

Overwork Recognized as Cause of Occupational Accident

I. Introduction and Summary of Case

Chronic long working hours is a major cause of death from stroke or heart attack for many workers.¹ Recognizing a death as due to overwork, and therefore an occupational accident, is not easy even if the surviving family applies for such with the Labor Welfare Agency. The courts have a broader recognition of the relationship between work and disease. In this article, we look at an exceptional case where a security guard died of a heart attack while engaged in personal activities on holiday, and his death was recognized as an occupational accident. Herein, I will examine the case in detail, and review the criteria and related implications.

After retiring from the police force, the employee entered and worked as a night security guard at a recycling center in Yangcheon-gu from February 26, 2018, and died of a heart attack while on holiday and hiking on a nearby mountain six months later (August 22). Accordingly, the spouse filed for recognition of his death as an occupational accident with the Labor Welfare Agency, claiming that the employee died due to stress accumulated from overwork. However, in February 2019, the Labor Welfare Agency dismissed the claim, stating that there was no relation between the work and the death. Accordingly, the spouse visited this labor attorney and requested legal representation for the case. So, after investigating the death of the employee, this labor attorney appealed to the Head Office of the Labor Welfare Agency for reconsideration. In August 2020, the Labor Welfare Agency's Head Office cited the opinion of the Labor Welfare Agency's medical doctors, and said that the death of a worker cannot be recognized as an occupational accident because he had not been working the number of hours considered as "overwork," and even if there was an additional weighting for shift work, they judged that it was simple surveillance and security work. Seeking to reverse the decision of the Labor Welfare Agency, this labor attorney told the Ministry of Employment and Labor (MOEL)'s Re-examination Committee that the employee's work was not simple security work, but involved night patrols every hour, and provided evidence of the harmful and dangerous environment of the workplace. Fortunately, the judges of the re-examination committee decided on May 4, 2021 to overturn the Labor Welfare Agency's decision to reject the case.

II. Decision of the Labor Welfare Agency (Occupational Disease Judgment Committee)

The Labor Welfare Agency's Occupational Disease Judgment Committee did not recognize the death of this guard as an occupational accident, as the number of hours he had worked did not meet the standard number for determining a chronic overwork situation in the MOEL guidelines. The fact that he worked according to a shift system added weight, but the committee did not consider this weighting essential since they felt the guard was performing simple surveillance tasks.²

¹ Lee, Hee-Ja, 「Accident Cases due to Overwork and Workers' Compensation」, Joongang Economy, 2014, p. 204.

² Occupational Disease Decision, 2019 Decision No. 2571, February 6, 2020

“The deceased had worked as a security guard at the Yangcheon-gu Office recycling center for about 6 months from February 26, 2018, and as a result of calculating the working hours based on the patrol log, for one week before his death he had worked 46 hours; for four weeks before death, he had worked a weekly average of 52 hours and 15 minutes; and for 12 weeks before his death he had worked a weekly average of 52 hours and 57 minutes. At the time of his death, no sudden changes in work environment were observed. The minority opinion was that the working hours of the deceased were insufficient to be considered “overwork,” but since he worked every other day, a considerable causal relationship was recognized between work and the heart attack leading to death. However, the majority opinion was that the average working hours per week before death was 52 hours and 57 minutes, which is less than the standard working hours to determine chronic overwork as stipulated by MOEL guidelines, and there was no significant work burden other than the fact that it was shift work. Taking these facts into account, it was difficult for the Committee to say that he was overworked or under sufficient stress that could lead to death, so a significant causal relationship between work and death was not recognized.” The MOEL guidelines forming the basis for the judgment are as follows.

MOEL Guidelines on Recognition of Overwork (No. 2020-155, December 29, 2020)

1. Stroke or heart disease

A. (Omitted) In the event of sudden and unpredictable incidents related to work and sudden changes in work environment within 24 hours prior to the occurrence of symptoms

B. (Omitted) When the amount or time of work within 1 week prior to the occurrence of symptoms has increased at least 30% over the average of 1 week in the previous 12 weeks (excluding the last full week before the incident)

C. (Omitted) Determination of chronic heavy work is based on the following:

1) When working hours exceed an average of 60 hours per week for 12 weeks before the incident (average of 64 hours per week for 4 weeks before the incident)

2) Even if the average working hours per week exceeds 52 hours during the 12 weeks before the incident, when performing any of the following tasks (weighted factor in the burden of work)

① Work schedule difficult to predict, ② shift work, ③ work with insufficient holidays, ④ work involving exposure to harmful working environment (cold, temperature changes, noise), ⑤ work of high physical intensity, ⑥ work with large time lags and frequent business trips, and ⑦ mentally stressful work

3) When working hours do not exceed an average of 52 hours per week for 12 weeks before the incident, if they are exposed to multiple weighted factors in the burden of work in Paragraph 2.

III. Reason for Revisiting Case

1. History of the Case and Investigations

In November 2018, shortly after the initial application by the security guard’s family for determination of the security guard’s death as an occupational accident, Yangcheon-gu Office prepared application documents stating

that the employee had died for reasons attributable to overwork, and filed an application for determination as an occupational accident with the regional office of the Labor Welfare Agency. The Labor Welfare Agency then submitted basic data on the investigation documents together with labor contracts, work (patrol) logs, and details on the health of the employee submitted by Yangcheon-gu Office to the Occupational Disease Judgment Committee without visiting the workplace and conducting a specific fact-finding investigation. The Committee dismissed the application for survivor's benefits explaining that the case was not related to occupational overwork.

In response to this, this labor attorney requested an information disclosure from the regional branch of the Labor Welfare Agency regarding the employee, and requested the same from Yangcheon-gu office, which had jurisdiction over the workplace of the deceased, together with questions about the working conditions and working environment at that time. In addition, this labor attorney visited the Yangcheon-gu recycling center and carefully investigated the guard post, the security route, and the workplace environment. In particular, a face-to-face interview was conducted with a co-worker who had worked two shifts with the deceased around the time of his demise. In this face-to-face investigation interview, it was confirmed that they had to come to work 30 minutes before their working hours began to receive necessary information from the day-shift workers, and that the employee did not just work in the guard post at night, but also patrolled every hour, as well as assisted 70 vehicles entering and leaving the recycling center during their shift. As the work load was too high for only two shifts, it was confirmed that the co-worker continually requested additional personnel, and that one more guard had been added two months after death of the deceased, creating three shifts instead of the two shifts that had existed when the deceased passed away.

2. Details of the Re-examination Request

This labor attorney added the facts revealed during the investigation and applied for reconsideration. First of all, since the employee had gone to work 30 minutes earlier than start time every day to take over the tasks, 30 minutes were added to the daily working hours. Second, the employer unilaterally deducted rest time from working hours. Ninety minutes were deducted from the employee's nighttime working hours as break time, but this break time was not constant and the deceased had been unable to leave the workplace during that time. So, it was explained based upon a related court ruling that such break time should be included as waiting time belonging to working hours.³ Third, some MBC news material that reported on the current workplace in 2017 was cited as evidence to prove the harmful and dangerous working environment due to the odors from rotting garbage, excessive noise from large recycling vehicles coming and going, and a large amount of garbage all around the workplace.

³ Supreme Court ruling on Dec. 13, 2017, 2016da243078: The guard was instructed to immediately react when urgent things occurred while in the guard post (security office) during the night break. As a matter of fact, the guard patrolled the premises at the employer's instruction during the night break at different times, which seems to hinder the free use of break time. Taken together, the security guard's night break was difficult to see as a break and sleep time that guards can use freely. In addition, the guard had to be available during waiting time for any emergency situation that might arise.

3. Reasons the Labor Welfare Agency Rejected the Request for Re-examination

In this labor attorney's view, the headquarters of the Labor Welfare Agency only conceded the fact that the employee had come to work 30 minutes before his start time to facilitate the shift handover, and did not accept any other claims. It determined that the 90-minute night break claimed by this labor attorney was not waiting time because the employee was a simple surveillance guard. In addition, the weighted factor of shift work was not considered because it was felt that the workers performed simple surveillance guarding tasks only. An excerpt from its decision is as follows.⁴

“The common medical opinion of the advisory doctors at the headquarters of the Labor Welfare Agency, who comprehensively reviewed the data related to the applicant's request, concluded that the overtime work of the deceased was simply in excess of normal working hours, but not enough to meet the standard working hours deemed sufficient for classification as “overwork.” In addition, there are no items that can be recognized as psychological stress caused by work, and no items that can be judged as a sudden change in work environment. No sudden changes in the working environment or working conditions were found to exist within 24 hours before the death. The working hours of the deceased for one week before death were 47 hours and 00 minutes, and no increase of at least 30% in workload or intensity of work was confirmed. The average working hours per week of the deceased for 4 weeks and 12 weeks before death were 53 hours 30 minutes and 54 hours 12 minutes respectively, and 3 hours of rest was provided when working 24 hours of simple surveillance tasks. It is difficult to recognize this as a short-term or chronic heavy burden. The weighting of the shift system is recognized as a factor, but the duties were simple surveillance tasks of a security guard, so there is little relevance to the work. Therefore, it is difficult to recognize a significant causal relationship between the work performed by the deceased and his death.”

III. Reasons for Requesting Re-examination and Obtaining Related Evidence

1. Reasons for Requesting Re-examination

In August 2020, the Labor Welfare Agency's Review Committee also dismissed the request for review, based on the investigation details of the Occupational Disease Judgment Committee and the opinion of the agency's advisory doctors without visiting the recycling center. In response to this, this labor attorney reflected the following items based on objective data in accordance with the MOEL Guidelines on Recognition of Overwork in his application for re-examination.

(1) Weight factors not reflected

The Labor Welfare Agency Review Committee recognized the average working hours per week for 12 weeks before the death as 54 hours and 12 minutes. However, the employee was working on a two-person, two-shift system requiring only work at night on weekdays. Although this shift work falls under the criteria to be determined a weighted factor as set by MOEL Guidelines (No. 2020-155), the committee did not reflect this in its judgment.

⁴ The Labor Welfare Agency, Review Team 1-G0006399 (Aug. 26, 2020)

According to this regulation, even if the average working hours per week for 12 weeks before death are fewer than 60 hours, as long as it exceeds 52 hours per week, the relevance between work and disease is valid in cases where the work falls under one or more of the 7 weighted factors. Therefore, shift work is directly related to the weighted factors involved in determining whether overwork has occurred.

(2) Additional 30% of night working hours not reflected

The employee in this case was hired for the main purpose of night security work. During the night shift, the employee patrolled every hour, and additionally assisted about 70 vehicles entering and exiting at night with recyclables to measure their weight. Therefore, his duties involved more than simple surveillance tasks. These tasks do not fall under surveillance and intermittent labor duties in Article 63, Paragraph 3 of the Labor Standards Act. Therefore, an additional 30% in work hours must be added for night work, according to MOEL Guidelines (No. 2020-155).

(3) Poor working environment due to vehicle noise and odors not reflected

The waste recycling site was a dangerous workplace, with toxic odors from melting Styrofoam, the noise of 70 vehicles every night, and the constant smell of rotting food waste. The employee had to wear a face mask, safety helmet, and safety boots when patrolling. Of particular note is that the co-worker of the deceased, who worked together with him in the two-shift system, strongly advised bringing in an additional worker after the employee's death, stating that he did not want to also die from the heavy workload. Accordingly, Yangcheon-gu Office brought in an additional worker, making it a three-shift system with three workers in November 2018, two months after the employee's death.

2. Evidence-gathering Activities related to Case Revisit

In this occupational accident case involving overwork, it was of great help to obtain supporting data through an official request for information disclosure and a fact-related questionnaire. Visiting the actual workplace and conducting an experiential survey on the work of the employee played a particularly helpful role in proving that the death amounted to an occupational accident.

(1) Application for information disclosure

This labor attorney requested the Labor Welfare Agency's Seoul Southern Branch and Head Office to disclose information related to the case and received the related documents used to reject the request for the death to be deemed an industrial accident. In addition, the labor attorney asked the employee's workplace, Yangcheon-gu Office, for information in the form of an inquiry in detail about the work environment of the relevant workplace and the reason for hiring an additional worker on a separate work shift, and received all necessary documents.

(2) Onsite confirmation of workplace conditions and interview with co-workers

This labor attorney went directly to the recycling center at Yangcheon-gu Office, the employee's workplace, to see the workplace layout, patrol route, workplace environment, and ask questions of the co-workers in person. Of particular note is that this labor attorney met a co-worker who was the employee's shift counterpart and listened to the difficulties of the co-worker at that time. It was also confirmed that another co-worker in the other shift had

demanded a change from the two-shift system to a three-shift system, and additional personnel.

(3) In addition, the labor attorney submitted MBC video data that he obtained online, which reported on the poor working environment and various civil complaints at the Yangcheon-gu Office recycling center at the time the employee was working there. This MBC video helped to prove the reality of the harmful workplace.

V. Decision during Re-examination and Conclusion

On May 4, 2021, the MOEL's Reexamination Committee held a judgment meeting on this case. Here, the committee members confirmed that the Labor Welfare Agency recognized an average of 52 working hours or more for the 12 weeks before the deceased passed away, so the issue was whether there was room to reflect the shift system, which is an important weighted factor at work. Here, under the premise that the employee's work involved only simple tasks, the Labor Welfare Agency failed to reflect the weighted factors stipulated in the MOEL Guidelines on Overwork. However, the members of the re-examination committee recognized through the MBC video data that the center was a hazardous workplace, that the work system changed from two shifts to three shifts after the employee died due to the high intensity of work, that the worker had to patrol the center premises every hour during the night shift, and that the employee provided support to 70 vehicles carrying recyclable items, also during night shift hours. They judged that the employee's work was not simple guarding work, and the weighted factor would be recognized because of the multiple duties that the employee had.⁵ Nevertheless, this labor attorney's claim that an additional 30% had to be added for night work was not reflected, as the committee considered the security guard at night to be a surveillant worker.

While engaged in this case of overwork leading to occupational accident, I realized the importance of fact-finding through information disclosures on the relevant workplace, Yangcheon-gu Office, and the data confirmed through onsite visits, which were used as important information to prove the security guard's off-duty death was an occupational accident. It is not easy to have overwork recognized thus because private companies still have no legal obligation to provide basic data, so it therefore does not happen unless the employer chooses to cooperate. Therefore, it is absolutely essential that legal requirements be introduced that will facilitate labor attorneys being able to investigate factual company situations that may prove helpful in obtaining evidence supporting consideration of incidents as occupational accidents.

⁵ Industrial Accident Compensation Insurance Re-examination Committee Decision on May 24, 2021: 2020 Decision 4601, May 24, 2021.5.24.