition" in excess of daily living requirement.[76] Subsequent courts interpreted the new Statute literally, barring compensation unless the claimant could prove that his work strain was unusual and in excess of strain regularly encountered

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tered at work can be considered when determining contributing factors. *Id.* The degree of a claimant's previously impaired heart condition is of no consequence. *Id.*

69 *Id.* at 493-94, 178 A.2d at 164.

70 *Id.* at 494, 178 A.2d at 165.

71 *Id.* at 495, 178 A.2d at 165.

72 *Id.* at 512-13, 178 A.2d at 174. For recitation of expert testimony concerning causation of death, see *id.* at 502-505, 178 A.2d. 169-70.

73 *Id.* at 508, 178 A.2d 172. The court found the testimony of decedent's co-workers on his performance that day at work consistent with the testimony of decedent's expert. *Id.* The co-workers noted that decedent seemed ill in the morning and looked worse later in the day. *Id.* Co-workers further commented that decedent failed to eat during the break and that he took a number of pills. *Id.* at 501, 178 A.2d 171. These facts are consistent with decedent's complaints upon admission to the hospital. *Id.* Decedent complained of severe precardial pains which began approximately three hours earlier, while he was still at work. *Id.* at 502, 178 A.2d at 169.

74 *Id.* at 494, 178 A.2d at 164. This was the opinion of Dwyer's expert which the court accepted.

75 *Id.* at 509, 178 A.2d at 172.

76 N.J. STAT. ANN. 34:15-7.2 (West 1979 & Supp. 1987).

in routine home activity.[77] The recognized purpose of the new amendment was "to counter the far-reaching effects of *Dwyer*."[78] In sum, courts awarded benefits if the claimant could prove that the heart attack was the result of job-related work strain in excess of the petitioner's daily living.[79]

The court in *Prusecki v. Branch Motor Express*,[80] reversed a ruling which awarded benefits to an employee who suffered a heart attack because he failed to prove that the work strain exceeded the wear and tear of his daily life.[81] The claimant, a fifty-three-year-old forklift operator was a heavy smoker.[82] He had no history of heart trouble, but suffered a heart attack shortly after a strenuous day at work.[83] The court agreed with the petitioner's expert that the heart attack was caused by work strain, but found insufficient evidence in the record to support the conclusion that the work strain exceeded the stress of his routine home activity.[84]

Interestingly, in a case with similar facts, the trial court in Essex County, in an unpublished opinion, refused to award benefits to a widow for a fatal heart attack her husband suffered while working as a bricklayer.[85] The court in *Bubulka v. Truesdale Constr.*

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77 *See* Perno v. Ornstein Fashions Inc., 196 N.J. Super. 174, 481 A.2d 1166 (App. Div. 1984) (holding that an employee in a sewing factory could not collect benefits because she failed to prove work strain exceeded daily routine activity). *See also* Prusecki v. Branch Motor Express, 206 N.J. Super. 39, 501 A.2d 1006 (App. Div. 1985) (holding that forklift operator failed to establish that work effort exceeded routine daily stress of strain requirement).

78 *Perno* at 175, 481 A.2d at 1167 (citing JOINT STATEMENT, *supra* note 29).

79 *See* Prusecki, 206 N.J. Super. at 45, 501 A.2d at 1009.

80 206 N.J. Super. 39, 501 A.2d 1006.

81 *Id.* at 42, 501 A.2d at 1007.

82 *Id.*

83 *Id.* at 41, 501 A.2d at 1007, claimant spent most of his shift unloading heavy freight from a trailer. *Id.* A portion of the trailer was blocked by a large crate. *Id.* This crate forced the claimant to manually unload the freight by climbing over the obstruction. *Id.* Normally this work was done by a machine, but because of the circumstances it had to be done by hand. *Id.* Claimant asked for assistance at the beginning of his shift, but no help was sent until his shift was almost over. *Id.* Prusecki began to sweat heavily before his break at 6:00 a.m. *Id.* at 42, 501 A.2d at 1007. During his break he ate and laid down for half an hour. *Id.* He felt dizzy and complained of pain in his elbows. *Id.* He returned to work for another hour and a half before co-workers took him to the hospital. *Id.*

84 *Id.* at 48, 501 A.2d at 1011. Thus, the case was remanded for further findings of fact. *Id.* at 50, 501 A.2d at 1012.

85 *See* Bubulka v. Truesdale Constr. Corp., CP 81-894 (Workers Compensation Division, January 10, 1984). Decedent was "bricking up" a doorway near a truck tunnel at the mall in Short Hills. *Id.* at 3, 4. The job involved climbing a ladder to get onto a small scaffold. Once on the scaffold, decedent cut and trimmed ten-pound cement blocks to fit into the doorway. *Id.* Much of this work was done from a squatting, bent-over position. *Id.*

Corp.,[86] interpreted the statute consistently with *Prusecki*.[87] The rationale for the denial of benefits rested on four factors: the absence of complaints or visible signs of distress by the decedent on the day of his death; the short time between his lunch break and his collapse; the absence of certain medical evidence supporting claimant's expert's theory of death; and undisputed expert testimony that decedent's work efforts were not in excess of his routine daily activity.[88] The *Bubulka* court interpreted the amendment to section 34:15-7.2 of the New Jersey Statutes as severely restricting the dicta set out in *Dwyer*.[89]

Consequently, the court in *Perno v. Ornstein Fashions*,[90] denied benefits because the claimant failed to prove that the stress at work was abnormal or involved a "substantial condition, event or happening" which probably caused the injury.[91] Once again, the court literally interpreted the language of the 1979 amended Statute. The claimant in *Perno*, a sewing machine operator, had a pre-existing heart condition and on the day of the injury her work effort was no greater than usual.[92] The court found "no

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86 *Id.*

87 *Id.* The *Bubulka* court, in examining the legislative history of N.J. STAT. ANN. § 34:15-7.2 and the original Senate Bill No. 802, reasoned that "the Legislature intended not only to reject a requirement that compensability be based on unusual work effort or strain, but that 'daily living' was *not* to be equated with 'daily livelihood.' " *Bubulka* at 28.

88 *Id.* at 25-27. The court noted that there was testimony at trial that decedent felt fine in the morning on the date of his death. *Id.* at 3. Also, the proofs indicated that decedent had a lunch break from 11:55 a.m. to 12:30 p.m. and that decedent collapsed between 12:40 and 1:00 p.m. *Id.* The court particularly emphasized that decedent only moved two to three bricks between his lunch break and his collapse. *Id.* at 4. Thus the work effort was not strenuous. *Id.*

Finally, there was undisputed testimony that the decedent's work effort was equivalent to walking three miles per hour. *Id.* at 8. Thus, the court concluded that the decedent's work effort was not in excess of his routine daily activity. *Id.* at 25-27.

89 *Id.* at 28-30.

90 196 N.J. Super. 174, 481 A.2d 1166 (App. Div. 1984).

91 *Id.* at 179, 481 A.2d 1169 (quoting N.J. STAT. ANN. § 34:15-7.2). *See also supra* note 77.

92 *Perno*, 196 N.J. Super. at 177, 481 A.2d 1168. The claimant in *Perno* was a fifty-six-year-old woman with forty years of experience as a sewing machine operator. *Id.* She said her job required her to carry large bundles of fabric to her station, three or four times a day and that this was strenuous for her. *Id.* She alleged that this work effort contributed to her existing heart disease. *Id.* Claimant had been experiencing angina and taking nitroglycerin pills for close to five years before she began her job with the defendant company. *Id.* One day at work she complained of chest pains and was sent home. *Id.* After seeing her doctor, she was hospitalized for a week and discharged with a final diagnosis of "chest pains of undetermined etiology possible angina pectoris, urinary tract infection, anxiety and exogenous obesity." *Id.* Claimant did not return to work. *Id.* Petitioner's expert testified at trial

triggering event from either normal or excessively abnormal work related activity" which caused the attack.[93] The *Perno* court opined that the heart attack was the inevitable result of the claimant's existing heart condition and that it was merely a coincidence that the attack occurred at work.[94] The court denied workers' compensation benefits.[95]

Thus, the courts in both *Prusecki* and *Perno* interpreted the "substantial strain" requirement literally to mean in excess of normal work strain at the employee's job.[96] The "job-related in a material degree" clause was also interpreted literally.[97] The denial of workers' compensation benefits in these cases was in direct conflict with the legislature's purpose in amending section 34:15-7.2 of the New Jersey Statutes in 1979.[98] These decisions did not counter the far-reaching effects of *Dwyer*, but rather suggested a revival of the *Seiken* standard requiring proof of unusual effort or strain, in excess of the work normally performed by the employee.[99] Thus, the supreme court in *Hellwig v. J.F. Rast & Co.*[100] overruled these literal interpretations of the Workers' Compensation Statute and held that ordinary work effort may lead to a compensable injury.[101]

The *Hellwig* court initially traced the evolution of workers' compensation cases from *Seiken* to *Prusecki* as well as the amend-

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that her work effort aggravated her underlying heart condition. *Id.* The compensation judge allowed seven and one-half percent of total permanent disability award to pay for the week's treatment at the hospital, as well as eight weeks of temporary disability. *Id.* at 149, 481 A.2d at 1169. The judge determined claimant could have returned to work. *Id.*

The appellate division reversed finding that at best, "petitioner suffered a transitory angina episode coincident to her longstanding, underlying disease process." *Id.* The appellate court found nothing to satisfy the requirements of N.J. STAT. ANN. § 34:15-7.2. *Id. See also supra* note 77.

93 *Perno*, 196 N.J. Super. at 180, 481 A.2d 1170. The proofs made clear that petitioner had a history of progressive and degenerative heart disease. *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

97 *See supra* notes 80-95 and accompanying text.

98 *See supra* note 32.

99 *Hellwig*, 110 N.J. at 50, 538 A.2d at 1251. More support for this contention may be found in the unpublished opinion of Yalcin v. Airtron Division of Litton Indus., C.P. 83-24434 (N.J. Div. of Workers' Comp., March 16, 1987). In *Yalcin*, the court expressly rejected the *Prusecki* wear and tear rationale labeling it a revision to the reasoning of the appellate division in *Hellwig*. *Id.* The *Yalcin* court adopted the appellate division's rationale in *Hellwig* and awarded benefits to a machinist who suffered a myocardial infarction while on the job. *Id.*

100 110 N.J. 37, 538 A.2d 1243 (1988).

101 *Id.*

ments to the New Jersey Worker's Compensation Act.[102] More specifically, the supreme court compared the standards set out in *Dwyer* with the language of the 1979 amendment to section 34:15-7.2 of the New Jersey Statutes to determine the legislature's true intent.[103] The *Hellwig* court noted that the amended Statute required "work effort or strain in excess of the wear and tear of claimant's daily living."[104] The court recognized that this was a substantial change from the dicta in *Dwyer* which purported the irrelevancy of duplicating work stress and strain in routine home activity.[105] Thus, in accordance with the language of the new Statute, the court pointed out that the claimant in *Hellwig* lived in an air conditioned home and drove an air conditioned car.[106] He did not exercise routinely and had been especially immobile due to the seven-week layoff from work.[107] Thus, any stress or strain at work would be in excess of that found in his routine home activity.[108]

The *Hellwig* court found another modification of *Dwyer* in the amendment to the Statute, namely the redefining of "material degree."[109] According to the statute, "material degree" means "an appreciable degree or a degree *substantially greater than de minimis*."[110] Examining the change in language used in the Statute the court was persuaded that the legislature intended to decrease the quantum of proof required to establish a compensable coronary injury.[111] Disregarding the dicta in *Dwyer*, stating the irrelevancy of duplicating work strain in ordinary home activity, the *Hellwig* court held that ordinary work effort is sufficient to establish causation for a compensable coronary accident.[112] The court interpreted the statutory language as focusing on the intensity and duration of the work strain prior to the accident and

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102 *Id.* at 42, 538 A.2d at 1246.

103 *Id.* at 48-51, 538 A.2d at 1250-51.

104 *Id.* at 48, 538 A.2d at 1250 (quoting N.J. STAT. ANN. § 34:15-7.2). The supreme court noted that the appellate division in *Prusecki* applied this same reasoning in denying benefits to the claimant. *Id.*

105 *Id.* at 49, 538 A.2d at 1250.

106 *Id.* at 40, 538 A.2d at 1245 (quoting 215 N.J. Super. 247, 521 A.2d 896).

107 *Id.*

108 *Id.* at 54, 538 A.2d at 1253.

109 *Id.* at 49, 538 A.2d at 1250.

110 *Id.* at 49, 538 A.2d at 1250 (quoting N.J. STAT. ANN. 34:15-7.2) (emphasis in original). In *Dwyer*, the court defined material degree as "an appreciable degree or a degree substantially greater than de minimis." 36 N.J. at 493, 178 A.2d at 164.

111 *Hellwig*, 110 N.J. at 49, 538 A.2d at 1250-51.

112 *Id.* at 50, 538 A.2d at 1251.

evaluating its probability of causing cardiac dysfunction.[113] Thus, if a heart attack occurs at the culmination of a period of ordinary work effort, it may be compensable under the Statute.[114] The court concluded that the legislature intended that the work strain be measured against the claimant's daily living and routine activity exclusive of work.[115]

Further, the court noted the new statutory test requires that the work effort involve a substantial event or happening that caused, in a material degree, the heart failure.[116] The *Hellwig* court, realizing the inevitable problem of medical certainty in establishing causation in these cardiac cases, noted the need for greater agreement in the medical community for standards to determine the causal link between cardiac dysfunction and work effort.[117]

In an effort to establish fixed standards, the supreme court in *Hellwig* cited the suggested guidelines noted by the 1977 American Heart Association's Committee on Stress, Strain and Heart Disease.[118] The court utilized these guidelines to support its conclusion that the claimant in *Hellwig* suffered a heart attack as a result of his work stress and strain.[119] The court determined that

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113 *Id.* at 50, 538 A.2d at 1251.

114 *Id.* at 51, 538 A.2d at 1251.

115 *Id.* at 54, 538 A.2d at 1253. The court also noted that the worker's medical history should be taken into account as well as the precipitating work effort and the length of time between the work effort and the attack. *Id. See also* American Heart Association's Committee on Stress, Strain and Heart Disease, Circulation, 55:825A, 826A (1977) (which suggests guidelines for determining the causal relation between occupational and non-occupational stresses and heart disease).

116 *Hellwig*, 110 N.J. at 39, 538 A.2d at 1244 (citing N.J. STAT. ANN. § 34:15-7.2).

117 *Hellwig*, 110 N.J. at 52, 538 A.2d at 1252. In *Hellwig*, *Prusecki*, and *Dwyer*, the medical experts disagreed as to the cause of the heart attack and the compensation judges were forced to choose between conflicting testimony. *Hellwig*, 110 N.J. at 51, 538 A.2d at 1251; *Dwyer*, 36 N.J. at 513-14, 178 A.2d at 174-75; *Prusecki*, 206 N.J. Super. at 43-44, 501 A.2d at 1010-11. Inevitably, the court recognized that compensation judges will evaluate conflicting expert testimony. *Hellwig*, 110 N.J. at 51, 538 A.2d at 1251. Providing guidelines to establish causal links between stress and injury, the court noted, would be a significant aid to these judges. *Id.* The *Hellwig* court also stressed that compensation judges are under a duty to be informed of the contemporary medical standards so that they may evaluate conclusory expert testimony. *Id.*

118 *Id.* at 52, 538 A.2d at 1253. The court noted that the committee's report concluded that medical science cannot determine when a person with underlying heart disease will suffer a heart attack without analyzing the stress of work effort, physical stress of sufficient duration and intensity may trigger a heart attack, and the causal link between work effort and injury is directly related to the time span between the precipitating event and the injury. *Id.* at 53-54, 538 A.2d at 1253.

119 *Id.* at 54, 538 A.2d at 1253. The court set forth that an evaluation of any coronary claim should include an account of the claimant's medical history, the

the claimant had no history of heart disease, there was a sufficient magnitude of work strain, and only a short period had elapsed between the work effort and his myocardial infarction.[120] Thus, the court concluded that the injury was compensable.[121] The court opined that the legislature, in amending the Workers' Compensation Act, sought to modify the *Dwyer* standard and require more reliable proof of a causal connection between work strain and cardiac dysfunction.[122] Courts now require that the claimant prove by a preponderance of credible evidence that the work effort exceed that stress normally encountered during routine home activity.[123] The court stated that no standards had yet been established to measure the equivalents of routine work stress with that of physical activity outside of work.[124] Inevitably, medical experts hired by opposing parties will have different opinions on this subject as well as the causal link between work stress and heart disease.[125] Thus, the New Jersey Supreme Court's interpretation of section 34:15-7.2 of the New Jersey Statutes in *Hellwig* does little to clarify the stress and strain required to compensate coronary injury.

By their interpretation of the Statute, the *Hellwig* court seems to be opening the floodgates for workers' compensation claims, because in most coronary injury cases the claimant's physical stress at work exceeds the stress in his leisure time. In holding that ordinary work effort may lead to a compensable injury, and

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duration and intensity of the work effort preceding the accident and the time lag between the work strain and the cardiac disfunction. *Id.* at 52-53, 538 A.2d at 1252-53 n.3.

120 *Id.* at 55, 538 A.2d at 1253.

121 *Id.*

122 *Id.* at 54, 538 A.2d at 1253. The court reasoned that the legislature's choice of language in N.J. STAT. ANN. § 34:15-7.2: "substantial condition, event or happening," together with its redefinition of material degree, as well as the requirement of causation between work effort and injury, all indicate an enhancement of the *Dwyer* standards. *Id.*

123 *Hellwig*, at 51, 538 A.2d at 1251. Thus, in the case of a recreational jogger, his work strain could be compared with his running. *Id.* at 48, 538 A.2d at 1250.

124 *Id.* at 52, 538 A.2d at 1252. The court stated that this problem was recognized by Chief Justice Weintraub in his concurring opinion in *Dwyer*. *Id.* (citing *Dwyer*, 36 N.J. 487, 513, 178 A.2d 161, 174 (Weintraub, C.J. concurring)). Chief Justice Weintraub noted that in heart matters, conflicting theses plague the medical profession as to "(1) whether stress or strain *can* precipitate certain disabling injuries or worsen them, and (2) what criteria must be met to establish *medically* a causal connection when it is agreed that stress and strain can be a factor." *Dwyer*, 36 N.J. 487, 513, 178 A.2d 161, 174 (Weintraub, C.J. concurring). Thus, inevitably judges are pressed to choose between conflicting medical testimony. *Id.* at 514, 178 A.2d at 175 (Weintraub, C.J. concurring).

125 *Id.*

abandoning the unusual strain rule of *Seiken*, the court has provided that any accident, occurring while on the job, is compensable if it is medically possible that the work effort may have contributed to the injury. Therefore, a claimant can meet his burden of proof by simply introducing favorable expert testimony. Compensation will be granted unless the judge finds counter-testimony more compelling.

The new Statute calls for work effort contributing in some material degree—a degree substantially greater than de minimis.[126] It seems unlikely that this change in proof from the *Dwyer* standard will have any real impact because of the uncertainty in establishing a causal link between work effort and heart disease.[127] What one expert might determine contributed to a coronary accident, another might not. Thus, the increased standard of proof has little significance in the larger scheme of workers' compensation cases. While the *Hellwig* court relied on the American Heart Association's report on stress and strain, those guidelines are sure to change in accordance with the constant leaps and bounds made in the medical field. It appears the supreme court, however, affirmed the compensation judge's award of benefits in *Hellwig* not only because of the magnitude of the work effort, but also because of the short interval between the work effort and decedent's loss of consciousness.[128]

The problem with this interpretation of the Statute is that judges will inevitably be forced to determine which medical experts are more convincing and decide claims solely on this basis. Until there is more agreement in the medical field on the causal link between stress and heart disease, however, there appears to be no alternate method of deciding workers' compensation claims. Thus, compensation judges have great discretion in awarding benefits.

Nevertheless, the New Jersey Supreme Court's interpretation of the Statute seems to be in accordance with its legislative intent of "putting significantly more money into the hands of the more seriously injured workers . . . ."[129] The 1979 amendment to the Workers' Compensation Statute primarily sought to assist those blue collar workers who typically live from paycheck to

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126 *See* N.J. STAT. ANN. § 34:15-7.2.

127 *See Hellwig*, 110 N.J. at 52, 538 A.2d 1243, and *Dwyer*, 36 N.J. 487, 513, 178 A.2d 161, 174 (concurring and dissenting opinions).

128 *See Hellwig*, 110 N.J. at 54, 538 A.2d at 1253.

129 JOINT STATEMENT, *supra* note 29.

paycheck by providing benefits for their widows and children. The cases that follow from *Hellwig* are likely to fulfill this legislative intent.

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