APPEAL NO. 92034

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq* (Vernon Supp. 1992) (1989 Act). A contested case hearing was held on October 3, 1991, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that appellant's heart attack was not compensable under the 1989 Act. Appellant challenges the sufficiency of the evidence to support the finding and conclusion of the hearing officer that appellant failed to show that his work was a substantial contributing factor of his heart attack, rather than the natural progression of appellant's preexisting heart condition or disease.

DECISION

We affirm. The evidence is factually sufficient to support the decision of the hearing officer.

Appellant properly invoked the jurisdiction of this body by timely filing his written request for review. Article 8308-6.41 (1989 Act). However, appellant's request for review did not contain a certificate reflecting service on the other party as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. Code, § 143.3(b) (TWCC Rules). Respondent was represented at the contested case hearing by (Ms. A.) with the firm of (firm) of (city), Texas. Appellant did not certify to service upon (Ms. A) or her firm but merely sent a copy of his transmittal letter, presumably with a copy of the appeal enclosed, to a representative of the respondent carrier in (city), Texas. Notwithstanding appellant's failure to comply with the requirement for service, however, respondent did timely file a response. *See* TWCC Rule 143.3.

Appellant, the sole witness to give evidence at the contested case hearing below, testified that after selling the concrete construction business he had operated since September 1982, he bought a truck and, in March 1988, "leased" himself and his truck to (Employer) as an "owner /operator." Appellant was paid a percentage of the gross revenues produced by his hauling materials for a customer of the Employer. The Employer deducted workers' compensation premiums from appellant's gross earnings. *See* Article 8308-3.05(g) (1989 Act). The parties stipulated that respondent provided workers' compensation insurance coverage for appellant and no disputed issues were raised concerning either appellant's status as an "employee" or respondent's liability should appellant's heart attack be determined to be compensable. Employer assigned appellant and his truck to haul various oil drilling tools between the several locations of a customer of Employer. Those locations were in (city), Texas, (city) and (city) in (city), and (city), (state). Appellant resided in (city), Texas, and drove his truck almost weekly between the customer's locations picking up and dropping off various oil drilling tools or pieces as required.

According to appellant, he suffered a heart attack on the morning of (date of injury), at the (city), (state), location. The previous day he drove from (city) to (city), unloaded some materials and apparently loaded some other materials, and then drove back to (city) where he spent the night in the sleeper compartment of his truck parked in the customer's yard.

He arose early on (date of injury) to load the truck for deliveries in (city) and (city). When he awoke that morning he felt some "tightness" in his chest and shoulders which he concluded would dissipate with some exercise. He had previously experienced such a feeling. He drove the truck into a building where its load was unchained and unloaded and where the subsequent loading was to take place. The oil drilling tools were very heavy and were loaded and unloaded with the use of cranes. After the drilling tools, which resembled drill stems or pipes, were loaded, appellant began the process of securing them with six or seven chains across the top of the load. While pulling down hard on one of the chain binders or latches, appellant felt "faint" and broke into "a cold sweat." He didn't know what was wrong since he "always had a pull in [his] shoulders and all." He stopped working for a few minutes and took some deep breaths. When the "chaining down" was completed appellant drove the truck to (city).

Respondent introduced a transcript of a recorded telephone interview of appellant by Employer's representative, recorded on January 29, 1991, the day appellant was released from (Hospital) in (city), Texas, to support respondent's contention that appellant's undisputed heart attack wasn't identified as having occurred at a specific time and place nor as having been caused by a specific event in the course and scope of employment. *See* Article 8308-4.15(1) (1989 Act). Appellant stated in that interview that on the morning of (date of injury), he had "a weird feeling . . . in my chest and shoulders and all that morning . . . [A]ching in my shoulders and upper arms, from my elbow up and then . . . across my chest and all . . . ." He further stated that after he got loaded and sat for a while "it seemed to go away." In his testimony, appellant stated he had had no prior heart problems and that what he experienced on (date of injury) when pulling the chain down "really felt like just where I pulled, where you pull a muscle in chest or shoulder, a strain . . . ."

After driving to (city) and unloading without incident, he began the drive to (city) and on to (city). Near (city) appellant was forced to pull into a truck stop because he felt "still tight and all" and like he was going to pass out. Shortly later appellant was taken by helicopter to (Hospital) in (city), (state). He was treated there from (date of injury) to January 23, 1991, for an acute myocardial infarction and released to return to Texas. On January 23, 1991, appellant was admitted to (Hospital) in (city) for gastric bleeding. He was treated and was released on January 29, 1991. Appellant returned to work for Employer on March 1, 1991.

Appellant testified he had a second heart episode sometime in early July 1991,while at work at about the same time and place and while doing the same thing as he did on (date of injury). He was admitted to (Hospital) where he was treated for four or five days and released. He returned to work about three weeks later without limitations on his physical activities. No medical records concerning this second heart event were introduced nor was it the apparent subject of appellant's claim against respondent. Appellant testified that he had no health insurance to pay for any of his periods of hospital treatment and had received no pay or other benefits while away from work.

According to the records of (Dr. K), introduced by both parties, appellant was

admitted to (Hospital) at 2:20 p.m. on (date of injury), with an "acute inferior wall myocardial infarction." (Dr. K's) report indicates that appellant, then 57 years of age, was a truck driver who had stopped at a truck stop because of "retrosternal tightness." According to (Dr. K's) report, "[T]he patient states that for the past several weeks he has been having occasional chest pain described as tightness which he ignored. He has been a smoker in the past, smoked heavily but has stopped recently. He has not been taking any medication. He had a cardiac catherization several years ago at which time he was told he did not have any blockages." A cardiac catheterization performed at (Hospital) revealed the complete occlusion of appellant's large proximal right coronary artery and 80% stenosis of the circumflex of the left coronary system. A balloon angioplasty procedure was performed on appellant's completely occluded vessel. (Dr. K) discharged appellant on January 22, 1991, advising him to get immediate care from a cardiologist in (city) and to have additional angioplasty procedures done on vessels in both the right and left coronary arterial systems. No mention was made by (Dr. K) of appellant's work or of the chain pulling event on (date of injury).

According to the medical reports of (Dr. D), introduced by both parties, appellant was admitted to (Hospital) in (city), Texas, by (Dr. D) on January 23, 1991, with admitting diagnoses of: (1) gastric bleeding (probable return of peptic ulcer disease); (2) chronic bronchitis secondary to tobacco use; (3) recent myocardial infarction with balloon angioplasty; and, (4) mild hypertension. (Dr. D) referred appellant to (Dr. M) for a cardiac evaluation. In his report, introduced by both parties, (Dr. M) stated he spoke to (Dr. K) in (city) who advised that while he had a good result from the angioplasty of the right coronary artery, appellant still had a 70% distal right coronary artery occlusion and a 70% to 80% narrowing of the circumflex arteries. (Dr. M's) "impression" was that appellant had a "[R]ecent inferior wall myocardial infarction with successful angioplasty of a very large right coronary artery; has got 70-80% narrowing of the circumflex and a 70-80% narrowing of the distal right coronary artery." (Dr. M) found appellant stable with very little damage to his heart wall and with a regular rhythm.

In his discharge summary, (Dr. D) stated that both (Dr. M) and (Dr. W), who evaluated appellant's gastrointestinal tract, found coronary artery disease. In his "Final Diagnosis" *(Dr. D) included "arteriosclerotic heart and vascular disease" and "coronary artery disease, status post myocardial infarction." The radiology report to (Dr. D) commented that appellant's "aorta is calcific." The medical reports of (Dr. D) and (Dr. M) make no reference to appellant's work or to the chain pulling event on the morning of (date of injury). On February 27, 1991, (Dr. M) released appellant to return to full time work effective March 1, 1991. According to appellant, no restrictions were placed his physical activities.

The findings of fact and conclusions of law pertinent to this appeal follow:

3.While strenuously winching down a load of oil field tools at the (Employer) yard in (city),(state), about 8:00 on the morning of (date of injury), (Mr. T) felt a sharp and unusual pain in his arms and chest.

4.Winching down the load in his truck is a specific job that (Mr. T''s) required to do to load his truck. Loading his truck is a job that he is required to do to prepare his truck for travel on the highway and is undertaken to further the business of (employer).

5.(Dr. K), the cardiologist in (city), (state), who performed a cardiac catherization and a balloon angioplasty on (Mr. T) on (date of injury), diagnosed (Mr. T) as having a myocardial infarction.

6.(Mr. T's) heart attack was caused by winching down the oil field tools on (date of injury).

7.The reports of (Dr. K) of January 22, 1991, of (Dr. M) dated January 23, 1991, and of (Dr. D) dated January 23, 1991, do not indicate that any of them reviewed (Mr. T's) medical history to form any medical opinion about whether (Mr. T's) work was the substantial producing cause of (Mr. T's) myocardial infarction on (date of injury). (Mr. T's) (date of injury), myocardial infarction was not substantially caused by his work rather than by the natural progression of a preexisting heart condition.

8.(Mr. T) suffered from no mental or emotional stress immediately prior to (date of injury).

5.A myocardial infarction is a heart attack within the meaning of Art. 8308-4.15.

6.(Mr. T's) heart attack: (i) occurred at about 8:00-8:30 on the morning of (date of injury) at the (Employer) yard in (city), (state), (ii) and was caused by the specific act of winching down a load of oil tools occurring during the course and scope of his employment, and (iii) (Mr. T) had not been under any mental or emotional stress, but because the preponderance of medical evidence does not establish that (Mr. T's) work, rather than the natural progression of a preexisting heart condition, was a substantial contributing factor to (Mr. T's) (date of injury) heart attack, (Mr. T's) (date of injury) heart attack is not a compensable injury within the meaning of Article 8308-4.15.

7.Because (Mr. T) did not suffer a compensable heart attack under Art. 8308-4.15, he does not have a compensable injury under the provisions of Art. 8308-1.03(10) and the carrier is not liable for compensation under the provisions of Article 8308.

Unlike its predecessor statute, the 1989 Act specifically addresses the compensability of heart attacks as follows in Article 8308-4.15:

A heart attack is a compensable injury under this Act only if:

(1)the attack can be identified as:

(A)occurring at a definite time and place; and

(B)caused by a specific event occurring in the course and scope of employment;

(2)the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and

(3)the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

At the hearing below respondent argued that the evidence failed to establish that appellant's heart attack occurred at a definite time and place pointing to the evidence that before he got involved in loading the truck that morning appellant had arisen on (date of injury), with a "weird feeling" and "tightness" he felt he could shrug off with some exercise. Respondent also pointed to the history in (Dr. K's) report that appellant had been experiencing a feeling of "tightness" for two weeks. Appellant, however, testified that when tightening down on the chain binders he felt faint, broke out into a cold sweat, felt like he had pulled a muscle in his chest, and felt pain. Later that day appellant was taken to an emergency room where he was diagnosed as having suffered an acute myocardial infarction. We view this evidence as probative and sufficient to support the hearing officer's finding and conclusion that appellant did suffer a heart attack on (date of injury), at (city), (state), while winching down a load of oil tools in the course and scope of employment. Appellant's evidence thus satisfied the requirements of Article 8308-4.15(1)(A) and (B). Further, since there was no evidence that appellant's heart attack was triggered, solely or otherwise, by emotional or mental stress factors, appellant met the requirement of Art. 8308-4.15(3). However, medical evidence "that [appellant's] work, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor of the attack" was completely lacking. Thus, appellant failed to establish the requirement of Article 8308-4.15(2) and the posture of the evidence supported the hearing officer's conclusion that appellant failed to meet his burden of proof to show his work was a substantial contributing factor of his heart attack. *See generally* Texas Workers' Compensation Commission Appeal No. 91009 (Docket No. AM-00005-91-CC-1) decided September 4, 1991; *compare* Texas Workers' Compensation Commission Appeal No.

91046 (Docket No. FW-00041-91-BR-1) decided December 2, 1991; Texas Workers' Compensation Commission Appeal No. 91061 (Docket No. LB/A097389/01-CC-LB41) decided December 9, 1991.

We agree with the hearing officer's finding that the medical reports of (Dr. K), (Dr. D), and (Dr. M) fail to address appellant's work as it may have related to his heart attack. We have searched the record and find no medical evidence linking appellant's heart attack to his work as a substantial contributing factor rather than the natural progression of his preexisting heart condition or disease. *See* Texas Workers' Compensation Commission Appeal No. 91063 (Docket No. MO-00023-91-CC-1) decided December 5, 1991. We do not agree with the hearing officer's statement in Finding of Fact No. 7 regarding the absence of medical opinion about whether appellant's work was "the substantial producing cause." The requirement of Article 8308-4.15(2) speaks to work as "a substantial contributing factor" and not as "the substantial producing cause." We conclude, however, that this misstatement of the legal requirement in the finding of fact was harmless error. The hearing officer in both his Conclusion of Law No. 6 and in his "Decision" used the correct term thus indicating he understood the statutory requirement and that his conclusion and decision were not premised upon an erroneous finding of fact. Since no medical evidence, let alone a preponderance, was adduced to show that appellant's work was a substantial contributing factor, the hearing officer correctly determined that appellant's heart attack was not compensable.

The decision and order are affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Susan M. Kelley
Appeals Judge