On November 13, 1991, a contested case hearing was held in (city), Texas, to determine whether the claimant, (claimant), respondent herein, suffered a compensable heart attack on (date of injury), while working for his employer, (employer). The hearing officer, (hearing officer), determined that respondent suffered a compensable heart attack and that he was entitled to medical and income benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Appellant's primary contention on appeal is that under the provisions of Article 8308-4.15, the evidence is insufficient as a matter of law to support the hearing officer's decision in that the evidence shows the heart attack was caused by coronary artery disease, and the heart attack was not identified as occurring at a definite time and place or from a specific event at work. Appellant also contends that the hearing officer erred in admitting a medical report from respondent's doctor, disregarding respondent's doctor's impression of coronary artery disease in another report, and disregarding respondent's transcribed recorded statement. Appellant further contends that the doctor's report relied upon by respondent is insufficient in that it does not discuss "reasonable probability," but only the "possibility" that respondent's work was a substantial contributing factor of his heart attack. Appellant requests that we reverse the hearing officer's decision and render a decision that respondent did not suffer a compensable heart attack. Respondent contends that he met the requirements of Article 8308-4.15, that the hearing officer did not err in his admission and consideration of evidence, and requests that we affirm the hearing officer's decision. Respondent was the only witness at the hearing. He also presented documentary evidence. Appellant presented no evidence, including no medical evidence, no medical opinion, and no medical testimony.

DECISION

Finding no error in the admission of the doctor's report, and finding that there is sufficient evidence of probative value to support the hearing officer's decision and that his decision is not against the great weight and preponderance of the evidence, we affirm his decision awarding workers' compensation benefits to respondent.

Respondent was 60 years of age when he suffered a heart attack while working as a tool room attendant for his employer on (date of injury). He said the tool room was hot and poorly ventilated with only one window, a door, and no electricity to run a fan. Respondent testified that he arrived at work at 6:45 a.m. on the morning of (date of injury), went into the tool room where he rolled a 4' x 8' piece of "gasket material" which he described as being like hard plastic, put tape on the roll to hold it together, and then issued tools to about 30 co-workers. He said the roll of gasket material weighed about 80 pounds and that he weighed about 150 pounds. According to his signed written statement which was in evidence, the tools and materials he handed out each day weighed between 4 pounds, i.e. saws and drills) and 100 pounds (i.e. fire blanket rolls and plastic rolls). After the tools were handed out, he said he attempted to put the roll of gasket material on top of a cabinet. He said the roll was too heavy to just pick up so he lifted one end and put it on a counter next to the cabinet and then raised the other end and "kind of rolled it up there." He said the cabinet was about four feet higher than the counter so he got on a chair, lifted one end of the roll, and put it on top of the cabinet. He said the roll fell when he tried to slide it onto the cabinet and that he jumped out of the chair to avoid being hit by it. When he jumped, he said he lost his balance and rolled into some fire extinguishers which cut his arm and leg a "little bit." He got up, repeated the process, and was successful on his second effort to get the roll on top of the cabinet. By this time it was 9:30 a.m. When he got down from the chair, he said he was sweating but went ahead and swept the floor with a broom. He said

he thought he should sit down and take a break. However, when he got to the chair he said he passed out for a second, fell to his knees, and grabbed the chair. He pulled himself into the chair where he sat and sweated for a while. He then decided to go outside and get some fresh air. He said he sat outside for 15 minutes but realized he wasn't getting any better. He said he had a "cramp" around his shoulder, neck and left arm and thought he was having a heat stroke. He was alone so he waved a driver of a company truck over to him and asked the driver to get help. The driver got the superintendent and safety man and they called an ambulance to take him to the hospital. Respondent stated that he spent a total of 17 days in two hospitals, that he had a "balloon job" done on him, that he is still on medication for his heart, and that his doctor has not told him when he can go back to work. He said his doctor told him he had had a heart attack and that he had a stoppage on the right side of his heart that didn't require bypass surgery. He also stated that his doctor did not give him an opinion as to whether his working conditions caused his heart attack, but that his doctor did tell him that smoking contributed to it and that he, the doctor, could not say that respondent was going to have a heart attack regardless of where he was at. Respondent further stated that the only thing he did the morning of (date of injury) that he had not done before was to put the roll of gasket material up on the cabinet. Other than that (and his heart attack) "it was just about like a normal day."

Medical records and reports relating to respondent's medical treatment on (date of injury) were introduced into evidence by respondent. The hospital admission report noted that respondent was admitted to the hospital at 11:22 on (date of injury), complained of chest pains, and told the emergency room doctor that he had been climbing a ladder and had a sudden onset of pain in his upper chest, neck, and left arm. The doctor's impression was "M.I." (myocardial infarction). (Dr. A), M.D., P.A., cardiology consultation of the same date, revealed that respondent presented to the emergency room with a history of chest pain; that respondent said he had been doing fine until he "suddenly blacked, suddenly collapsed;" and that after he recovered he started to complain of chest pain. (Dr. A) also noted that an EKG showed findings suggestive of acute anterior wall myocardial infarction with reciprocal changes that could be suggestive of posterior wall myocardial infarction as well, and gave an impression of: (1) Coronary artery disease, (2) Syncopal episode, and (3) Chronic obstructive pulmonary disease. The doctor further noted that respondent denied any history of "CVA's, TIA's, or bleeding disturbances." An MRI was performed and the radiologist diagnosed myocardial infarction and concluded "borderline heart, pleural effusion on the right." (Dr. A) performed surgical procedures consisting of right and left heart catherization, left ventriculogram, selective coronary angiography, and the insertion of a temporary pacemaker. In an operation report dated April 8, 1991, he noted in his "Hemodynamics" that there were no areas of calcification at the level of the mitral or aortic valve; that there was a hypokinetic area affecting the interior and posterior wall of the left ventricle; that the right coronary artery was found to be dominant and showed 95 percent stenosis in its proximal portion with findings suggestive of residual thrombus; that the distal run off remained open and the left main was normal; that the LAD (left anterior descending artery) showed 60% stenosis at the level of the take-off at the first diagonal, and that the first diagonal showed approximately 30% stenosis in its origin. His conclusions were coronary artery disease, abnormal left ventricle, and right ventricular failure. In a report dated November 21, 1991 (the hearing officer left the record open to receive a written opinion from respondent's doctor), (Dr. A) stated:

> "Just prior to the MI the patient was working, lifting, and pushing heavy machinery which could have possibly been a substantial contributing factor for [respondent's] MI."

Respondent testified that prior to (date of injury), he had never had heart problems

nor been diagnosed as having heart problems. He also said he had never before felt the type of pain he felt that day. He said he had retired from the military service in 1968 and had been a heavy equipment operator from that time up until he obtained the tool room attendant job ten weeks before his heart attack. He also said he had been required to have a physical examination each year of the first ten years after retiring from the service; that his last physical examination was in 1989; that he had an EKG done at that time and no one told him that anything was wrong; that he had to take a drug test but not a physical examination for his tool room job; and that he had never been turned down for a job based on health problems. He said his previous hospitalizations were for a back injury while in the military service and for eye surgery. He also said that from 1949 until the day of his heart attack he had smoked one pack of cigarettes a day, and that at the time of his attack he was not taking any "over-the-counter medications."

Other medical records and reports introduced into evidence by respondent showed that he underwent eye surgery in 1983 and 1985, and had a spermatocelectomy in 1989. These reports noted no complaints of heart disease, and the reports of EKG's performed for those operations and another done in 1984 failed to indicate whether or not there was any "Evidence of Myocardial Disease" in the spaces on the reports for the reporting of such findings.

We now turn to appellant's contentions on appeal. We find no merit in appellant's contention that the hearing officer erred in admitting into evidence (Dr. A) signed report of November 21, 1991. Toward the close of the hearing on November 13, 1991, the hearing officer asked respondent's attorney if "any doctor had ever offered an opinion," to which respondent's attorney replied that respondent's doctor had given one, but that it had not been reduced to writing. The hearing officer then left the hearing record open until December 11, 1991, in order for respondent to obtain a written doctor's opinion, send a copy of it to appellant for review and response, and submit it into the record. Appellant did not object to having the record remain open for receipt of this report and Claimant's Exhibit No. 3 reflects that a copy of the report was hand-delivered to appellant's attorney on November 25, 1991, and a copy mailed to the hearing officer on November 26, 1991. The record contains no response to the report from appellant. As indicated, the appellant elected not to offer any medical or other evidence on this issue.

Pursuant to Tex. W. C. Comm'n Rule, 28 TEX. ADMIN. CODE § 142.2, the hearing officer is authorized to rule on the admissibility of evidence and to request additional evidence. Article 8308-6.34(e) provides for the admission into evidence of written reports signed by a health care provider. As noted, appellant did not object to having the record remain open for the introduction into evidence of (Dr. A) report. Ordinarily, evidence which is admitted without objection cannot be complained of on appeal. Dicker v. Security Insurance Company, 474 S.W.2d 334 (Tex. Civ. App.-Waco 1971, writ ref'd n.r.e.).

We also find no merit in appellant's contention that the hearing officer disregarded a transcription of respondent's recorded statement. The transcription of that statement was not offered into evidence and was therefore, not a part of the record. (Claimant's Exhibit No. 2, a signed written statement by respondent, is not the transcript of the recorded statement.) Respondent acknowledged that he had given an oral statement to an adjuster to the effect that he had a normal day on (date of injury), but explained in other portions of his testimony that issuing tools and cleaning the tool room were part of his usual work, although he had not, on other days, put the roll of gasket material up on the cabinet.

The remainder of appellant's contentions concern the application of Article 8308-4.15 to the evidence adduced at hearing. Article 8308-4.15 of the 1989 Act provides as follows:

Compensability of heart attacks. 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.

We also disagree with appellant's assertion that the evidence was insufficient to show that the heart attack occurred at a definite time and place and was caused by a specific event occurring in the course and scope of employment. We have previously held that in order to meet the requirements of Article 8308-4.15(1), a layman can testify as to the time and event that caused his attack due to the lack of any requirement in Article 8308-4.15(1) that the evidence to establish a definite time, place, and specific event be of a medical nature. Texas Workers' Compensation Commission Appeal No. 91046, Chief Appeals Judge Sanders dissenting (Docket No. FW-00041-91-BR-1) decided December 2, 1991. In this case, respondent's uncontroverted testimony showed that he experienced "cramps" in his neck, shoulder, and left arm within three hours of starting his work and issuing tools, and almost immediately after lifting and sliding an 80-pound roll of material on to the top of a high cabinet. This evidence, together with the emergency room admitting report which gave an impression of myocardial infarction and noted respondent's arrival at the hospital at 11:22 a.m. and a history of sudden onset of pain in the upper chest, neck, and left arm, is sufficient to support the hearing officer's findings that the myocardial infarction occurred immediately after respondent engaged in a strenuous activity and that the activity was undertaken in furtherance of the business interests of the employer. *See* Insurance Co. of North America v. Kneten, 440 S.W.2d 52 (Tex. 1969); Transport Insurance Company v. McCully, 481 S.W.2d 948; Texas Workers' Compensation Commission Appeal No. 91046, *supra*.

As noted in Appeal No. 91046, *supra*, the second part of Article 8308-4.15 is not reflective of prior case law because this part specifically requires medical evidence and states that a preponderance of such evidence must indicate 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. In this case, the medical evidence showed that:

1.Respondent had four EGK's performed in the eight years preceding the year of his heart attack and in each instance the person making the EKG report failed to indicate whether or not there was evidence of myocardial disease in the space provided on the report to indicate such;

2.Respondent's doctor gave an initial impression on the day of respondent's heart attack of coronary artery disease, syncopal episode, and chronic obstructive pulmonary disease;

3.In his report of operation dated April 8th respondent's doctor found that the right coronary artery showed 95% stenosis, the LAD showed 60% stenosis, and the first diagonal showed 30% stenosis, and concluded that respondent had coronary artery disease, an abnormal left ventricle, and right ventricular failure; and

4.In a subsequent report dated November 21, 1991, respondent's doctor gave his opinion that respondent's lifting and pushing just prior to his myocardial infarction "could have possibly been a substantial contributing factor for (respondent's) MI."

Simply because a medical expert uses "magic words" does not mean a court must ignore the substance of his testimony and accept his opinion as some evidence of causation. Schaffer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). In Schaffer, the Supreme Court of Texas held that the claimant's doctor's opinion that, based on reasonable medical probability the claimant's disease resulted from his employment, was not based on reasonable medical probability but relied on mere possibility, speculation, and surmise where the particular strain of bacteria from which the claimant suffered had not been identified and where there was no evidence that the bacteria was present in the soil where the claimant worked. However, the use of the word "possible" by a medical expert in identifying the cause of an injury does not preclude the doctor's opinion from being based on reasonable medical probability. In Lucas v. Hartford Accident and Indemnity Company, 552 S.W.2d 796, 797 (Tex. 1977), a case involving causal connection between the claimant's thrombophlebitis and his disability, the Supreme Court of Texas stated:

"The insurer argues and the Court of Civil Appeals held that (Dr. C's) use of qualifying phrases reduced his testimony to no evidence at all. "I think," "in all likelihood," "it is possible," are phrases found in the quoted testimony. But, the substance of the medical testimony taken in context, satisfies the law's demand for reasonable medical probability."

In Lucas, the claimant's doctor had also testified that there was "not necessarily but probably" a relationship between the claimant's thrombophlebitis and work-related injury to his ankle. It is not critical, as a matter of semantics, that the doctor use the particular words "in reasonable medical probability" if that is, in context, the substance of his testimony. Transport Insurance Company v. Campbell, 582 S.W.2d 173, 175 (Tex. Civ. App.-Houston [1st Dist.], 1979).

We have on several occasions addressed the question of the compensability of a heart attack under the provisions of Article 8308-4.15 of the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 91009 (Docket No. AM-00005-91-CC-1) decided September 4, 1991; Texas Workers' Compensation Commission Appeal No. 91031 (Docket No. AB-00002-91-CC-1) decided October 24, 1991; Texas Workers' Compensation Commission Appeal No. 91044 (Docket No. WA-00002-91-CC-1) decided November 14,

1991; Texas Workers' Compensation Commission Appeal No. 91046, *supra*; Texas Workers' Compensation Commission Appeal No. 91061 (Docket No. LB/A097389/01-CC-LB41) decided December 9, 1991; Texas Workers' Compensation Commission Appeal No. 91063 (Docket No. MO-00023-91-CC-1) decided December 5, 1991; Texas Workers' Compensation Commission Appeal No. 91081 (Docket No. AM-A034067-01-CC-LB41); and Texas Workers' Compensation Commission Appeal No. 92034 (Docket No. HO-00158-91-CC-1) decided March 19, 1992.

In Appeal No. 91009, *supra*, we reversed the hearing officer's decision for the claimant on the basis that the evidence was insufficient to support his conclusion that the preponderance of the medical evidence showed that the deceased's work, rather than the natural progression of atherosclerosis, was a substantial contributing factor of his heart attack. In that case, a medical doctor gave his written opinion that "more likely than not, the occupational physical stress experienced by (deceased) was a contributing cause of his myocardial death." His written statement was "based upon laymen observation with the signs and symptoms he complained of before death." The doctor's written statement also revealed that the deceased had intracoronary arteriosclerosis plague. The doctor did not indicate his source for the background information on the deceased's activity on the day of the attack, and, apparently, had not examined or treated the deceased. In arriving at our holding we noted that not only did the medical evidence fail to show a degree or natural progression of the deceased's preexisting heart condition as it related to the employee's work, it indicated that the work was no more than a contributing factor of the attack rather than the statutorily imposed higher standard of a substantial contributing factor.

In Appeal No. 91031, *supra*, we found that the evidence was sufficient to support the hearing officer's conclusion that the deceased died as a result of a natural progression of a preexisting disease and that the death was not compensable. An autopsy report stated that the deceased died a "natural" death caused by arteriosclerotic cardiovascular disease, and a doctor who specialized in cardiology concluded that the deceased died from sudden cardiac death (which we held was cardiac in nature and within the broader, non-medical definition of "heart attack"); that his death was not connected with any specific event at work and could have just as easily occurred at home while relaxed; and that the condition leading to the deceased's demise was a condition that most commonly occurs when a person is not engaged in strenuous activity or work. We stated that the medical evidence clearly and convincingly established that the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack rather than the deceased's work. It appears from the decision that the claimant did not offer any medical evidence indicating that his work was a substantial contributing factor to his attack.

In Appeal No. 91044, *supra*, we upheld the hearing officer's decision that the deceased's heart attack was not compensable where no medical evidence presented by the claimant even considered whether the deceased's work, rather than the normal progression of the disease process, was a substantial contributing factor to the deceased's heart attack. In Appeal No. 91046, *supra*, the majority opinion affirmed the hearing officer's finding of a compensable heart attack despite the claimant's history of three prior heart attacks. In that case, the claimant's doctor stated that claimant's heavy work was "the precipitating factor" for the attack. In his dissenting opinion, Chief Appeals Judge Sanders said he would have held that the claimant did not sustain his burden of establishing the compensability of his heart attack under Article 8308-4.15. Judge Sanders recited from the medical evidence the claimant's extensive coronary artery disease going back ten years, his

risk factors and previous heart attacks, medical impressions following the recent attack, a cardiologist's statement which was contrary to the claimant's doctor's opinion, and that the claimant's left anterior descending coronary artery was 100% proximally occluded, his left circumflex artery showed 70% stenosis, and the right coronary artery had a 40-50% stenosis.

In Appeal No. 91061, *supra*, we affirmed the hearing officer's decision that the claimant had not sustained his burden of proof that his heart attack was a compensable injury. In that case, the medical evidence showed severe coronary artery disease with a 30% stenosis in the right coronary artery, 85 to 90% stenosis in the left anterior descending artery, and 40% narrowing in the circumflex artery. One doctor said she could not assess whether the claimant's heart attack was work-related or a natural progression of coronary artery disease. The doctor who examined the claimant had diagnosed a myocardial infarction and stated that "It is entirely possible that this myocardial infarction was stress related. It occurred while the patient was on the job and may very easily have been due to stress that the patient experienced at work." The claimant had stated that his heart attack occurred while he was working and walking on the job. His supervisory job required him to give job assignments and to walk the job to see that the work was being done. In Appeal No. 91063, *supra*, we held that the evidence supported the hearing officer's determination that the claimant's heart attack was the result of the natural progression of a preexisting heart condition and was not compensable where the medical records showed that claimant's left anterior descending artery was completely occluded before his first angioplasty and was again completely occluded before his second angioplasty, claimant's doctors diagnosed arteriosclerotic heart disease with coronary artery disease, and none of the medical evidence linked the claimant's heart attack to his work. In Appeal No. 91081, *supra*, we upheld the hearing officer's decision that the deceased did not suffer a compensable heart attack. We found that the claimant provided no medical evidence indicating that the deceased's work was a substantial contributing factor of his heart attack, and their was a lack of evidence indicating that a specific event caused the attack. We also affirmed the hearing officer's decision that the claimant's heart attack was not compensable in Appeal No. 92034, *supra*. The claimant failed to adduce any medical evidence to show that his work was a substantial contributing factor of his heart attack.

In our opinion, the present case is distinguishable from Appeal Nos. 91009, 91031, 91044, 91061, 91063, 91081, and 92034, *supra*, in that in those cases there was either no medical evidence offered by the claimant relating the cause of the heart attack to the employee's work, or the medical evidence offered by the claimant at most indicated that the employee's work was a contributing cause of the heart attack. In the present case respondent's doctor, who took the history of the attack from respondent on the day of the occurrence and who performed respondent's heart operation, opined that respondent's lifting and pushing just prior to his myocardial infarction could have possibly been a substantial contributing factor for respondent's myocardial infarction. While this statement is not as definite as the doctor's statement in Appeal No. 91046, *supra* (the heavy work was "the precipitating factor"), as previously noted, the courts have held that the use of the word "possible" by a medical expert in testifying as to causation, when taken in context with the substance of the medical testimony, can satisfy the law's demand for reasonable medical probability. We hold that the medical evidence presented a question of fact for determination by the hearing officer as to whether the preponderance of the medical evidence regarding the attack indicated 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. We find that there was some medical evidence of probative value to support the hearing officer's conclusion on that issue favorable to respondent, and that his conclusion was not so against the great weight and preponderance of the evidence so as to

be manifestly wrong or unjust. The hearing officer's decision is affirmed.

_____
Robert W. Potts
Appeals Judge

CONCURRING IN THE RESULT:

_____
Joe Sebesta
Appeals Judge

CONCURRING OPINION:

_____
Susan M. Kelley
Appeals Judge

I agree with the results of this particular case, noting that the preponderance of medical evidence here is found not only in the doctor's assessment as to the "possibility" that the lifting was a substantial contributing factor, but to his earlier notation of "syncopal episode" as a cause of the myocardial infarction, indicative of an occurrence that brought on the loss of cardiac function. The hearing officer has apparently determined that Dr. A's statement taken in context of earlier medical records in which it was rendered, as well as the lack of meaningful medical evidence from the appellant to refute that tendered by respondent, that respondent proved everything in Article 8308-4.15 that he is required to prove to sustain compensability. I note that 4.15(2) requires that the evidence "indicate," rather than "establish," the causal connection. Great care should be taken, however, before reliance is made in future cases on statements to the effect that an exertion at work "could have possibly been a substantial contributing factor" for a heart attack. While I recognize that a physician need not use magical words in rendering an opinion, the assessment of only possibilities, as opposed to medical probabilities, generally does not establish the vital causal link between the workplace and the injury. *See* Schaffer v. Texas Employers' Insurance Ass'n, 612 S.W.2d 199 (Tex. 1980); *see also* Illinois Employers' Insurance of Wausau v. Wilson, 620 S.W.2d 169, (Tex. Civ. App.-Tyler 1981, writ ref'd n.r.e.). It is also important to be mindful of the apparent legislative intent behind Section 4.15 of the 1989 Act to greatly restrict compensability of heart attacks to only those cases where all elements of the statute are demonstrated by the record.