IN THE SUPREME COURT OF GUAM

BETTY FAGAN,
Plaintiff-Appellant,

vs.

DAVID G. DELL'ISOLA, in his capacity as the Worker's Compensation Commissioner, TAIWAN ELECTRICAL & MECHANICAL ENGINEERING SERVICES, INC., Employer and Real Party in Interest and CHUNG KUO INSURANCE COMPANY, LTD. Insurance Carrier and Real Party in Interest,
Defendants-Appellees.

Supreme Court Case No.: CVA04-003
Superior Court Case No.: CV1542-01

OPINION

Filed: September 15, 2006

Cite as: 2006 Guam 11

Appeal from the Superior Court of Guam
Argued and submitted on February 15, 2005
Hagåtña, Guam

Appearing for the Plaintiff-Appellant:
A. Alexander Gorman, *Esq*.
Law Offices of Gorman & Gavras, P.C.
Second Floor, J & R Bldg.
208 Route 4
Hagåtña, Guam 96910

Appearing for the Defendants-Appellees:
Thomas C. Sterling, *Esq*.
Klemm, Blair, Sterling & Johnson, P.C.
Suite 1008 Pacific News Bldg.
238 Archbishop Flores St.
Hagåtña, Guam 96910

BEFORE: FRANCES M. TYDINGCO-GATEWOOD,[1] Presiding Justice; ROBERT J. TORRES, JR., Associate Justice; MIGUEL S. DEMAPAN, Justice *Pro Tempore*.

TYDINGCO-GATEWOOD, J.:

[1] This matter comes before the court on the issue of whether the trial court properly affirmed the Worker's Compensation Commissioner's decision denying death benefits to Fagan's widow. We announce for the first time how our Guam courts should deal with claims for heart attacks brought under our Worker's Compensation laws. We find that the Commissioner's decision was not in accordance with the law announced today and therefore, the trial court's affirmation was improper. Thus, we remand this matter to the lower court with instructions to vacate its order and to then send the claim back to the Worker's Compensation Commission for a hearing under an appropriate analysis consistent with this opinion.

I.

[2] On July 6, 1999, a co-worker found Larry Paul Fagan "motionless and unconscious" at the Taiwan Electrical and Mechanical Engineering Services, Inc., job site in Piti. Appellant's Excerpts of Record ("ER"), at 8 (Findings and Order, Aug. 10, 2001). He was taken to the U.S. Naval Hospital, where he was pronounced dead. The next day, Chief Medical Examiner Dr. Aurelio Espinola issued the Certificate of Death, stating that "coronary occlusion" was the immediate cause of death. ER, at 8 (Findings and Order, Aug. 10, 2001). The certificate also indicated that it had been a natural death.

[3] Mr. Fagan's widow, Plaintiff-Apellant Betty B. Fagan ("Mrs. Fagan") filed a claim with the Worker's Compensation Commission on July 25, 2006, seeking death benefits under the worker's compensation policy of Mr. Fagan's employer, Taiwan Electrical. She alleged that her husband had

[1] The Chief Justice was unable to participate in this case as scheduled. Justice Tydingco-Gatewood, as senior member of the panel, was appointed Presiding Chief Justice.

been "harassed and bullied on a daily basis at work by his employer for his refusal to train other workers." ER, at 9 (Findings and Order, Aug. 10, 2001).

[4] The Commission forwarded her claim to Chung Kuo Insurance Co., Ltd., the carrier of the Taiwan Electrical's worker's compensation policy. Chung Kuo denied the claim, and issued a Notice of Controversion on September 1, 1999, indicating that the cause of Mr. Fagan's death was determined to be natural causes.

[5] In a February 4, 2000 report, Dr. Espinola summarized the results of the autopsy conducted on Larry Fagan, and made two key findings. First, he acknowledged that "tremendous stress is known to trigger heart attack." ER, at 11 (Espinola Report). Second, Dr. Espinola found: "[B]oth coronary arteries showed marked coronary sclerosis with segmental narrowing up to 95%. The right coronary at one point was completely occluded by a fresh blood clot that caused his death." ER, at 11 (Espinola Report). He further concluded that "with the severity of his coronary arteries, he could have heart attack anytime, even during sleep." ER, at 11 (Espinola Report).

[6] The Commission denied Mrs. Fagan's claim for death benefits without holding a hearing. She then filed a Complaint for Injunction to Set Aside Compensation Order No. 2001-0065 and to Enter an Order Awarding Benefits in the Superior Court. The complaint, which was later amended, specifically cited 22 GCA § 9122(b)[2] as the basis for granting injunctive relief. After a June 27, 2002 hearing, the trial court denied the injunctive relief, holding: "The Court finds substantial evidence to support the order of the Worker's Compensation Commission denying benefits to Plaintiff [Mrs. Fagan]." ER, at 16 (Decision and Order). The Judgment was filed on January 28, 2004, but was not signed by Mrs. Fagan's attorney. Mrs. Fagan timely appealed the trial court's denial of injunctive relief.

[2] Title 22 GCA §9122(b) (2005) states in relevant part: "If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the Commissioner, and instituted in the Superior Court."

II.

[7] We have jurisdiction to hear appeals of a final order of the Superior Court. 48 U.S.C. § 1424-1(a)(2) (2004); 7 GCA §§ 3107(b) and 3108(b) (2005). This is a final and appealable order under 7 GCA § 25102(f) (2005).

III.

[8] We must initially determine the applicable standard of review because it, essentially, instructs us as to the degree of deference to afford the agency and the trial court. *See Farley v. Sullivan*, 983 F.2d 405, 407 (2nd Cir. 1993) ("In assessing action by an administrative agency, the court must temper its standard of review according to the degree of discretion [the legislature] has given to the agency concerned.").

[9] Generally, where the standard of judicial review of an agency action is enunciated by regulation or statute, such standard of review will govern. However, where, as here, the agency regulation or statute (22 GCA §§ 9101-9145) only addresses whether the decision is "in accordance with law,"[3] we must look further, to the standard provided by the general administrative adjudication law. *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1193 (9th Cir. 2000). ("[A] reviewing court must apply the deferential [Administrative Procedures Act] standard in the absence of a stated exception when reviewing federal agency decisions."); *Ka Makani O Kohala Ohana Inc. v. Water Supply*, 295 F.3d 955, 959 (9th Cir. 2002) ("Because [the governing statute] does not contain a separate provision for judicial review, we review an agency's compliance with [the statute] under the Administrative Procedure Act.") *N.L.R.B. v. Beverly Enter.-Mass., Inc.*, 174 F.3d 13, 22

[3] We note that 22 GCA § 9122 (2005) provides for judicial review if the decision of the Commission is "not in accordance with law." To the extent that section 9122 dictates a standard of review, it is consistent with the standard of review given to the Commissioner's decisions under the Administrative Adjudication Law, which requires the reviewing court to determine whether the Commissioner's decision is in accordance with law and supported by substantial evidence under 5 GCA § 9240.

(1st Cir. 1999) ("Because the NLRA is silent as to the standard for reviewing nonfactual matters, the standard of review for such matters is provided by section 10(e) of the Administrative Procedure Act. Errors of law are reviewed by the court de novo.")

[10] The general law on administrative adjudications on Guam is found in 5 GCA §§ 9100-9312, entitled the "Administrative Adjudication Law" ("AAL"). Pursuant to section 9240 of the AAL, the standard of review to be applied by the trial court, upon judicial review of the agency's action, is as follows: "If the agency decision is not in accordance with law or not supported by substantial evidence, the court shall order the agency to take action according to law or the evidence." 5 GCA § 9240 (2005). The court always reviews questions of law *de novo. Nissan Motor Corp. in Guam v. Sea Star Group Inc.*, 2002 Guam 5 ¶ 10.

[11] The trial court was required to review *de novo* the Commission's conclusions of law. The trial court was also required to affirm the Commission's findings of fact, and any conclusions resulting therefrom, if supported by substantial evidence. This is because a reviewing body "may not substitute its views for those of the [agency], but instead must accept the [agency's] findings unless they are contrary to law, irrational, or unsupported by substantial evidence." *Alcala v. Dir., Office of Workers Comp. Programs*, 141 F.3d 942, 944 (9th Cir. 1998) (addressing the standard of administrative review of the Longshore and Harbor Worker's Compensation Act ("LHWCA")).[4]

[12] Our inquiry in effect mirrors the review which should be conducted by the trial court. First, we determine whether the agency decision "was in accordance with law." 5 GCA § 9240 (2005); 22 GCA § 9122 (2005). Second, we determine whether the agency decision was "supported by substantial evidence." 5 GCA § 9240. "[S]ubstantial evidence is defined as 'such relevant evidence

[4] The LHWCA's standard of review requires that the decision of the agency not be "contrary to law, irrational, or unsupported substantial evidence." *Port of Portland v. Dir., Office of Workers' Comp. Programs*, 932 F.2d 836, 838 (9th Cir. 1991), citing *Todd Shipyards Corp. v. Black*, 717 F.2d 1280, 1284 (9th Cir. 1983). The LHWCA standard is similar to Guam's standard of review for agency decisions found at 5 GCA § 9240 (2005), which requires the agency decision to be "in accordance with law"and supported by substantial evidence.

as a reasonable mind might accept as adequate to support a conclusion.'" *Bondoc v. Worker's Comp. Comm'n*, 2000 Guam 6 ¶ 6[5] (citation omitted); *see also Am. Grain Trimmers, Inc. v. Office of Workers' Comp. Programs*, 181 F.3d 810, 818 (7th Cir. 1999) ("when evaluating administrative decisions, the courts of appeals review legal conclusions *de novo* but must affirm findings of fact and conclusions drawn therefrom if supported by substantial evidence") (citing *Morehead Marine Services, Inc. v. Washnock*, 135 F.3d 366, 370 (6th Cir. 1998)).

[13] Applying the above standards to the facts at bar, we examine whether the trial court determined whether the decision was in accordance with the law and supported by substantial evidence. In so doing, we will review all conclusions of law *de novo*, and will hold unlawful and set aside any agency action, findings and conclusions found to be irrational, or otherwise not in accordance with law or unsupported by substantial evidence in a case. *Kalama Services, Inc. v. Dir., Office of Workers' Comp. Programs*, 354 F.3d 1085, 1090 (9th Cir. 2004).

III.

A. Whether the Commission's Decision was "in accordance with law."

[14] In reviewing the trial court's decision, it is necessary to begin our discussion with whether the court properly determined the Commissioner's decision was in accordance with the law. In so doing, we examine whether Mr. Fagan's injury falls within the provisions of Guam's Worker's Compensation law, and further, whether such injury is compensable. Based on our *de novo* review of the questions of law in this case, we conclude that the Commissioner's action in denying Mrs. Fagan's claim for death benefits was not in accordance with the law.

---

[5] Bondoc appealed the decision of the Worker's Compensation Commission under Title 7 of the Guam Code Annotated, petitioning the Superior Court for a writ of review under Title 7. In this case, Mrs. Fagan has sought review of the Worker's Compensation Commission's decision pursuant to Title 22 of the Guam Code Annotated, specifically, 22 GCA § 9122, "Review of Compensation Order," which provides that "a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise. . . ." Since Mrs. Fagan sought review under 22 GCA § 9122 rather than Title 7, the standard of review set forth in *Bondoc* is not applicable here. Moreover, we do not currently address the propriety of the method of appeal or the standard of review of a petition for review of a commission decision under Title 7 of the Guam Code Annotated.

1. Guam Worker's Compensation Law

[15] Generally speaking, Guam's Worker's Compensation law, found at 22 GCA §§ 9101-9145, allows a claimant to seek compensation for injury sustained while in industrial or public employment. In particular, section 9104(a) (2005) provides: "Compensation shall be payable under this Title in case of disability or death of an employee, but only if the disability or death results from an injury sustained while engaged in industrial employment or public employment or both as defined in § 9103." 22 GCA § 9104 (2005).

[16] The term "injury" is defined in 22 GCA § 9103(m) (2005) as "accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury." In order to qualify as a compensable injury under the Worker's Compensation law, the injury must therefore "aris[e] out of and in the course of employment." *See* 22 GCA § 9103 (2005).

[17] Moreover, section 9121(a) (2005) provides for a presumption of compensability: "In any proceeding for the enforcement of a claim for compensation under this Title, it shall be presumed, in the absence of substantial evidence to the contrary (a) [t]hat the claim comes within the provision of this Title." Guam's statutory scheme, however, provides no guidance in determining whether a particular injury arises out of and in the course of employment, as such phrase is used in section 9103. Similarly, Guam's statutory scheme provides no guidance with respect to the applicability of the presumption of compensability provided by section 9121(a).

[18] However, because our Worker's Compensation law is substantially similar to the federal Longshoremen and Harbor Workers' Compensation Act ("LHWCA"), we look to case law interpreting the LHWCA for guidance. *Amerault v. Intelcom Support Services, Inc.*, 2004 Guam 23

¶ 16 (observing that Guam's worker's compensation laws are substantially similar to the LHWCA)[6]; *Gibbs v. Holmes*, 2001 Guam 11 ¶ 15 ("[finding] guidance in the case law of those jurisdictions that have adopted worker's compensation statutes that are substantially similar to Guam's statutes.").

[19] To be sure, the provisions of our Worker's Compensation law are virtually identical to the provisions found in the LHWCA. To begin with, 22 GCA § 9104 and the LHWCA both require that the injury must arise out of and be in the course of the claimant's employment. *See* 22 GCA § 9104 and 9103; *cf.* 33 U.S.C. § 903 (2006) (Westlaw through Pub. L. 109-279 (2006) ("[C]ompensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States")); 33 U.S.C. § 902 (Westlaw through Pub. L. 109-279)(2006) ("'[I]njury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury.")).

[20] In addition, our Worker's Compensation law and the LHWCA have virtually identical language with respect to the presumption of compensability. *See* 22 GCA § 9121(a); *cf.* 33 U.S.C. § 920(a) (Westlaw through Pub. L. 109-279) (2006) ("In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary . . . that the claim comes within the provisions of this chapter")).

---

[6] In *Amerault*, 2004 Guam 23 ¶ 16, we recognized that the LHWCA is modeled after the statutory scheme of New York law. Unfortunately, New York courts, applying statutes with language identical to the LHWCA, do not provide clear guidance. This has been observed by such scholars as Larson, when he said "[W]hen the New York statutory presumption is superimposed upon actual New York practice of accepting almost any evidence of exertion as adequate to satisfy its test," many cases result in the conclusion "that the decedent at the time of death was engaged in exertions comparable to those which have satisfied the New York courts in the great bulk of those cases." 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law, § 7.04[3][a] (2005). This is because in general, New York cases are inconsistent in heart attack cases, so much so that little guidance comes from New York's cases in this area. *See* discussion *infra*, subsection 2.d. For these reasons, we do not find the New York cases to be persuasive.

[21] The provisions of the LHWCA, like Guam law, provide no statutory guidance in determining whether an injury arises out of and in the course of employment, nor do the provisions of the LHWCA provide guidance as to the applicability of the presumption of compensability. Nonetheless, numerous courts interpreting the LHWCA provisions, under factually similar circumstances, have formulated various tests to be applied in determining, first, whether an injury has arisen out of and in the course of employment, and second, the effect of the presumption of compensability. We discuss such cases below.

2. The LHWCA cases

a. Claimant's prima facie case and the presumption of compensability

[22] As previously discussed, a claimant under the Worker's Compensation law enjoys a presumption of compensability under 22 GCA § 9121. We must first consider "what initial demonstration of employment-connection will give the presumption a foothold." 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law, § 7.04[3][a] (2005) ("Larson 1"). In other words, does the allegation of an injury occurring at the workplace in itself operate to trigger the presumption, thus shifting the burden immediately to the employer, or must the claimant establish the elements of the *prima facie* case before the presumption is triggered and the burden is shifted to the employer? A survey of this issue has yielded varying results: "The sweeping inclusiveness of the language might seem at first glance to mean that the mere making of a claim is also the making of a prima facie case." *Id.* However, "courts have not so interpreted the statutes." *Id.*

[23] Cases interpreting the operation of the presumption under the LHWCA have required more than an allegation of an injury in the workplace. In *Meehan Seaway Service Company v. Director, Office of Worker's Compensation Programs*, 125 F.3d 1163, 1168 (8th Cir. 1997), the court required that the claimant set forth a *prima facie* claim for compensation before the presumption will attach. That is, the claim "must allege an injury that arose in the course of employment as well as out of

employment." *Id.* In turn, to establish that the injury arose in the course of and out of employment, it is also sufficient that the claimant "establish[] both that he suffered harm, and that workplace conditions or a workplace accident *could have* caused, aggravated, or accelerated the harm." *American Stevedoring Ltd., v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001) (emphasis added). *Accord Bell Helicopter Int'l, Inc. v. Jacobs*, 746 F.2d 1342 (8th Cir. 1984). Stated another way, a claimant seeking compensation pursuant to the LHWCA "bears the initial burden of establishing that (1) he suffered an injury and (2) the accident occurred in the course of employment or conditions existed at work that could have caused the harm. Once the claimant has established his *prima facie* case, a presumption is created . . . ." *Gooden v. Dir., Office of Worker's Comp. Programs*, 135 F.3d 1066, 1068 (5th Cir. 1998) (citation omitted).

[24] We hold, in line with the above federal cases, that the mere showing of an injury at the workplace does not invoke the presumption of compensability found in 22 GCA § 9121. Rather, in order to invoke the presumption of compensability, a claimant bears the burden of establishing, first, that he suffered an injury, and second, that the injury occurred in the course of employment, or conditions existed at work that could have caused, aggravated, or accelerated the injury.

b. Employer's burden to rebut the presumption by substantial evidence

[25] Once the *prima facie* case is established by the claimant, and the presumption is invoked, the burden then shifts to the employer, who may present evidence in rebuttal. That is, the presumption of compensability "can be rebutted by the employer through substantial evidence establishing the absence of a connection between the injury and the employment." *Gooden*, 135 F.3d at 1068.

[26] We have defined substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Bondoc v. Worker's Comp. Comm'n*, 2000 Guam 6 ¶ 6. The employer's burden to provide substantial evidence has been further defined and clarified by

courts in applying the LHWCA. *See La. Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 298 (5th Cir. 2000) ("defining 'substantial evidence' as evidence that provides a substantial basis of fact from which can be reasonably inferred") (citation omitted); *Am. Grain Trimmers, Inc. v. Office of Workers' Comp. Programs*, 181 F.3d 810, 818 (7th Cir. 1999). This same definition of substantial evidence has been applied in other LHWCA cases, such as *Louisiana Insurance Guaranty Ass'n*, 211 F.3d at 298, defining "substantial evidence" as evidence that provides a substantial basis of fact from which the fact in issue can be reasonably inferred. In a comprehensive discussion of what an employer must produce to rebut the presumption, the court in *American Grain Trimmers, Inc.*, 181 F.3d 810, 818 (7th Cir.1999), agreed with the administrative law judge's characterization of the "substantial evidence" burden of the employer as a requirement of introducing "specific and comprehensible evidence, not speculation," before the presumption would be defeated.

[27] Where a worker's compensation claimant sets forth a *prima facie* case and successfully invokes the presumption of compensability, the burden then shifts to the employer to rebut the presumption. Moreover, we hold that in order to defeat such presumption, the employer must provide substantial evidence, defined as specific and comprehensible evidence, and not speculation.

c. Claimant's burden–injury arising out of and in the course of employment

[28] Courts applying the LHWCA have held that once the employer successfully rebuts the presumption of compensability, the burden of persuasion then shifts back to the claimant. *Parsons Corp. v. Dir., Office of Workers' Comp. Programs*, 619 F.2d 38, 41 (9th Cir. 1980) ("[O]nce substantial evidence is produced to rebut the statutory presumption, the burden of persuasion shifts to the claimant.").

[29] The inquiry then becomes whether, viewing all the evidence of record, the injury arose out of and in the course of employment. *Gooden*, 135 F.3d at 1068. ("If the employer rebuts the presumption, then the issue of causation must be decided by looking at all the evidence of record");

22 GCA § 9103(m) (defining a compensable injury as "accidental injury or death arising out of and in the course of employment").

[30] The phrase "[a]rising out of and in the course of" employment is essentially a test for causation, particularly in the case of heart attacks. 2 Arthur Larson & Lex K. Larson, Larson's Worker's Compensation Law, § 43.03 (2005) ("Larson 2"); *but see Meehan*, 125 F.3d at 1137 (stating that "arising out of" refers to injury causation and "in the course of employment" refers to the time, place, and circumstances of the injury).

[31] However, the terms "arising out of" and "and in the course of employment," found in most state worker's compensation laws, have come to mean the same thing: "[T]he two tests, in practice, have not been kept in air-tight compartments, but have to some extent merged into a single concept of work-connection." Larson 2 § 29.01. Suggesting that the injury arise out of and in the course of employment be treated as a continuum test, Larson states: "One is almost tempted to formulate a sort of quantum theory of work-connection." Larson 2 § 29.01. We agree and find that the "arising out of and in the course of" employment is essentially a test for causation, particularly in the case of heart attacks. *See* Larson 2 § 43.03.

d. Causation

[32] In worker's compensation heart attack cases, courts generally choose between either the "usual exertion rule" or the "unusual exertion rule" of legal causation. "[T]he preponderance of those jurisdictions that now accept the usual-exertion rule in heart cases is three to one over those that reject it." Larson 2 § 43.03[1][a](footnote omitted). A sizeable minority, however, have adopted and continue to employ the "unusual exertion rule."[7]

[7] See Arthur Larson, *The "Heart Attack" Cases in Workmen's Compensation: An Analysis and Suggested Solution*, 65 Mich. L. Rev. 441, 445-446 (1967), nn. 17 and 18.

[33] Under the usual exertion rule, a heart attack is compensable unless the record shows by substantial evidence that the heart attack was not precipitated or aggravated by claimant's *usual work conditions*. *Wheatley v. Adler*, 407 F.2d 307, 311 (D.C.Cir. 1968). "[A]ccidental injury may occur notwithstanding the injured is then engaged in his usual and ordinary work, and likewise [] the injury need not be external. It is enough if something unexpectedly goes wrong within the human frame.'" *Id.* at 311 n.6. In other words, an "employer generally takes his employee as he finds him." *Gooden*, 135 F.3d at 1069 (applying the LHWCA).

[34] The unusual exertion rule, also known as the excessive strain rule, has been adopted in New York as well as other states. Under this stricter rule, to prevail in a claim for coverage for a heart attack on the job under this rule, there must be some evidence of "unusual or excessive strain" on the job, a stress going beyond his "usual" job demands, such as is illustrated in the case of *Schlange v. Briggs Manufacturing Co.*, 40 N.W.2d 454 (Mich. 1950), in which compensation was awarded only because the workman was performing his work "in an unusual manner and with the exertion of unusual force." *Id.* at 455. Defendant claims that under this test, Mrs. Fagan cannot prevail because the record is utterly void of any reference to unusual exertion, force or stress on Mr. Fagan at work.

[35] New York's "unusual" exertion rule – that the claimant must have suffered from an unusual stress or exertion on the job in order to be compensated – was illustrated in such cases as *Frankel v. National 5, 10 & 25 Cent Stores*, 278 N.Y.S. 450 (App. Div. N.Y. 1935), where the claimant was denied compensation because the exertion that caused the heart attack was usual for his job. Yet New York cases evolved eventually to expand compensability to those situations where even if there was no unusual exertion, but only if there was "greater than the ordinary wear and tear of life," the heart attack would be compensable. *Masse v. James H. Robinson Co.*, 92 N.E.2d 56 (N.Y. 1950).

[36] The New York progression is illustrated in the case of *Schechter v. State Insurance Fund*, 190 N.Y.S.2d 656 (Ct. App. 1959). The *Schechter* court broadened the "unusual exertion" rule in elucidating that "so long as the conditions of performing the work are such that an exceptional strain is imposed on the worker so great that his heart is affected and damaged thereby the requirement of unusual or excessive strain is satisfied." *Id.* at 660. In *Schechter*, the claimant was subjected to unusual strain by reason of an increase in his workload, and the medical testimony was sufficient to sustain the Workmen's Compensation Board decision that the increase in workload constituted the unusual strain which in turn caused the heart attack.

[37] Some New York judges have criticized the approach taken by the *Schechter* case. Appellee Chung Kuo Insurance Co., Ltd., adopts this criticism, arguing from the dissent in *Klimas v. Trans Carribean Airways, Inc.*, 219 N.Y.S.2d 14 (1961): "We have gone far in other heart cases . . . but if we are to go beyond that point and allow compensation to be awarded simply for psychic or nervous strains . . . [w]e will 'make workmen's compensation the equivalent of life and health insurance.'" *Id.* at 19 (citation omitted). In addition, in New York certain cases evolved eventually to expand compensability to those situations where, even if there was no unusual exertion, but only if there was "greater than the ordinary wear and tear of life." *Masse*, 92 N.E.2d 56. However, the "wear and tear" rule came to be applied only when there was no unusual exertion. *Burris v. Lewis*, 160 N.Y.S.2d 853 (1957). Therefore, New York expanded to adopt both "unusual exertion" and "greater than ordinary wear and tear" as tests for compensability for heart attacks.

[38] Larson criticizes the arbitrariness of these various approaches in New York. In one case, *Chiara v. Villa Charlotte Bronte*, 76 N.Y.S.2d 59 (App. Div. 1948), a man who carries 60 pounds down stairs is denied compensation, while in another case, *Serie v. F. & M. Schaefer Brewing Co.*, 76 N.Y.S.2d 50 (App. Div. 1948), a man who lifts a 60-pound burden on a slippery surface is compensated for his heart attack. Likewise, in *Coleman v. Guide-Kalkhoff-Burr, Inc.*, 222 N.Y.S.2d

689 (1961), a claimant who had a heart attack while arguing with his superior was denied compensation, while in *Wilson v. Tippets-Abbott-McCarthy-Stratton*, 253 N.Y.S.2d 149 (App. Div. 1964), a worker who argued with his superior via an intermediary was compensated. The results were inconsistent, despite a purported test involving unusual exertion or beyond the ordinary wear and tear of ordinary life.

[39] We recognize that the LHWCA finds its source in New York law, and in the normal course, such case law should have some persuasive effect in our choice of a standard of legal causation to be applied in cases under our Worker's Compensation law.[8] In light of the arbitrariness and inconsistency in the application of the unusual exertion rule, we decline to adopt such line of cases.

[40] Rather, we adopt the usual exertion rule as announced by the LHWCA courts. We do so considering the overall language of the Guam worker's compensation statutes. Guam's Legislature has decreed that a worker's compensation claimant is to be aided by a presumption. The presumption is a claimant-friendly device, relieving claimants of the usual rigors of proving causation before the burden of production shifts to the employer to rebut it. As the Supreme Court of Hawaii so eloquently stated, in addressing its own presumption of coverage in its worker's compensation statutes:[9]

---

[8] "Guam courts have considered courts of other states interpreting statutes similar to laws of Guam to be persuasive authority." *Amerault*, 2004 Guam 23 ¶ 16.

[9] Hawaii's Worker's Compensation statutes include the following presumption:

> **§ 386-85 Presumptions.**
> In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:
> (1) That the claim is for a covered work injury;
> (2) That sufficient notice of such injury has been given;
> (3) That the injury was not caused by the intoxication of the injured employee; and
> (4) That the injury was not caused by the wilful intention of the injured employee to injure oneself or another.

Haw. Rev. Stat. § 386-85 (2005).

> The legislature indeed has cast a heavy burden on the employer in workmen's compensation cases. In its wisdom in formulating public policy in this area of the law, the legislature has decided that work injuries are among the costs of production which industry is required to bear; and if there is reasonable doubt as to whether an injury is work-connected, the humanitarian nature of the statute demands that doubt be resolved in favor of the claimant.
>
> Operation of the statutory presumption is crucial in cardiac cases where the causes of heart disease are not readily identifiable. 'The presumption has been of substantial aid to claimants in obtaining awards in cardiac cases by enabling them to connect up a death involving some from of cardiac disorder with the work. On the other hand, dependents of workmen who have died on the job of an unwitnessed attack have frequently failed to recover compensation where no such presumption was operative." McNiece, Heart Disease and the Law 22 (1961). Because of the relatively higher degree of uncertainty surrounding causation of heart diseases, the strength of the presumption is especially formidable.

Akamine v. Hawaiian Packing & Crating Co., 495 P.2d 1164, 1166 (Hawaii 1972).

[41] We find that the Legislature's decision to aid the claimant with this presumption shows a legislative intent favoring claimants in general; Guam's "legislature indeed has cast a heavy burden on the employer in workmen's compensation cases." *Id.* We find that if the claimant is subjected to usual exertions of his workplace and that those usual conditions caused or aggravated an injury such as a heart attack, then the claimant has proven causation.

B. Application to Fagan's Claim

[42] Now that we have determined what law is applicable in worker's compensation cases dealing with claimants suffering from heart attacks, the next issue we must resolve is whether the Commissioner's compensation order was in accordance with it.

[43] In conducting a *de novo* review of the trial court's review of the legal conclusions in the Commissioner's decision, we find that the trial court's Decision and Order is not in accordance with the law we have just pronounced. The only record of the worker's compensation claim dealing with Mrs. Fagan's request is the Commissioner's order. No hearing was ever conducted by the commission. ER at 14 (Decision and Order). No testimony was ever taken. A thorough review of the scant record before the Commissioner reveals that there was absolutely no discussion of what

law applies. There was no discussion in the Commissioner's findings of facts or conclusion of law of whether Mrs. Fagan was the beneficiary of the statutory presumption dictated in 22 GCA § 9121.

[44] In its order denying compensation, the trial court mentions the statutory presumption found in section 9121, but fails to show if or how the Commissioner applied the presumption. There is no analysis of whether Mrs. Fagan met the burden of showing that the work conditions "could have" caused the heart attack, thereby shifting the burden to the employer. There is no discussion of whether the employer rebutted the presumption with "substantial evidence," which we hold to be required if the presumption is invoked. Additionally, there is no analysis whether the Commissioner found that Mrs. Fagan met her burden of establishing that Mr. Fagan's heart attack "arose out of and in the course of his employment," such as to trigger the "usual exertion" test for causation. There is nothing in the worker's compensation record which demonstrated that the Commissioner looked at all the evidence of record and determined the issue of causation. Specifically, there is nothing in the record to suggest that the Commissioner found by substantial evidence that Mr. Fagan's attack was not precipitated or aggravated by the alleged harassment and bullying Mr. Fagan was receiving at work in accordance with the "usual exertion rule."

[45] The trial court weighed what appeared to be Mrs. Fagan's statement regarding harassment of her husband, and Dr. Espinola's autopsy report. Despite the fact that Dr. Espinola's report was internally inconclusive, the trial court affirmed the Commissioner's finding given the conclusion that Mr. Fagan's heart arterial condition made him susceptible to a heart attack at anytime, even during sleep. However, Dr. Espinola's report also stated, "tremendous stress is known to trigger heart attack." ER, at 11 (Espinola Report). Because the Commission did not memorialize whether it took into account the presumption of coverage or whether the employer rebutted it, and did not apply a standard of any kind for determining whether Mr. Fagan's heart attack arose out of his job, it is not possible for a reviewing court to determine whether that standard of causation was met by Mrs.

Fagan. A proper review would have required the record to contain evidence of whether usual exertion was placed upon Mr. Fagan, and whether the exertion medically contributed to his heart attack.

[46] This court is to uphold the trial judge if the decision is in accordance with law and supported by substantial evidence. Since neither the Commissioner nor the trial court applied the law as we have today clarified it, we find that the decision was not "in accordance with law." Because neither applied the proper law, we need not reach whether the decision was supported by substantial evidence.

IV.

[47] Therefore, though the trial court correctly identified the standard of review, he failed to review *de novo* whether the agency had applied the proper law. For this reason alone, the case must be remanded to the trial court for proceedings consistent with this opinion. We therefore **VACATE** and **REMAND** this matter to the lower court with instructions to vacate its decision and remand the matter to the Worker's Compensation Commission for a hearing consistent with this opinion.