

# Workers' Comp: Is Fatal Heart Attack Following Work Exertion Compensable?

Article By:

Joanna R. Vilos

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An employee suffers a heart attack after engaging in physical labor at work. He later dies and his spouse seeks death benefits under the state **Workers' Compensation Act**. We all know that lots of things can contribute to a heart condition. When does a heart attack justify workers compensation benefits? The *Wyoming* Supreme Court recently diagnosed the conditions when benefits are available under its state law.

## Workers' Comp Statute Sets Forth Conditions For Benefits

Pursuant to Wyoming's workers' compensation law, benefits for employment-related coronary conditions are payable only if three conditions are met:

1. There is a direct causal connection between the work performed and the cardiac condition;
2. The exertion that caused the cardiac condition occurred during the actual period of employment stress that was clearly unusual to or abnormal for employees in that particular job, irrespective of whether the employment stress is unusual to or abnormal for the individual employee; and
3. The acute symptoms of the cardiac condition are clearly manifested within four hours of the exertion that allegedly caused the cardiac problem.

In order to seek such benefits, the claimant must provide competent medical evidence to establish these three conditions.

## Case In Point: Maintenance Worker Dies After Work-Related Heart Attack

In a recent case decided by the Wyoming Supreme Court, 68-year-old Robert Scherf died after suffering a heart attack while working at his job servicing a front end loader. [Scherf v. State Ex Rel. Dep't of Workforce Serv.](#), 2015 WY 130. Despite being a long-time smoker, with chronic hypertension, hyperlipidemia and renal insufficiency, Scherf was a physically active man who did not appear to have any physical difficulties performing his work as an oiler for Mountain Construction

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Company.

While working at an out-of-town jobsite near Greybull, Wyoming, Scherf began feeling very nauseated and light-headed, and thought he may have pulled some rib muscles. He had just exerted a great deal of effort to open and close an access panel on a loader that he was servicing. The following day, he felt poorly so did not go to work. His wife talked to him by phone and he sounded incoherent and hung up on her. Concerned, she contacted a co-worker and the company president to check on him. The president visited him in person and thought Scherf looked tired, sick and wasn't making much sense, so suspecting a heart attack, called an ambulance. Scherf was diagnosed with acute myocardial infarction with cardiogenic shock and after unsuccessful treatment, died the next evening.

Scherf's wife sought death benefits under the Wyoming workers' compensation statute. The Workers' Safety and Compensation Division denied benefits on the grounds that there was no indication that the work being performed when Scherf suffered the heart attack was unusual or abnormal for his job. After a hearing, the hearing examiner agreed with the Division and upheld the denial of benefits. Mrs. Scherf sought review by the district court which affirmed the decision. Her appeal to the Wyoming Supreme Court, however, yielded different results.

## **Court Finds Evidence That Exertion Was Unusual or Abnormal For The Job**

A cardiologist's expert opinion established the first and third conditions for benefits, namely that the Scherf's myocardial infarction began while he was at work, and was caused by the heavy exertion while straining to open and shut an access panel on a loader. The only issue was whether the exertion experienced by Scherf was clearly unusual or abnormal for oilers in the industry.

Reviewing the testimony of numerous Mountain Construction employees, including its president, the Court concluded that the exertion Scherf experienced that day in opening and closing the loader's access panel was indeed unusual to or abnormal for oilers. Scherf had told his wife on the phone that the panel had been caked with mud and was stuck, making it very difficult to open and close. Yet, the company president, superintendents, and other oilers testified that opening the access panel was not normally difficult and was not a strenuous task.

Because Scherf's widow testified to his extra exertion on the day he suffered a heart attack, the Court decided that Scherf had experienced employment exertion that was unusual to or abnormal for oilers, thus meeting the second and final condition for workers' compensation benefits. The Court ordered that death benefits be paid to Scherf's widow.

## **Conclusion**

Losing an employee is never easy. A prolonged legal battle over workers' compensation benefits can add stress and pain to an already difficult situation. Knowing how Wyoming courts determine whether cardiac-related conditions are compensable can help you pick and choose your battles wisely. When in doubt, be sure to consult with your employment counsel.

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