APPEAL NO. 92390

Pursuant to our reversal and remand in this case (Texas Workers' Compensation Commission Appeal No. 92115, same docket number, dated May 4, 1992), a contested case hearing was held on June 19, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. He determined the respondent's deceased husband's heart attack was compensable and ordered payment of benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Appellant urges there is no evidence, or insufficient evidence, to support two findings of fact and one conclusion of law and asks that we reverse the Decision and Order. Respondent asks us to affirm.

DECISION

Unable to conclude that the Decision and Order of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we have little option but to affirm. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Pool v Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). In doing so, we observe that this case invokes the concept that reversal action is not appropriate even where, as here, we could reasonably draw different inferences and conclusions from the evidence than those drawn by the hearing officer. Garza v. Commercial Life Insurance of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974). no writ); Clancy v. Zale Corporation, 705 S.W.2d 820 (Tex. App.-Dallas 1986, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 92130 (Docket No. redacted) decided May 21, 1992.

The facts in this case are set out in our previous decision cited above and are incorporated herein, except for the new matters developed at the hearing on remand. In that regard, the hearing officer heard additional testimony from two witnesses (the deceased's supervisor and his wife) generally concerning the usual work requirements placed on the deceased, the unusual conditions present at the job location on the day of the deceased's demise, the extent of the weather conditions at that location and close approximate time to the deceased's demise, and the deceased's habit of driving his equipment to a position where he did not have to walk a considerable distance. In essence, this evidence showed that the deceased normally used power-assisted equipment not requiring heavy physical labor. The heavy equipment usually was not operated in rainy conditions because of soil compaction requirements. On the day in question, the conditions were very wet and muddy. It was also known that the deceased took off work experiencing chest pains and was not assigned duties requiring heavy labor. The deceased was told on occasion that he was not paid to do hard labor. Because of the frequency of rain during the time period preceding the deceased's demise, he was sent to the area to get the "loader" but because of the muddy conditions, he could not get his pick up truck close to the loader. In the opinion of the supervisor, walking through deep mud was physically more stressful than the deceased's normal work-related activity. However, the supervisor also stated that during the spring months he had to walk through deep mud "quite a bit" and, in answer to a question as to whether it would be unusual to walk through muddy conditions similar those

existing on to the day of the deceased's demise, the supervisor stated, "no, I wouldn't say it would be unusual, no." He could not say "one way or the other" if the deceased also had to walk through mud. The deceased's wife stated that when she visited her husband at the job site, he would routinely drive his vehicle to where she was rather than walking.

The matter on remand regarding the apparent gap in the tape recording of the original contested case hearing has been rectified. The pertinent questions and answers involved are set out below:

Question:Doctor, do you have an opinion based upon your medical training, education and experience, do you have an opinion as to whether or not walking through about 100 yards of thick mud at work rather than the natural progression of the preexisting heart condition or disease was a substantial contributing factor of the death of (deceased) on (date of injury). Do your have an opinion?

Answer:Yes, I do.

Question:What is that opinion, doctor?

Answer:I think it is a substantial contributing factor.

Counsel:I'd like to object to that entire question. This witness has not been established to have any knowledge of the Workers' Compensation Act and therefore is not qualified to give this type of legal opinion.

Hearing Officer:The objection is overruled.

The hearing officer adopted all of his originally entered Finding of Facts except for Finding of Fact No. 8 which he changed to the following:

A substantial contributing factor of (deceased's) heart attack on (date of injury), was the stress placed on his heart by the work-related activity of walking through deep mud for approximately 100 yards rather than the natural progression of a preexisting heart condition or disease.

Appellant's objection goes to the hearing officer's Findings of Fact No. 6 and No. 8 above, and to his Conclusion of Law No. 2. Finding of Fact No. 6 and Conclusion of Law No. 2 are:

6.Walking through deep mud for 100 yards was physically more stressful than (deceased's) normal work-related activity or operating a loader.

2.(Deceased's) heart attack is compensable under Section 4.15 of the Texas Worker's Compensation Act.

As the fact finder, the hearing officer evaluates and weighs the evidence before him and he can believe one witness over another and believe all, part or none of the testimony of any witness. *See* Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. Civ. App.-Corpus Christi 1983, writ ref'd n.r.e). This includes the testimony and evidence of expert witnesses. Atkinson v. U.S. Fidelity Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950 writ ref'd n.r.e.). We can only conclude that for some reason the hearing officer chose to dismiss, with little weight being accorded it, the very pertinent deposition testimony of (Dr. JB) which concluded that the deceased died from his heart disease. Similarly, he must have found unconvincing the rather substantial evidence showing a severe preexisting heart condition, well documented in the evidence, and the evidence showing the part it played in the ultimate heart attack. He also had to discount the clear inference from the testimony of the deceased's supervisor at the hearing on remand which pretty well indicated that walking through mud was not an unusual occurrence in the deceased's particular line of heavy equipment work. In spite of this evidence, the hearing officer determined, as a matter of fact, and couching it in the terminology of Article 8308-4.15, that the work-related activity of walking through the mud was a substantial contributing factor that outweighed the natural progression of the preexisting heart condition. The most that can be said is that there is some evidence of probative value in the testimony of (Dr. M) which prevents us from reversing on the grounds that the totality of the evidence merely supports or gives rise to inferences and conclusions that support an opposite result; and, that the decision is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 92172 (Docket No. redacted) decided June 19, 1992, citing Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. Civ. App.-Texarkana 1989, no writ); Appeal No. 92130, *supra*: Texas Workers' Compensation Commission Appeal No. 92253 (Docket No. redacted) decided July 29, 1992; Texas Workers' Compensation Commission Appeal No. 92158 (Docket No. redacted) decided June 5, 1992.

The decision and order are affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge