

## APPEAL NO. 92174

On February 25, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. (Hearing officer) determined that the deceased worker, (decedent), whose widow is the appellant herein, did not sustain an injury on (date of injury), to wit, a heart attack, in the course and scope of his employment for (employer).

The appellant disagrees with various findings and conclusions of the hearing officer, and argues that the preponderance of the evidence supports compensability; that the decedent's work, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor of his heart attack according to a preponderance of the medical evidence; and that the major medical witness for respondent did not understand decedent's working conditions at the time of his death. The respondent asks that the decision of the hearing officer be upheld, pointing out that the claimant failed to sustain her burden to establish compensability of the decedent's heart attack under the criteria set forth in the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. Art. 8308-4.15 (Vernon's Supp. 1992) (1989 Act).

### DECISION

We affirm the decision of the hearing officer, finding his decision to be supported by sufficient probative evidence.

The (decedent), was 67 years old and weighed around 250 pounds when he died on (date of injury), within two hours after arriving at work for his employer. He had been employed by the employer since 1967. The appellant, (widow), is his surviving widow. The appellant stated that a month before her husband's death, sometime around March 20, 1991, the decedent experienced leg pain and shortness of breath when he and appellant were out walking; he subsequently consulted with (Dr. H) who had been treating him for cancer. Dr. H's records indicate that decedent was found to have high cholesterol. The morning of his death, decedent was in good spirits, according to appellant. Appellant testified that decedent had collapsed at work two or three years earlier and had a heart attack. She stated that she believed he was working light duty at work, although she stated that he did not regularly discuss his job duties with her, but did so only on occasion. She stated that he never complained of chest pain related to activities around the home. It was her feeling that decedent had a heart attack because of his work the morning of (date of injury).

Decedent's coworker, (EP), testified in video deposition. He stated that he was the only person who washed chips (referring to beechwood chips used in the brewing process) on a day-to-day basis. He stated that the cooked chips were raked from a higher floor into chutes which loaded them into "torpedoes," which were mounted on stainless steel troughs; the full torpedoes then were pulled to the washing area which was in the same room. The torpedoes were transported on dollies with two stationary and two swivel wheels, which were pushed by hand or by machine. EP stated that pushing them could sometimes be hard

because the wheels would rust and freeze up. He stated that fully loaded torpedoes could weigh as much as 2,000 pounds. EP testified that decedent's usual job was to assist him with hauling of loaded torpedoes and washing chips. That morning EP and decedent were washing new chips. On the morning of (date of injury), EP stated that decedent had also been asked to "throw down" the torpedoes, referring to the loading process. This meant that decedent would go to the next floor, rake the chips out of the cooker, and push the chips down a chute into the torpedo, after pushing the empty torpedo into position. He also was charged with loading the washers with new chips. Although stairs connected the floors, EP stated that decedent usually took the elevator rather than the stairs. EP said that decedent had already loaded two torpedoes and had pushed the third into place under the chute. He first saw decedent around the chip chute and exchanged morning pleasantries with him briefly, around 8:15 a.m. EP stated that decedent appeared tired, hot and sweaty. EP characterized throwing down torpedoes as hard, but not a task performed regularly by any one person. He said that throwing down torpedoes was a "hey you" job. EP stated that it was usually hot in the wash area because of hot water used to wash chips, as well as an inoperable fan, and the air would frequently become thick and steamy. EP acknowledged that the conditions at that time were clear because it was morning. EP stated that he was bent down, cleaning a plugged drain out, and when he rose he could not see decedent. He then found decedent unconscious and face down, pulled him away from the area because there was hot water around, and then summoned medical assistance.

EP stated that he understood from one of the supervisors, (Mr. Z), that decedent had collapsed of heat exhaustion while performing this same task in another building in early 1991, and that as a result decedent was then put into EP's job washing chips "that particular day." EP testified that the washing tasks entailed some safety risks, such that the workers would leave the area and retire to a break room during the washing process. Boiling water was used in the washing process. In summary, many of the work conditions that EP related to the process of "throwing down" torpedoes were also, according to his testimony, part of the washing and hauling of chips that were identified as decedent's usual job, and took place in the same general area, in hot conditions.

Two doctors testified by video deposition. Neither had personally examined decedent but had reviewed official autopsy and death reports, Dr. H's medical records, and the deposition of EP. Both doctors testified that their opinions were based upon reasonable medical probability. The doctor presented by the appellant, who was (Dr. P), stated that he received his M.D. in 1987, and was board certified in general internal medicine, with a subspecialty in cardiology. Dr. P said that decedent appeared to be working under stress and this was a substantial contributing factor to his cardiac event, rather than preexisting heart disease. Dr. P stated that decedent appeared to have died from a sudden cardiac death, most likely caused by arrhythmia, and that physical exertion could bring on such arrhythmia because of the increased need for oxygen. He noted that the autopsy showed no evidence of heart failure but showed a 90% occlusion in his major coronary artery.

The doctor presented by respondent, (Dr. E), is a professor in cardiology at the Baylor

College of Medicine, and research director at the Heart Institute. Dr. E graduated from medical school in 1963. He is certified in General Internal Medicine as well as a subspecialty in cardiovascular disease. Dr. E reviewed the records listed above, and also reviewed the deposition of Dr. P. He stated that decedent most definitely had an underlying heart disease, that he opined could have been present for as long as a decade. He concluded that decedent had a significant occlusion of nearly 90% in his major coronary artery, which would be sufficient to cause angina with no exertion. He stated that decedent could have died as he did at any time, and that the preponderance of medical evidence would suggest that it was the natural progression of a person with a like occlusion to experience sudden death. Dr. E stated that it was unlikely that decedent died of myocardial infarction, noting that no clot or dead tissue was discovered in the autopsy. However, Dr. E stated that, as a clot could escape detection, he could not say for certain that decedent did not have a clot. He stated that exertion very rarely causes sudden cardiac death (in less than 1% of sudden cardiac deaths), and he pointed out that most heart patients are tested by undergoing near-capacity exercise. Dr. E cited studies as the basis of his opinion. Dr. E agreed with Dr. P's analysis of sudden cardiac death but disagreed strongly with his conclusion that decedent's work at time of death was a substantial contributing factor of the attack rather than the preexisting disease. Dr. E disputed that the autopsy report stated a cause of death per se, noting that it basically described decedent's underlying condition. It was his opinion that there was no specific time and place for Mr. Walker's death, and that his work, rather than his preexisting heart condition, was not a substantial contributing factor to the cardiac event. As part of his opinion, Dr. E noted that decedent was performing essentially the same job he had performed for several years. Dr. E conceded that, "just off the cuff," a person could believe that exertion and physical labor could lead to a heart attack because of increased need for oxygen, but "it just doesn't happen." Dr. E's opinion was the same on cross-examination when posed with a hypothetical question that assumed that decedent had been doing a wholly different task the morning of his death. His opinion as to the cause of cardiac arrhythmia is that it primarily results from a disruption of the autonomic nervous system.

The autopsy report for decedent lists his cause of death as "coronary artery sclerosis, marked, while at work."

The decision of the hearing officer should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The evidence supporting the hearing officer's decision on this issue is not so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The finder of fact has the responsibility to weigh and reconcile conflicting medical evidence. Highlands Underwriters' Insurance Co. v. Carabajal, 503 S.W.2d 336 (Tex. Civ. App.-Corpus Christi 1973, no writ). As the Appeals Panel has noted previously, the 1989 Act restricts compensability of heart attacks that occur on the job, and the claimant

has the burden of proving every element set forth in Art. 8308-4.15, with a preponderance of medical evidence indicating (for purposes of 4.15(2)) that the employee's work rather than the natural progression of a preexisting heart condition was a substantial contributing factor of the attack. Texas Workers' Compensation Commission Appeal No. 91009 (Docket No. AM-00005-91-CC-1) decided September 4, 1991. In this case, the hearing officer had the responsibility to assign the weight to be given to the conflicting medical evidence. His findings and conclusions are adequately supported by this record, and we affirm his decision.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge