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Workers' Compensation and the Compensability of Attenuated Injuries: "One man's stress is another man's pleasure"

The compensability of stroke-related deaths in workers' compensation cases is a hotly contested matter,¹ and the compensability of strokes precipitated by so-called job-stress has run a dividing line between Georgia courts.² This Article will provide the reader with the history of the law which gave rise to this particular issue and develop the controversy while determining the reasoning behind the opposing opinions. This Article will also provide the reader with some insight into the practical effects of a Georgia Supreme Court decision on this issue one way or another.

In order to aid the reader in a more complete understanding of this issue and its implications, this Article will rely upon a "case study" taken from a pending case before an Administrative Law Judge (ALJ) in a district of Georgia. The purpose of the case study is to give the reader a concrete example of the issue and dispel any ambiguities that may arise in a purely law-oriented discourse. The case study will be extremely specific, so this Article will attempt to incorporate as much of the law surrounding this issue while treating the case study as an undercurrent that flows through the entire Article as a concrete anchoring point.

This Article will first analyze the history of the law that led to the issue in point, including much of the generic law surrounding all of workers' compensation. Beginning with the Georgia Code's authorization


of certain types of injuries as compensable, this Article will detail the emergence of heart attack and stroke cases in workers' compensation law and then proceed to cases dealing with work-related stress.

After detailing the history of stress-related strokes in workers' compensation claims, this Article will discuss the compensability of strokes in workers' compensation from the viewpoint of decided cases as well as from an independent analysis of the law. Job stress will be the next subject this Article discusses using the same analysis. Finally, this Article will provide a suggested solution to the division of the courts on this issue. This solution will be supported by the plain language of the law and overwhelming medical opinion as well as public policy considerations.

I. THE CASE STUDY

John and Jane Smith were married, divorced, remarried (to each other), and redivorced. The second divorce was the result of strained relations between the couple when John became involved in a meretricious relationship. John and Jane had three children, one of whom suffered a handicap that left her permanently disabled. After their second marriage, John worked for the police department as a sergeant on the midnight shift. One year later, John became a forensic specialist and worked eight-hour shifts but was on call twenty-four hours a day. John later became an administrative assistant to the police chief. The latter position was a desk job that did not involve the traditional aspects of law enforcement, such as arrests or criminal investigations. For several years, John also worked part-time jobs to supplement his income, both before and after his final divorce.

John smoked for eighteen years and was diagnosed with high blood pressure a year before he quit smoking. John had been taking medication for his high blood pressure for two years before his death, and in the last week preceding his death, he doubled the medication at the insistence of his doctor. John had beef four or more times a week.

4. These cases usually, if not always, concern either heart attacks or strokes in conjunction with stress and the bearing that work-related stress has on such injuries.
5. The independent analysis mentioned will not only be what the name implies—an analysis of the compensability of strokes in workers' compensation from the viewpoint of the statutory law apart from case law—it will also be a re-evaluation of the case law on point.
6. In an attempt not to obstruct the processes of the pending case upon which this Article is based, the names of the parties will be altered, but the relative facts will remain as true to their nature as possible.
and used salt on his food. Jane flavored their vegetables with margarine and prepared the food with salt.

After the final divorce, Jane confronted John about his meretricious relationship, and he admitted that he had been seeing someone else. John was angry when Jane told him he was spending too much time with his girlfriend and was neglecting the children. There was tension between John and Jane after the divorce when they met to exchange the children.

Under the divorce decree, John only had visitation rights with the three children. Ten percent of John's salary was sent to Jane for the support of the children. John also provided medical support for the children, paying fifty percent of their medical bills after the insurance payment. John was described as not laid back or relaxed, but busy. He took his job seriously and was a very conscientious person. Jane also admitted that John was "a gung-ho deputy" and "a real go-getter." While working as a forensic specialist, John was involved in many physical situations and would come home wound up. Jane stated that John's job as an administrative assistant was also stressful.

II. THE SETTING

In order for the reader to grasp the intricacies of the ensuing discussion, some background information is necessary. The burden of proof in a workers' compensation case is on the claimant to show that the "employee suffered an accidental injury which arose out of and in the course of his employment." The employer takes the employee as he finds him, regardless of knowledge of pre-existing infirmities. The claimant is aided by a presumption that "when an employee is found dead in a place where he might reasonably have been expected to be in the performance of his duties, it is presumed that the death arose out of

7. This background information can be found in a more exhaustive manner in any of the Mercer Law Review, Georgia Survey editions, as there is always a pervasive article concerning workers' compensation and new developments therein.
9. See Lumbermen's Mut. Cas. Co. v. Griggs, 190 Ga. 277, 9 S.E.2d 84 (1940). Maryland Cas. Co. v. Dixon, 83 Ga. App. 172, 173, 63 S.E.2d 272, 274 (1951), further defines this as follows: "An accident arises out of the employment when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of health." Id. at 173-74, 63 S.E.2d at 274 (emphasis added).
his employment . . . ."10 However, "[t]his presumption arises only when the death is unexplained."11

The Georgia Code excludes from its definition of injury a "disease in any form except where it results naturally and unavoidably from the accident" and "heart attack[s], the failure or occlusion of any of the coronary blood vessels, or thrombosis unless it is shown by a preponderance of competent and credible evidence that any of such conditions [heart attack through thrombosis] were attributable to the performance of the usual work of employment."12 In *Echols v. Chattooga Mercantile Co.*,13 the Georgia Court of Appeals adopted the following definition of "accident": "[A]ccident] includes every injury except diseases not naturally growing out of injuries arising out of and in the course of employment . . . ."14 The court of appeals, in *Griggs v. Lumbermen's Mutual Casualty Co.*,15 similarly defined accident as excluding a disease that does not arise out of a physical injury: "A traumatic disease, as distinguished from an ideopathic disease is one which is caused by physical injury and is compensable."16

The presumption that "an employee's death arose 'out of and in the course of his employment' if he is found dead in a place where he may reasonably be expected to be in the performance of his employment,"17 only arises where the death is unexplained.18 With the rise of heart attack and stroke claims in workers' compensation, the courts needed to redefine the term "unexplained." According to the court in *Zamora*, the death itself (i.e. the precipitating factor of the death) must be unexplained.19 In *Odom v. Transamerica Insurance Group*,20 the court found that "[i]n the present case the death was not unexplained. The death certificate was introduced in evidence which stated that death was due to 'cerebral vascular accident due to hypertension.' Therefore, in this case the presumption did not arise . . . ."21

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14. *Id.* at 21, 38 S.E.2d at 678 (quoting *Hardware Mut. Cas. Co. v. Sprayberry*, 195 Ga. 393, 394, 24 S.E.2d 315, 316 (1943)).
16. *Id.* at 450, 6 S.E.2d at 182.
18. *Id.* at 84, 290 S.E.2d at 194.
19. *Id.* at 84, 85, 290 S.E.2d at 194.
21. *Id.* at 157, 251 S.E.2d at 49.
Furthermore, the court in Zamora stated that

where the precipitating causative factor of a stroke is known and explained as hypertension, the claimant is not entitled to rely upon the presumption that the stroke "arose out of" the deceased's employment but must submit probative evidence on the issue of the causal connection between the stroke and the employment.22

However, if the death certificate merely stated that the cause of death was due to "cerebral hemorrhage" and did not include the additional opinion that the cerebral hemorrhage was due to hypertension, there would be a finding that the claimant had a stroke, but the cause of the stroke would be unexplained.

There are three types of evidence a claimant under the statute can employ in order to show that the deceased's death was causally related to his employment: (1) medical opinion, (2) lay observation and opinion, and (3) "natural inference through human experience."23 However, where neither the symptoms of the stroke nor the stroke itself occurred while the employee was carrying out his employment, the lay observation and natural inference are not available as credible evidence to prove causation.24 Therefore, where the "natural inference is not available . . . to establish causation, the issue of causation 'becomes solely a medical question . . . '"25 The policy behind this was discussed by Judge Andrews in his dissenting opinion in Reynolds:

Whether a causal connection exists between the continuous job-related mental stress [and the] stroke involving a cerebrovascular occlusion is not a simple medical question about which a cause and effect relation-

24. Southwire, 250 Ga. at 898, 302 S.E.2d at 93 ("we hold that the 'natural inference' is not available where . . . the symptoms of the heart attack did not occur until the claimant had been home several hours"). See also C&G Clothing Co. v. Rowell, 173 Ga. App. 296, 297, 325 S.E.2d 906, 907 (1985) ("[s]ince the heart attack occurred at home, the natural inference from human experience does not apply").
ship may be inferred by laymen based on common sense or human experience. It is a medical question of the sort that requires expert medical testimony.26

A claimant will have to prove a causal relationship between the accident and the employment through competent medical testimony. It does not matter that other factors induced the injury, as long as the employment contributed to those factors.27 Furthermore, "[t]he fact that such an attack is made more likely or probable by a pre-existing weakened physical condition is not a ground for denying compensation, if there is sufficient competent evidence that it was traumatic rather than ideopathic in origin."28 The court in Georgia Bureau of Investigation v. Worthington29 stated that where there is "inconsistent medical opinion it is the responsibility of the board to assign weight to the testimony of medical experts."30

The courts have long allowed recovery under workers’ compensation for stroke related injuries,31 but job related stress as a causation of injury is relatively new.32 Worthington set the standard for allowing compensation for heart attacks or strokes on the basis of job stress. Job stress was fit into the definition of injury—the disease as traumatic as

26. Id. at 33, 459 S.E.2d at 619.
28. Id. The MERRIAM WEBSTER DICTIONARY 727 (3rd ed. 1974) defines “trauma” as “a bodily or mental injury usually caused by an external agent.” “Idiopathic” is defined as “arising spontaneously or from an obscure or unknown cause.” Id. at 348. One can deduce from the court’s use of such terms that it is further restricting the definition of “injury” under workers’ compensation to one that is caused by external factors arising out of the employment rather than internal factors upon which the employment has no effect.
30. Id. at 629, 255 S.E.2d at 100.
32. There have been only five cases dealing directly with job-related stress in workers’ compensation claims, the first arising in 1979 in Georgia Bureau of Investigation v. Worthington. That was a stroke case and since then only two other cases have involved job stress and strokes—Reynolds Constr. Co. v. Reynolds and Tracor Co. v. Brown. The other cases dealing with stress were heart attack cases: Sutton v. B&L Express, 215 Ga. App. 394, 450 S.E.2d 859 (1994) and Kines v. City of Rome, 96 FCDR 1542 (1996).
opposed to idiopathic—as a causative external factor produced by the work environment. It should be noted that Worthington provided an avenue for claimants to recover for stress related injuries where the stress was entirely divorced from any physical exertion. This was a big step away from the law as it stood before 1979. The court in Shelby Mutual Casualty v. Huff, explained that the claimant must show that some kind of exertion caused the injury.

Where it is shown that the cause of death is cerebral hemorrhage or some other disease with which exertion on the part of the employee as shown by the evidence may be expected to concur in precipitating an attack, and where such claimant, so suffering, exerts himself in the course of his employment, these facts are sufficient . . . to authorize an award . . . . Both the disease and the exertion must be shown, however.

The Appellate Court has further stated that the slightness of the exertion does not matter as long as there is some exertion which contributed to the injury, and it called for a determination of a causal connection between “any specific activity or exertion at work” and the injury. In Springfield Insurance Co. v. Harris, the court stated that “[c]ases involving cerebral hemorrhage have frequently been held compensable in spite of the fact that there has been a lapse of time, extending from a few minutes to several days, between the exertion which it was contended precipitated the cerebral accident and the ultimate death or disability.

Worthington dealt with a fifty-three year old Georgia Bureau of Investigation agent who was primarily responsible for collecting and submitting statistical data on crime in his district. After leaving his house one day and enroute to a firing range, Worthington experienced a dizzy spell. Later in the day, he experienced blurred vision, a headache, and impairment of speech and movement. The doctors who testified stated simply that stress contributed to the stroke. The case of Reynolds presented a similar situation. Reynolds was a partial owner of a construction business owned by his family. The symptoms of his stroke occurred as he was returning home from viewing a potential job

34. Id. at 465, 74 S.E.2d at 253 (emphasis added).
38. Id. at 422, 126 S.E.2d at 921.
site. Reynolds did not exert himself in the traditional sense of physical exertion, and the medical testimony was that stress did not contribute to the stroke, rather that the stroke was an effect of arteriosclerosis.

Despite the medical testimony, the ALJ found the stroke compensable as a result of job stress—to which Reynolds and his brother testified.

The claimant in Kines was a police officer for the City of Rome, Georgia. He died from a heart attack at home at least thirty-six hours after his last work-shift.

The court denied the claimant compensation, because it found that the claimant’s heart attack could have been caused by many other congenital and idiosyncratic factors. The court in Sutton similarly denied compensation to a truck driver who was overweight, smoked, and had hypertension.

III. THE CASE-STUDY APPLIED

The problem that stress related strokes pose for the area of workers' compensation is highlighted nicely by the hypothetical discussed in this Article. The problem, presented succinctly, is that the courts are allowing as compensable a claim that is virtually impossible to verify. This Article will try to justify an abolishment of the compensability of such claims through a defense of the employer in the above hypothetical.

We have already seen that the Georgia Code and case law have prohibited compensation for diseases with the exception of heart attacks, failure or occlusion of coronary blood vessels, or thrombosis and only where the foregoing are shown to be work-related. Our hypothetical claimant, John Smith, will argue that his stroke was a result of the disease called hypertension, or high blood pressure. Such a disease pre-existed his employment and was not a natural and unavoidable result of any injury. Moreover, a stroke cannot be considered a “thrombosis,” which can be compensable under the Code, because such term relates to coronary thrombosis and not cerebral thrombosis.

40. I use the phrase “traditional sense” to represent those cases that Worthington departed from. The court of appeals seems to have recognized emotional stress as a form of exertion which is compensable in workers’ compensation.


42. Id.

43. Kines, 96 FCDR at 1543.

44. Id. at 1543-44.


47. Note that there is no authority for this proposition in the Code itself, but the common doctrines of statutory interpretation, noscitur a sociis—i.e., it is known from its associates—and ejusdem generis—i.e., of the same kind, class, or nature—state that a word with an ambiguous meaning should be read in context and defined by its surrounding
states that strokes are either hemorrhagic, embolic; or thrombotic in origin. Since Smith's stroke was hemorrhagic in origin, it could not be incorporated into the "thrombosis" which the Code allows to be proven by a preponderance of competent and credible evidence. The stroke and underlying hypertension would therefore be excluded from the purview of the Workers' Compensation Act. However, courts have not followed this line of reasoning and in fact have found similar strokes compensable regardless of the Code language. While ignoring the language of the Code—or refusing to analyze it—the courts have not explained the reason for incorporating cerebral problems in the Code's scope of "injury." Perhaps the courts have relied on the doctrine of statutory construction which states that the drafters of the Code did not foresee this problem and therefore omitted it. This analysis is entirely unfounded, however, since cerebral problems (strokes in particular) have existed as long as coronary problems. The courts have simply legislated once again, although the end result (incorporation of cerebral problems as a compensable "injury") may not be far from what the drafters intended to be compensable.

The presumption that "an employee's death arose 'out of and in the course of his employment' if he is found dead in a place where he may reasonably be expected to be in the performance of his employment," should not apply to our hypothetical. First, the death has to occur in a place where the employee was likely to be in the performance of his employment. Our claimant's stroke occurred while at home and his death occurred later at the hospital. In neither of these places is it reasonable to assume that the claimant was engaged in his employment. It is important to note here that the courts have mixed the presumption with causation issues. They have analyzed the presumption in terms of language. WILLIAM N. ESKRIDGE, JR. & PHILIP P. FRICKLEY, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 637-38 (2d ed. 1995). The Code lists heart attacks (coronary by nature) and the failure or occlusion of coronary blood vessels along with thrombosis. Read in context, therefore, thrombosis refers to coronary thrombosis rather than cerebral thrombosis.

49. Judge Andrews dissented in Reynolds where a claimant, on facts similar to the hypothetical, was compensated. Judge Andrews stated that the Code does not apply when the injury at issue is a stroke involving a cerebrovascular occlusion. It may be argued that because the statutory list of medical conditions concludes with the general term "thrombosis," the statute embraces conditions unrelated to the prior enumerated coronary problems and could be construed to include a thrombosis or occlusion of a cerebral vessel. However, I find no evidence that the Legislature intended this broad construction.

whether the employment could have had an impact on the injury regardless of its removal from the actual injury. If taken at face value, the presumption should be applied as read, and the presumption does not apply if the claimant is found dead at home or in a hospital. Second, the death must be unexplained in order for the presumption to be valid. This only applies where the death itself (i.e. the precipitating factor of the death) is unexplained. In Odom v. Transamerica Insurance Group, the court found that "in the present case the death was not unexplained. The death certificate was introduced in evidence and stated that death was due to 'cerebral vascular accident due to hypertension.' Therefore, in this case the presumption did not arise .... Furthermore, the court in Zamora stated that

[w]here the precipitating causative factor of a stroke is known and explained as hypertension, the claimant is not entitled to rely upon the presumption that the stroke "arose out of" the deceased's employment but must submit probative evidence on the issue of the causal connection between the stroke and the employment.

However, if the death certificate merely stated that the cause of death was due to "cerebral hemorrhage" and did not include the additional opinion that the cerebral hemorrhage was due to hypertension, there would be a finding that the claimant had a stroke, but the cause of the stroke would be unexplained.

Smith's death was explained as a cerebral hemorrhage on his death certificate, but there was no language indicating a secondary cause. However, Smith had been diagnosed with hypertension before his death,

51. This will be discussed in more detail when causation is discussed, infra. The heart attack and stroke cases have posed a problem for the courts in determining whether the presumption applies. Many times, the actual injury—heart attack or stroke—does not occur until the claimant has already returned home.

52. There is no reason not to apply the presumption as it reads. To extend the presumption to cover heart attacks or strokes which occur at home but may have been precipitated by some exertion at work would be to destroy the presumption. In other words, there would always be a presumption in heart attack and stroke cases.

54. Id. at 84, 85, 290 S.E.2d at 194.
56. Id. at 157, 251 S.E.2d at 49.
58. This includes the case where hypertension actually is the precipitating factor, but the doctor omitted mention of such.
59. What purpose this serves is unknown. The court will look at the face of the death certificate to determine whether the death is explained. It seems that a proper inquiry would allow the testimony of the doctor who diagnosed the death as well as the certificate itself.
and his doctor told him to double the blood pressure medication before
he died; that is the most likely reason for the stroke. If the employer
can argue effectively that hypertension was the underlying cause of
Smith's stroke, then the presumption would not be available to Smith.
Smith would only have to show the court that the death certificate
stated "cerebral hemorrhage" as the only cause of death in order to use
the presumption. However the claimant must prove both (1) that the
deceased was found in a place where a reasonable person could infer
that he was carrying out his employment and (2) that deceased's death
was unexplained. In the hypothetical, the claimant should not be able
to use the presumption.\footnote{Smith should only be able to employ one of the three types of evidence available.}{60}

Smith should only be able to employ one of the three types of evidence
available.\footnote{As has already been noted, supra, where neither the
symptoms of the stroke nor the stroke itself occurred while the employee
was carrying out his employment, the lay observation and natural
inference are not available as credible evidence to prove causation.}{62}

Since the symptoms and actual stroke did not occur until the hypothetical
claimant was at home, the only evidence available to establish
causation is medical opinion.

\section*{IV. The Problem}

The claimant will have to prove a causal relationship between the
stroke and Smith's employment through competent medical testimony.
However, the thrust of this Article is that any medical evidence which
states that work related stress could have contributed to the stroke is
inconclusive. Nevertheless, courts have allowed such evidence to be
admitted and have held injuries compensable based on that evidence.
The court in \textit{Worthington} stated that when there is "inconsistent medical
opinion it is the responsibility of the board to assign weight to the
testimony of medical experts."\footnote{The court in \textit{Worthington} stated that when there is "inconsistent medical
opinion it is the responsibility of the board to assign weight to the
testimony of medical experts."}{63}
The Administrative Law Judge should not, however, assign weight to \textit{any} medical opinion in a case involving
the issue whether stress could have caused a stroke; medical journals
have consistently shown that the effect of stress on hypertension and
strokes is unknown. Stress is idiosyncratic and has not been proven to
exacerbate or cause hypertension or strokes. In an editorial, \textit{The Lancet}

\footnote{But again, courts have mixed the presumption issue with causation issues. The
result should be as this Article states, but the court may confuse itself and the parties and
find the presumption a valid one.}{60}

\footnote{The three types are (1) medical opinion, (2) lay observation and opinion, and (3) the
natural inference through human experience.}{61}


\footnote{\textit{Worthington}, 149 Ga. App. at 629, 255 S.E.2d at 100.}{63}
discussed this point: "Whether high physiological stress responsivity is a cause or effect of hypertension is, however, far from clear . . . ."\(^{64}\)

Furthermore, studies have shown the possibility that hypertension itself can be the cause of stress in people with family histories of stress.\(^{65}\)

The article concluded with the adage, "One man's stress is another man's pleasure."\(^{66}\)

Bruce Charlton of Glasgow University described stress as having "little real value, serving mainly to confuse and confound rational thought."\(^{67}\)

Charlton further described stress as "being used to indicate (or disguise) an ignorance of mechanisms."\(^{68}\)

Furthermore, "in most so-called stress situations, experiments have not even been done to establish any objective correlates . . . of the stress. Stress as a unified response has been watered-down to a vague, undefined subjectively unpleasant feeling . . . ."\(^{69}\)

Charlton concluded that "[w]hen stress is allowed validity it is a guarantee that the discussion will proceed at such a level of generality that nothing specific can be said, no science can be done, no conclusions can be drawn."\(^{70}\)

An article in USA Today studied the effect of stress on the immune system and found that stress is highly idiosyncratic and is influenced mostly by personality type. The "Type A" personality, which is an aggressive, go-getter type person like Smith, is more prone to experience stress. The article implicitly stated that people cause their own stress and stressors as a result of their personality and that stress can therefore be controlled by that person.\(^{71}\)

Dr. Francis McCafferty concurred and stated the following about stress and individuality:

Stress is not always harmful. It is the individual's reaction to stress that determines the outcome, i.e., whether the individual will adapt or become maladaptive. Individuals who feel they can control events or are in control of their lives are better able to handle stress than

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65. *Id.*
66. *Id.* The import of this Article—and similar articles that have reached the same conclusion—is that stress could be caused by hypertension. If this is the case, the courts are awarding workers' compensation to individuals whose injuries are not related to work at all. A stroke could be caused by stress which, in turn, is caused by pre-existing hypertension. Hypertension is an idiopathic disease, as opposed to a compensable traumatic disease, for which a claimant will not be compensated under the Code.
68. *Id.* at 157.
69. *Id.* (emphasis supplied).
70. *Id.* at 158.
individuals who believe they are the victims of fate or chance and who feel powerless and helpless.\textsuperscript{72}

In *The Role of "Stress" in Workers' Compensation Claims,* Dr. Eliashof stated that "[d]espite the increasing number of claims for work-related stress induced illness, the characteristic features and etiology have been minimally studied and are not well understood."\textsuperscript{74}

Stress is an untenable theory upon which a claim for workers' compensation may be based. Studies have been conducted on police personnel in order to determine work stressors and police stress.\textsuperscript{75} *Psychological Reports* published a study conducted by the Department of Criminal Justice, Rochester Institute of Technology and Russell Sage College, which ranked police stressors.\textsuperscript{76} The study included 103 randomly selected, full-time sworn police officers and ranked sixty stressors on a scale of 0-100 (zero being no stress). Some of the following are stressors that the hypothetical claimant might have experienced with their attendant stress level (0-100) and relative rank (1 being the most stressful on the list, 60 being the least):

<table>
<thead>
<tr>
<th>Description</th>
<th>Stress Level</th>
<th>Overall Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Use of Force</td>
<td>61</td>
<td>7</td>
</tr>
<tr>
<td>2) Excessive Paperwork</td>
<td>43.2</td>
<td>31</td>
</tr>
<tr>
<td>3) Family Demands</td>
<td>41.8</td>
<td>35</td>
</tr>
<tr>
<td>4) Increased Responsibility</td>
<td>33</td>
<td>46</td>
</tr>
<tr>
<td>5) Politics Outside Dep't</td>
<td>25.5</td>
<td>56</td>
</tr>
</tbody>
</table>

The situation that caused the most stress for Smith, which he reported to his fellow workers and his ex-wife, is one of the five lowest ranked stressors in the study—"Politics Outside Department." Smith was worried about a county annexation of areas that were previously patrolled by the Police Department. This is another example of an individual creating his own stressors. Smith created a large stressor out

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74. Id. at 298.
75. Most articles that deal with stress focus on police officers, truck drivers, and hospital personnel—it has been claimed that these people have the largest stressors, and medical investigation has consequently focused on them. This Article focuses on police stressors, not only because it facilitates discussion of the hypothetical, but because the studies on each of these professions is representative of the others.
of something that most police officers in the study felt was a small stressor.

Another study of three police departments and 160 police personnel was published by the Journal of Criminal Justice. This study stated the following:

It is undeniable that police work includes moments of very high stress, even terror, but these moments are rare. On the whole, the impact of these moments seems to be offset somewhat by the compensation factors that made up the civil servant cluster associated with low stress. . . . When dramatic events do occur, they are often experienced as eustress (i.e. positive stress) by officers who enjoy the excitement of the job . . . . But, in general, police officers seem to experience about the same level of stress as other people . . . .

Smith was the type of individual who felt in control of his life and was described as a “go-getter.” Under Dr. McCafferty’s theory, Smith would have been the type of person to “adapt” rather than become “maladaptive.” Bruce Charlton concurs in stating the following: “But what happens when the same stress is repeatedly applied? Often the effects wear off, the organism becomes ‘adapted.’ The stress is no longer a stress.” Although Charlton is referring to physical stimuli, the concept can be applied to psychological stimuli as well.

Our hypothetical employer should be able to show not only that police stress is no different than any other stress, but also that Smith’s stroke was precipitated by factors exclusive of his employment. Courts have held that injuries did not arise out of and in connection with employment when the deceased’s injury was caused by his own personal problems. A population based case-control study was conducted by Konrad Jamrozik, which found that smoking, consuming meat more than four times weekly, adding salt to food, and having a history of hypertension are each associated with increased risk in all strokes.

Smith smoked, ate meat more than four times weekly, added salt to his food, and had a history of hypertension. He met all the factors for an increased risk of stroke, and none of these factors was attributable

78. Id. at 106 (emphasis added).
79. See McCafferty, et al., supra, 1786-87 for the theory that individuals who feel in control of their lives are better able to handle stress.
to his employment. In *Sutton v. B & L Express,*\(^82\) the court found that there was ample evidence to support the board's denial of compensation to the claimant. The court stated that "the board found the medical evidence showed Sutton had multiple risk factors for coronary disease, including hypertension, cigarette abuse, and obesity . . ., none of which was shown to be attributable or related to his employment."

In *Tracor Co. v. Brown,*\(^84\) the court similarly affirmed the board's denial of compensation to the claimant. It stated that the board found "[t]he claimant sustained his stroke while at home and he had always been a nervous person and although this nervous condition increased through the years, . . . his ultimate disability was [not] due to any job-incurred injury . . ."\(^85\) Our claimant's stroke occurred while he was at home, and he had always been an intense person.

In the recent case of *Kines v. City of Rome,*\(^86\) the court of appeals similarly upheld a denial of compensation. Although the court recognized that there was evidence that the deceased had a stressful job as a police officer,

'[t]here was also evidence that the deceased had been involved in a meretricious relationship for four years and that his wife was pregnant at the time of his death, facts that would reasonably generate far more stress than would a job he had performed without physical problems for 22 years.'\(^87\)

Smith was involved in a meretricious relationship after his divorce and his children would visit while his girlfriend was at the house. Moreover, he had the added stress of coping with his daughter's medical problems. The ALJ should find in accordance with *Sutton, Tracor,* and *Kines* that the claimant's injury was in no way related to his employment but was based on personal factors which "would reasonably generate far more stress" than his job.

V. CONCLUSION

The point of this Article\(^88\) is to attack an area of the law which the courts have legislated into existence. Hopefully the hypothetical was

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83. Id. at 395, 450 S.E.2d at 861.
85. Id. at 32, 292 S.E.2d at 480.
86. 96 FCDR 1542 (1996).
87. Id. at 1544.
88. If the reader somehow missed it in the morass of example and medical theory, here it is.
useful in illustrating the problems with allowing compensation for stress-related strokes, especially when the claimant also has a history of hypertension and other personal problems. Stress is not a disease caused by external occurrences, and the effect of stress on hypertension is unknown. The courts have “assumed intuitively” that stress can and does cause hypertension and strokes; their only support has been intuitive assumptions of doctors who are not specialists in the field of stress and who have done no research to back their findings, which in most, if not all, of the cases have been hypothetical statements that stress might have an impact on hypertension and strokes.

Until research shows that stress does have an effect on hypertension and strokes, the ALJ and the courts should not allow claimants to be compensated for such attenuated injuries. Studies have shown that stress is extremely individualized and influenced largely by personality type. There is no reason for the law to compensate a person for stress that is caused not by external factors such as employment, but by the person himself. Stress can be controlled by the individual which causes it;98 the law should not allow individuals to shirk their responsibility of self-care and then rely upon the law to provide them with compensation for their self-inflicted injuries.

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89. There have been many studies (which I will not list here—I am afraid the reader may have begun wondering whether this was a law review comment or a medical thesis) showing that there are ways for individuals to control and cure their stress.