APPEAL NO. 92338

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On June 16, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He held that claimant's (appellant herein) heart attack was not compensable because there was no medical evidence that the work rather than the natural progression of a preexisting disease or condition was a substantial contributing factor. Appellant refers to a conflict of interest that he believes exists because all people involved are state employees and to a possibility of perjury in the testimony of his supervisor at the time, (Mr. K). He states that the heart attack in question occurred immediately following a stressful incident with his supervisor and that prior heart attacks only caused minimal damage.

DECISION

Finding that the decision of the hearing officer is based on sufficient evidence of record, we affirm.

The hearing officer, the representative of the attorney general's office and appellant's supervisor at the time do not, because they share a common employer, create a conflict of interest. Appellant refers to no wrongdoing in making this assertion.

Regardless of the quality of Mr. K's testimony as perceived by appellant, that testimony was not determinative of the outcome of this case. Nevertheless, it was admissible and the amount of weight and credibility to be given it were for the hearing officer to decide. Article 8308-6.34(e) of the 1989 Act. Mr. K was not qualified to, and did not, provide a medical opinion as to whether work was a substantial contributing factor of appellant's heart attack.

Appellant is a Child Protective Services worker who had over five years longevity with the state on (date) when he had a short discussion with his supervisor about his case load. He went to a hospital emergency room with a heart attack on (date of injury), the morning after that discussion. He was transferred to another hospital for admittance. His doctor, (Dr. F) states in the history he took on (date of injury) that appellant's chest pain began the day before at work "after a heated argument with his supervisor" and was present the morning of (date of injury). Dr. F states that appellant previously had a myocardial infarction in July 1988 and refers also to an "anginal episode" in (City) in 1990. This doctor and consulting medical opinions in evidence refer to appellant's history, high cholesterol, and smoking. Dr. F also discusses appellant's family history of heart attack and in his admitting diagnosis not only lists "suspected subendocardial myocardial infarction" but also, "known coronary heart disease." Subsequent to the incident in question, appellant had one attack while undergoing angioplasty while still hospitalized in (date) and another in March 1992.

The respondent offered all medical records that are in evidence. The records

appear to be substantially complete, including nurse's notes and various test reports. No medical record addresses whether work or the natural progression of the disease or condition was a substantial contributing factor. As a result no comparison of the two factors was made by medical evidence. No statements of any doctor were offered other than the medical records previously described. The only testimony at hearing was that of appellant and Mr. K.

Appellant testified repeatedly that he knew there was no way to meet his burden of proof under the law as written. (*See* Article 8308-4.15 of the 1989 Act.) He added that no cardiologist could say just when the heart attack occurred. He did believe, however, that "non-justified stress at work," in addition to his background of disease, was a factor. (Appellant stated that his background training is as a medical technologist.) We note that appellant offered no opinion as to whether work rather than the preexisting disease was a substantial contributing factor.

The evidence before the hearing officer was sufficient to support his findings that work was not shown to be a substantial contributing factor and that there was no comparison of work to the progression of the preexisting disease as a substantial contributing factor. *See* Texas Workers' Compensation Commission Appeal No 92115 (Docket No redacted) decided May 4, 1992. Since it is necessary that the requirements found in all three subparagraphs of Article 8308-4.15 be answered in favor of the claimant in order for a heart attack to be compensable under the 1989 Act, the findings made against appellant that are discussed in this paragraph control the case and determine the outcome.

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge