

APPEAL NO. 92190

On April 7, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. He determined that the deceased, (Mr. G), did not suffer a heart attack in the course and scope of his employment. Accordingly, he denied workers' compensation benefits to the claimant, Mrs. G, appellant herein, who is the surviving spouse of the deceased. Appellant, who represented herself at the hearing, filed an appeal of the hearing officer's decision. Respondent, the employer's workers' compensation insurance carrier, filed a response requesting that we affirm the hearing officer's decision.

DECISION

The decision of the hearing officer is affirmed.

TEX. REV. CIV. STAT. ANN. art. 8308-4.15 (Vernon Supp. 1992) 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.

It is the claimant's burden to establish that an injury was received in the course and scope of employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377, 378 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The claimant has the burden of proving every element set forth in Article 8308-4.15. Texas Workers' Compensation Commission Appeal No. 92174 (redacted Docket No.) decided June 10, 1992. Unless the record shows that the hearing officer's finding on an issue is factually insufficient, or so against the great weight and preponderance of the evidence as to be manifestly unjust, we do not interfere with the hearing officer's decision. See Spillers v. City of Houston, 777 S.W.2d 181, 186 (Tex. App.-Houston [1st Dist.] 1989, writ denied); Texas Workers' Compensation

Commission Appeal No. 92180 (redacted Docket No) decided June 11, 1992.

A State of Texas Certificate of Death completed by a Justice of the Peace recorded that the deceased died on September 6, 1991, at the age of 63. The immediate cause of death was listed as "natural," and the conditions leading to the immediate cause were listed as "heart attack (date of injury), chest pains, and rupture of myocardium." The place of death was listed as "residence."

Deceased's employer, (employer), operates a mine and has a water treatment plant to treat water it has used in the mining operation. Since 1989, the deceased had worked for the employer as a watchman and worker on weekends and holidays. His weekend work started at 7:00 a.m. on Saturday and ended at 7:00 a.m. on Monday. He had moved a trailer onto the employer's premises where he and appellant would stay on the weekends. Due to her own work, appellant was not able to stay with the deceased at his worksite over the weekend of (dates). However, she testified as to the deceased's work activities and illness on that weekend from her knowledge of his usual work activities which she had previously observed, the telephone conversations she had with the deceased over that weekend, and what the deceased told her after that weekend.

Appellant testified that the deceased worked for the employer the weekend of (dates). She said it was very hot and humid that weekend. In addition to his watchman duties, the deceased's normal work duties included putting lime into a hopper as part of the water treatment process. The lime came in 50-pound bags. Appellant said that due to the height of the hopper, the deceased had to lift the bags up to his left shoulder to empty them into the hopper. He would usually have to empty a full pallet of these bags into the hopper. Appellant's testimony indicated that a pallet would contain 2,000 pounds of lime, or 40 bags. The deceased worked in a small metal building with no windows, fans, or ventilation. He was provided with only a cloth face mask for his protection while emptying the lime. Appellant said that as the deceased was putting the lime into the hopper on Saturday, (date), his left shoulder started hurting so he went to the trailer and rested. When the deceased began to experience pain, appellant said he had put about half a pallet of lime, or about 1,000 pounds of lime, into the hopper. That evening he attempted to put more lime into the hopper, but the pain started again so he stopped. On Sunday, (date), the deceased was uncomfortable, but didn't hurt as much as he did on Saturday. The morning of Monday, (date), the deceased felt sick. Appellant said that the deceased told two employees, (HT) and (SH), who arrived at work that morning, that he was ill and needed to go home. Neither live testimony nor written statements from these employees were presented at the hearing. When appellant arrived home Monday morning he was sick and went to bed. According to appellant, the deceased thought he had a muscle strain. The morning of Tuesday, (date of injury), the deceased was hurting so badly that appellant took him to (Dr. M). Appellant said that (Dr. M) told the deceased he was having a heart attack, and that after an EKG was done that morning, (Dr. M) said that the deceased had also had a heart attack "previously--recently." The deceased was taken to (Hospital) that morning where he was seen by (Dr. N). He was released from the hospital on August 20th, and then died on September 6,

1991.

Appellant introduced into evidence a report of a physical examination of the deceased performed by (Dr. S) in June of 1989. The report is largely illegible, but does indicate that at the time of the examination the deceased was employable and could safely perform heavy work. The only other documentary evidence offered by appellant was a letter from (Dr. S) in which he related the difficulty appellant had in obtaining the June 1989 physical examination report. No other matter was addressed in that letter. The hearing officer properly excluded (Dr. S's) letter from evidence on the basis that it was not relevant to the determination of the issue to be resolved at the hearing.

Respondent introduced into evidence the verified statement of (KK). He stated that he was the deceased's immediate supervisor, that the deceased worked the weekend of (date) and 4th, that it was part of the deceased's normal work duties to empty the 50-pound bags of lime into the hopper, that the deceased had never had a problem lifting the bags, that the deceased had not made a verbal or written report of an on-the-job injury, and that the deceased did not tell him anything about being injured on the job when he talked to the deceased after the deceased was released from the hospital.

Respondent also introduced into evidence medical records obtained from (Dr. M) and (Hospital). (Dr. M) records reveal that she saw the deceased on (date of injury), for complaints of chest pain, that her impression from the results of the EKG was "acute anterolateral MI," and that the deceased was transferred to (Hospital) that same day. (Dr. M) also saw the deceased on August 29th for complaints of weakness and fatigue. (Dr. M) made no mention of the deceased's work in any of her medical records.

The medical records and reports of (Hospital) also do not mention the deceased's work in any context whatsoever. The deceased's hospital admission record of (date of injury) indicates in the history of present illness section that, about a week before the deceased's hospital admission, he had had substernal discomfort for a few minutes, and that since that time he had been doing well except that he started having substernal pressure and indigestion intermittently the night before his hospital admission, which subsequently became continuous. The history also notes that the deceased had a history of diaphoresis and chest pain, and that he had a history of shortness of breath and exertion for several years. The report notes a risk factor of smoking three packs of cigarettes per day. (Dr. N's) impression at the time of the deceased's hospital admission was acute anterior wall myocardial infarction and coronary artery disease. The deceased had a right and left heart catheterization performed on (date). The cardiac procedure report gives a final impression of "[s]evere coronary artery disease with severely compromised left ventricular function with large anterior apical aneurysm."

The deceased's hospital discharge summary of August 20th contains the following discharge diagnosis:

- 1.Acute anterior wall myocardial infarction;
- 2.Coronary artery obstructive disease;
- 3.Severely compromised left ventricular function with anterior apical left ventricular aneurysm;
- 4.Post myocardial infarction pericarditis, resolved; and
- 5.Nonsustained ventricular tachycardia.

The discharge summary reveals that:

- 1.The posterior ventricular branch of the right coronary artery was 99 percent blocked at its origin;
- 2.The left anterior descending coronary artery was 100 percent blocked; and
- 3.The left circumflex coronary artery was 100 percent blocked in the mid segment;

Appellant urged at the hearing that the deceased's working conditions, including the heat, humidity, poor ventilation, lime dust, and lifting activities, caused his heart attacks. Under Article 8308-4.15(2), the preponderance of the medical evidence regarding the heart attack must indicate that the deceased's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the heart attack. See Texas Workers' Compensation Commission Appeal No. 91044 (redacted Docket No.) decided November 19, 1991; Texas Workers' Compensation Commission Appeal No. 91063 (redacted Docket No.) decided December 5, 1991; Texas Workers' Compensation Commission Appeal No. 91081 (redacted Docket No.) decided December 31, 1991; Texas Workers' Compensation Commission Appeal No. 92034 (redacted Docket No.) decided March 19, 1992. Having reviewed the entire record, we conclude that there is an abundance of medical evidence that the deceased suffered from a preexisting heart condition or disease, and that there is no medical evidence that the deceased's work was a substantial contributing factor of his heart attacks. In our opinion, the hearing officer's finding that the preponderance of the medical evidence regarding the heart attacks did not indicate that the deceased's work was a substantial contributing factor to the heart attacks is supported by the evidence, and is not against the great weight and preponderance of the evidence.

Appellant states in her appeal that: "Since I could not obtain an attorney to advise me, I did not know the hearing officer could not refer to papers and etc., presented to the Conference Officer on Dec. 30, 1991." At the beginning of the hearing, the hearing officer noted that appellant was not represented by an attorney, and asked her if she wished to proceed with the hearing, to which appellant replied in the affirmative. When the hearing

officer introduced the benefit review conference (BRC) report as an exhibit, he informed appellant that the exhibit did not include documents considered by the benefit review officer. The BRC report indicates that only two items: the death certificate and the written statement of (KK), were considered by the benefit review officer at the BRC held on December 30, 1991. No medical reports were considered by the benefit review officer. Appellant told the hearing officer that she would offer into evidence the two items considered by the benefit review officer. As it turned out, it was respondent that introduced into evidence the two documents considered at the BRC. Both documents are listed in the hearing officer's statement of the "Evidence Presented." In view of the foregoing, appellant's assertion is not a basis for disturbing the hearing officer's decision. We add that it is a party's responsibility to offer into evidence the documents it wants considered by the hearing officer.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge