APPEAL NO. 92261

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). On May 14, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to consider the sole disputed issue, namely, whether appellant was injured in the course and scope of her employment. Appellant (claimant below), then employed as a registered nurse at the (city) State Center of the (employer), contended she suffered a stroke or some type of central nervous system injury while on duty on (date of injury), resulting from the stress of monitoring a mental health patient who was hallucinating, while also trying to accomplish her duties for 13 other patients in the cottage. The hearing officer, finding that appellant had a 15 year history of hypertension, had been under stress at her job for months, had not encountered unusual stress on (date of injury), had produced no medical evidence stating she suffered a stroke on (date of injury), and continues to suffer stress-related symptoms and to be unable to work, concluded that appellant failed to prove by a preponderance of the evidence that she was injured in the course and scope of her employment. Appellant, in essence, challenges the sufficiency of the evidence to support the salient conclusion and related findings, and contends that on (date of injury) she experienced a specific event at work which was so abnormally stressful that it either aggravated her preexisting hypertension or otherwise caused an accidental injury to her central nervous system. No response was filed by respondent.

DECISION

Since the challenged findings and conclusion are not against the great weight and preponderance of the evidence, we affirm.

We are faced at the outset with the problem of determining the nature of the injury appellant contended she sustained on (date of injury), during the abnormally stressful situation at work which she described. The disputed issue simply referred to whether appellant was injured. Appellant's exhibit entitled "Employee's Notice of Injury or Occupational Disease and Claim for Compensation," signed on October 3, 1991 but referring to the injury date of "(date of injury)," in describing how the accident happened stated "work related hypertension/stress." It described appellant's affected body part as "central nervous system," and the nature of the injury as "psychological & physical (Infarct)." In her testimony, appellant described the symptoms she experienced at work on (date of injury) including high blood pressure (hypertension), dizziness, and numbness in her left arm and leg, as well as a later effect of peripheral vision loss. She did not disagree with her treating doctor's diagnoses on April 24th of dizziness, hypotensive episode, history of hypertension, history of renal calculi, and history of arthritis, nor with his later (July 22, 1991) diagnoses of severe hypertension, atherosclerotic cerebrovascular disease manifested by transient ischemic attack, left ventricular hypertrophy, and atherosclerotic heart disease. The only mention of "stroke" in her medical records was contained in the report of (Mr. M), dated September 20, 1991, who examined her in May 1991 for a vision complaint in her left eye. His report stated appellant suffered a stroke on (date of injury) and was being treated for hypertension. Appellant conceded that he might have deduced such from the

information she provided. In appellant's opening statement to the hearing officer, appellant characterized the injury as "a stroke or some significant medical problem," because of the left-sided numbness she had not previously experienced. In her closing statement she contended that on (date of injury) "a specific, identifiable event occurred at a specific time and location," and that her treating doctor (Dr. A). "recognized that the event occurred, whether he called it a stroke or cardiovascular accident (sic) or whatever you care to characterize it." Appellant, when asked whether she felt her "cardiovascular system" was in adequate condition for her age, testified she wasn't sure and that "with the hypertension and everything, and whatever happened on (date of injury) which I guess must have been a stroke, the MRI, because I never had these problems before," referring to balance and numbness problems. At another point she testified she developed spots in her eyes and had an eye exam "after whatever you want to call it happened to me" in April. Appellant also said that "stroke, CVA (cerebrovascular accident), and infarct are all the same thing," and when asked whether she had changed her description of her injury from central nervous system problems to stroke, said "they are interchangeable."

The 1989 Act, which makes an insurance carrier liable for compensation for an employee's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment (Article 8308-3.01), defines injury to mean "damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm. The term includes occupational diseases." Article 8308-1.03(27). Occupational disease is defined as "a disease arising out of and in the course and scope of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease. The term includes repetitive trauma injury." Article 8308-1.03(36). A compensable injury is defined as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this Act." Article 8308-1.03(10). Appellant had the burden to prove by a preponderance of the evidence that she sustained a "compensable injury." Her apparent theory was that the stressful event of (date of injury) either aggravated her preexisting hypertensive condition or otherwise resulted in her having a stroke or some medically significant central nervous system event.

Appellant testified that she was 57 years of age and obtained a nursing degree in 1987. She lived in (city), (state), near (city), and had worked in a nursing capacity in various institutions in (state) since May 1975, predominantly with mentally disturbed patients and substance abusers. Prior to commencing her employment with employer on November 1, 1989, appellant worked for some time at (Hospital), also in (city), Texas, but quit because of the stress. She had high blood pressure and when she described what was going on at that hospital to (Dr. A), he asked why she didn't resign, so she did. The records of (Dr. A) note appellant's visit on July 19, 1989 for nausea evaluation and state she "has had similar problems in the past when her blood pressure has been out of control." These records also indicated she smoked one pack of cigarettes per day, was "grossly obese," and that her

blood pressure was "200/100." (Dr. A's) records also noted an October 11, 1989 visit when appellant complained that two weeks earlier she had become "dizzy to the point where she couldn't walk." (Dr. A's) notes said this "appeared to be more related to the stress of working at (employer) and the people there." He noted that her "blood pressure systolic ranged all the way from 160-210; diastolic from 70-95;" that she desired to quit her job; and, that she had been off for three days, feeling terrible, and having trouble sleeping, "again, because of the stress and hating her job." He advised her to stay on blood pressure medication. (Dr. A's) notes of appellant's visit on October 27, 1989 stated she had quit her job at (employer), had taken a job with employer, and at that time her blood pressure "has been pretty well controlled." Appellant said that she knew what she was getting into when she decided to go to work for employer.

Appellant's duties for employer included functioning as the charge nurse for both the intensive psychiatric unit and three cottages with psychiatric patients. She performed general psychiatric nursing duties which included obtaining mental and physical status assessments, attending to meals, administering medications, answering the phone, record keeping, and, when necessary, assisting the male technician with "take downs" to control violent activity. On (date of injury), she noticed a male patient in one of the cottages who was pacing the floor, talking to himself, picking at the air, and apparently hallucinating. She was by herself with only one male technician and became concerned that this patient might act out. She conceded, however, that she did not call anyone for assistance. Appellant became very stressed by this addition to her workload because she had to monitor this patient constantly while answering the phone and trying to take care of the meals, medications, patient assessments and so on for the 13 other patients. At some time after the 5:00 p.m. meal was served, the hallucinating patient finally sat down and ate. At that time, appellant also sat down and then suddenly "felt terrible" and her left side became numb. She said she had never experienced such numbness before and had the technician call another nurse, (Ms. G), to come to her assistance. (Ms. G) testified that when she came to the cottage she saw that appellant looked "weak" and "anxious." Appellant told (Ms. G) she felt terrible, did not know what had happened, feared she might have had a stroke, and wanted to go home. (Ms. G) took appellant's blood pressure and it was high. She wanted appellant to go to a hospital. About 15 minutes later, (Ms. G) again took appellant's blood pressure and it had come down. (Ms. G) couldn't say whether appellant had had a stroke but felt she had experienced a "hypertensive crisis." Appellant began to move her left hand and leg and decided to drive home. (Ms. G) felt appellant had improved when her blood pressure came down and that it was all right for appellant to drive alone the one hour's distance to her home.

Appellant said she walked unaided to her car and drove to (city), (state), where she went to the (Center). She arrived there at about 7:45 p.m. and since she couldn't be seen right away decided to go home. The next morning, she discovered (Dr. A) was out of town so she returned to the (Center) where her complaints, in addition to sinus infection and allergy problems, were noted as "high blood pressure, dizzy spell, left arm, & leg went numb at time of dizzy spell," and diagnoses of hypertension and vertigo were reached. Appellant

said she was told there she was too ill to treat and, after declining to go to a hospital, it was arranged for her to see (Dr. B), an internist. (Dr. B) took appellant off work and released her for regular duties effective April 16th. He reached diagnoses of hypertension and dizziness. An MRI scan of appellant's head, accomplished for (Dr. B) on April 26th, indicated "moderate cortical atrophy and old white matter infarcts." His note of May 6, 1991 attributed the cortical atrophy and old white matter infarcts to hypertension. Appellant said that (Dr. B) told her upon review of the MRI scan that she had had a "CVA of the brain." A cerebrovascular evaluation of appellant's extracranial circulation was accomplished for (Dr. B) on April 15th. According to this report, appellant had various mild plaque deposits and areas of stenoses in her carotid arteries. This report discussed the implications of appellant's symptoms depending on whether they were due to atherosclerosis or her hemodynamics. Neither of these reports mentioned recent intracranial hemorrhage. (Dr. B) wrote a letter on January 29, 1992 which said appellant had a past history of hypertension, referred to the MRI results and stated that "[h]er hypertension was probably responsible for the infarcts. Stress of any kind can aggravate a hypertensive condition." Appellant testified she had a long history of high blood pressure but that it was controlled. She also said she had been suffering stress for months prior to and including April 1991.

Appellant returned to work on April 16th, but experienced dizziness and a hypotensive episode at work on April 18th and was taken to (Hospital) in (city) where she became a patient of (Dr. A). She was admitted for hypotension, left-sided weakness and numbness, and acute renal insufficiency. She was discharged on April 24th with diagnoses of dizziness, hypotensive episode, history of hypertension, history of renal calculi, and history of arthritis. Appellant was readmitted to (Hospital) on July 19th and released on July 22nd. (Dr. A) report of July 26th discussed appellant's April episode of "dizziness, left-sided weakness and hypotension" and stated that she "has a long-standing history of uncontrolled hypertension." According to this report, at the time of her April episode appellant was having her anti-hypertensive medications adjusted, was taking her medications and doing well, but was having some side-effects and "therefore, she decided to change over to some other medications." (Dr. A) discharge diagnoses included severe hypertension, atherosclerotic cerebrovascular disease manifested by transient ischemic attack, left ventricular hypertrophy, and atherosclerotic heart disease. (Dr. A), in a letter of July 31st, released appellant to return to work on August 5th stating his preference for her working in only a cottage unit for one month and then resuming all normal duties on September 5th, if her blood pressure remained under control. Appellant said she worked some in August, wasn't sure she worked in September, but hasn't worked since that time. She said that since September 16th she has been "totally disabled" and can never return to work as a nurse in any stressful situation.

In a letter dated January 29, 1991 (sic), (Dr. A) said that he had continued to follow appellant for hypertension; that whenever she had returned to work her blood pressure increased but was better controlled when she wasn't working; and that he told her she needed to find some other form of employment to prevent further problems. In his opinion appellant "was under a significant amount of stress at the hospital causing the blood

pressure to be elevated which in turn caused the symptoms that we found when she was admitted to the hospital."

Appellant insisted that the unusually stressful events at work on (date of injury) caused her to have a stroke, a CVA, or, as stated on her Exhibit 1, a "psychological & physical (Infarct)" injury to her "central nervous system," or "whatever you want to call it." She argued to the hearing officer that such injury was proven by appellant's testimony and the circumstantial evidence presented, and that medical evidence of her stroke or whatever it was she had wasn't required to prove she sustained a compensable injury.

Appellant challenges the sufficiency of the evidence to support the following factual findings and legal conclusion:

Finding 4: On (date of injury), CLAIMANT had a history of hypertension dating back at least 15 years.

Finding 5: On (date of injury), CLAIMANT, had been under stress at her job for months.

Finding 6: The events of (date of injury), as related by CLAIMANT, were not such as would cause stress unusual to CLAIMANT'S employment at the (Center).

Finding 7: There is no medical evidence which states that CLAIMANT suffered a stroke on (date of injury).

Finding 8: CLAIMANT continues to suffer stress-related symptoms and is unable to work.

Conclusion 2: CLAIMANT did not meet her burden of proof by a preponderance of the evidence that she was injured in the course and scope of her employment.

In both her opening and closing statements to the hearing officer, appellant referred to various pre-1989 Act Texas court opinions which discussed employees who suffered heart attacks at work and the requirement for strain or exertion as a part of the proof of causation. In her request for review, appellant, in objecting to Finding of Fact No. 7, contends that "the preponderance of the medical evidence and/or a preponderance of the circumstantial evidence, indicates that the Claimant's work, rather than the natural progression of her condition, was the causative factor or substantial contributing factor to the attack of (date of injury). The incident was precipitated by a sudden stimulus which directly caused the injuries to the Claimant's body." Much of this language is from Article 8308-4.15 (1989 Act) entitled "[c]ompensability of heart attacks." This new statute is specific to heart attacks and does not include strokes. We have had occasion to consider

stroke cases since the enactment of the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 91064 (Docket No. redacted) decided December 12, 1991; Texas Workers' Compensation Commission Appeal No. 92076 (Docket No. redacted) decided April 3, 1992; and, Texas Workers' Compensation Commission Appeal No. 92231 (Docket No. redacted) decided July 13, 1992. In Appeal No. 91064, we observed that under the prior workers' compensation law, heart attacks and strokes were analyzed and reviewed by the Texas courts using the same evidentiary standards, but we concluded that Article 8308-4.15 applies only to heart attacks. The record here doesn't indicate that appellant ever contended her injury was a heart attack. Rather, as set forth above, appellant several times referred to her injury as "a stroke," or some type of injury to her central nervous system. When questioned about other diagnostic terms such as "CVA" and "infarct," she tended to equate them with "stroke." It is apparent from the record that she herself, a registered nurse, believed she suffered a stroke, precipitated by what she regarded as an unusually stressful work shift on (date of injury). In Appeal No. 92076, there was no doubt that the claimant was alleging she had suffered two strokes which she contended were caused by stressful events at her place of employment. In Appeal No. 91064, the doctors' reports used the terms "cerebrovascular accident (CVA), hemiparesis, cerebral infarction with hemiparesis, and stroke" to describe what happened to the employee, and we had no doubt we were dealing with a stroke case. *And see* Appeal No. 92231, *supra*. The evidence in this case is far less clear that appellant suffered a stroke. None of the medical records, aside from the eye doctor, used the term stroke, nor CVA, nor hemiparesis, and the medical evidence of brain infarcts was that they were "old white matter infarcts." There was a reference to transient ischemic attack (TIA) in one of (Dr. A) reports but no evidence indicating such term was used or meant to mean stroke, much less that it was caused by stress at work on (date of injury).

In Appeal No. 91064 we noted that several heart attack cases under the former worker's compensation statute were instructive when considering stroke cases under the 1989 Act. We cited Olson v. Hartford Accident and Indemnity Company , 477 S.W.2d 859 (Tex. 1972) for the proposition that "[f]or there to be an accidental injury, or an industrial accident, there must be an undesigned, untoward event traceable to a definite time, place, and cause . . . ." That case affirmed the court of civil appeals which stated that the incidents alleged to have caused the employee's heart attack were "no more than the usual differences and irritations--the stresses and strains--that are apparent in everyday living, as well as employment. . . . ." Hartford Accident and Indemnity Company v. Olson, 466 S.W.2d 373, 376 (Tex. Civ. App.-El Paso 1971). In Appeal No. 92076 we stated that our review of the Texas case law revealed that stroke can indeed amount to a compensable injury and we discussed several of those cases. Of particular interest is the case of Aetna Insurance Company v. Hart, 315 S.W.2d 169, (Tex. Civ. App.-Houston 1958, writ ref'd n.r.e.), a case involving a female employee of a dry cleaners who suffered from high blood pressure and obesity and who had a stroke at work. Unlike the instant case, there was no question but that (Mrs. H) had a stroke and had therefore proved an injury. The court affirmed the jury's finding that the employee's stroke was causally related to her having been berated by an abusive customer. Noting that (Mrs. H's) employment subjected her to the

risk of being berated by customers, the court determined that "[t]here is in this case an undesigned, untoward event traceable to a definite time and place involving a risk of the employment. Of course, this must have been the producing cause of the stroke suffered by (Mrs. H)." *Id* at 175. The court observed that "the Legislature intended to make an injury caused by an emotional stimulus compensable under the Compensation Act because the Legislature abrogated the right of an employee to bring a common law action against an employer for an injury received in the course of his employment attributable to a risk of the employment . . . To recover under the Act it need only be shown that an injury to the physical structure of the body was sustained by the employee as a result of a risk or hazard of the employment while the employee was acting in the course of his employment." *Id* at 172. The court concluded its discussion of the medical evidence saying "it suffices to preclude the conclusion that the precipitating cause of the stroke was anything other than the emotional stimulus produced by the incident with the [customer]." *Id* at 177.

Whether appellant suffered an injury (Article 8308-1.03(27)) in the nature of a stroke or some similar central nervous system event on (date of injury), and whether such injury was caused by her employment, were fact questions for the hearing officer to resolve. As the sole fact finder, the hearing officer has the responsibility to determine not only the relevance and materiality, but also the weight and credibility of the evidence. Article 8308-6.34(e).

Appellant's evidence showed she had a history of high blood pressure; that she had experienced symptoms prior to her employment with employer as well as on (date of injury); and that she experienced similar symptoms again on April 18th and July 19th when she was hospitalized. She contended that the (date of injury) event was somehow different because she had not previously experienced the left-sided numbness. However, according to the medical records, that symptom was present on April 18th and July 19th also. We are satisfied there is sufficient evidence to support the challenged findings and conclusion and we cannot therefore substitute our judgment. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ). With regard to Finding of Fact No. 7 that no medical evidence states appellant suffered a stroke on (date of injury), appellant contends that the preponderance of the medical and circumstantial evidence indicates her work caused "the attack" and "the injuries to her body." As the hearing officer found, appellant had a history of hypertension and appellant contended the unusual stress on (date of injury) aggravated that condition or otherwise caused her stroke. Medical evidence to establish the link between appellant's work and her injury, whatever it may have been, was lacking here. Generally, the claimant alone can establish the issue of injury, even if the claimant be contradicted by medical experts. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). However, that case also noted an exception where the issue in a compensation case involves the cause, progression and aggravation of disease. "When a subject is one of such scientific or technical nature that the jury or court cannot properly be assumed to have, or to be able to form, opinions of their own based upon the evidence as a whole and aided buy their own experience and knowledge of the subject of inquiry, only testimony of experts

skilled in that subject has any probative value." *Id* at 495.

The expert evidence appellant produced consisted of (Dr. B) letter of January 29, 1992 stating that her hypertension was probably responsible for her old white matter infarcts and that "stress of any kind can aggravate a hypertensive condition;" and (Dr. A) letter of January 29, 1991 (sic) stating that appellant "was under a significant amount of stress at the hospital causing the blood pressure to be elevated which in turn caused the symptoms that we found when she was admitted to the hospital." (Emphases supplied.) Earlier in that letter (Dr. A) stated that when appellant was seen in the emergency room of the hospital in April 1991, she had "dizziness, left-sided weakness, numbness, and renal insufficiency." Appellant had the burden of proving she sustained an injury in the course and scope of her employment (Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.)) and we are satisfied appellant failed to meet that burden. When expert medical opinion is presented to draw a connection between conditions at a work place and an injury, that medical opinion must establish that an injury is linked to the work place as a matter of reasonable medical probability as distinguished from probability, speculation, or guess. Schaeffer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1990). Compare the medical evidence discussed in Appeal No. 92231, *supra*.

We need not concern ourselves with appellant's assertions that Finding of Fact No. 8 does not indicate that appellant's inability to work is permanent and that her disability began on (date of injury), since that finding is surplusage and unnecessary to support the salient legal conclusion. The findings are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision of the hearing officer is affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge