

APPEAL NO. 92454

A contested case hearing was held in (city), Texas, on July 16, 1992, (hearing officer) presiding, to determine whether (decedent) sustained a compensable heart attack. The hearing officer, finding that decedent was not engaged in any specific event which occurred while working for (employer) on (date of injury), which caused him to have a heart attack that day, concluded that decedent did not sustain a compensable heart attack. Appellant challenges the sufficiency of the evidence to support the salient finding and conclusion, and asserts that the heart attack provision in the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-4.15 (Vernon Supp. 1992) (1989 Act), does not require that the heart attack victim have succumbed at the very moment of the causative specific event. In its response, the respondent asserts that appellant seeks to apply pre-1989 Act case law and urges our affirmance.

DECISION

Finding the evidence sufficient to support the challenged finding and conclusion, we affirm.

(Ms. G), a clerk for (Company) at its (plant) in (city), Texas, testified for respondent that the Company relocated its marketing services function from the administration building to an old school building at the plant during the first two weeks in (month year). She became acquainted with decedent during that period in that she coordinated with him on the various articles of office furniture, filing cabinets, and so forth to be moved by decedent and his crew. She said that decedent functioned like a foreman of the crew in making the move. On (date of injury), at about 1:30 p.m., decedent came to her work area, sat on the edge of a table near her desk, and was talking to her for two or three minutes when he suddenly fell forward onto her desk and began to slide to the floor. (Ms. G) grabbed decedent and she and another person nearby lowered decedent to the floor. She yelled for her boss who appeared with another man and they began resuscitation efforts. A short time later, an ambulance crew arrived and transported decedent to a hospital. Resuscitation efforts were unsuccessful and decedent died.

(Mr. B), a general labor foreman for employer, testified that decedent was a truck driver for employer, and that he had tasked decedent and four helpers to move office furniture and file cabinets for the Company. He said that decedent was supervising the move, and that on the morning of (date of injury), he had seen decedent carrying boxes about the size of a brief case and assisting in putting file cabinets on a dolly. He said he was told by another employee that at approximately 9:00 a.m. that morning, decedent "had some kind of a slight attack of some kind," with nervousness and shortness of breath. He said decedent was a diabetic and that earlier incident may have been an insulin reaction. There was no other evidence of the earlier episode. He opined that decedent had to strain and exert himself to move the furniture because it was heavy, though he didn't testify to seeing decedent move furniture. He said that when he entered the building around noon, he saw decedent leaning against a corridor wall and just slide down the wall.

Appellant testified that she had been married to decedent for seven and one-half years and that he had "never had a heart condition in his life." She had no first-hand knowledge of the events of (date of injury).

Appellant proffered medical records showing that decedent was hospitalized on January 8, 1984 for chest pain complaints and was discharged with a final diagnosis of diabetes and anxiety neurosis. He was also hospitalized on January 15, 1988 for about three weeks. The final diagnosis was diabetes and abscess and cellulitis of his right leg. The hospital emergency room record of (date of injury) reflected that decedent arrived in full cardiopulmonary arrest and expired a short time later. The death certificate reflected the manner of death as "natural." No medical evidence was adduced which discussed or related decedent's heart attack to his work. Appellant did introduce three medical journal articles concerning exercise and heart attacks.

According to two of the unsigned transcripts of interviews of decedent's assistants, obtained by respondent on (date), decedent moved approximately 20 to 50 boxes, each weighing approximately 30 pounds, from a hallway into a room, a distance of 10 to 20 feet, sometime during the morning of (date of injury). However, another of these coworkers said it was he, not decedent, who moved the boxes, and that decedent just gave the orders. Another coworker's interview stated that at about 10:00 a.m. that morning, decedent helped five others push a heavy computer component partway up some stairs before breaking off to go up the stairs and show them where it was to be located. According to this statement, decedent had commented that the object was heavy and that he was "kinda tired." Another coworker said that decedent had pushed the object a little, but "not anything strenuous." All these coworkers recalled that decedent had been happy, appeared to be feeling well, and voiced no complaints that morning.

Article 8308-4.15 (1989 Act) provides three requirements for the compensability of a heart attack. Among these is the requirement (Article 8308-4.15(1)) that the heart attack 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." The hearing officer found that decedent "was not engaged in any specific event which occurred while working for [employer] on (date of injury), which caused him to have a heart attack on (date of injury)." The evidence supports that finding. No evidence tied any of decedent's earlier activities that morning to his sudden heart attack while talking to (Ms. G), nor proved his heart attack to have been caused by any specific event. Further, Article 8308-4.15(2) requires that "the preponderance of the medical evidence regarding the attack indicate[s] 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." While the evidence established that decedent had diabetes, no medical evidence regarding the heart attack was adduced. The evidence thus falls short of meeting this statutory requirement as well. See Texas Workers' Compensation Commission Appeal No. 91044 (Docket No. redacted) decided November 14, 1991; and Texas Workers' Compensation Commission Appeal No. 91081 (Docket No.

redacted) decided December 31, 1991. Accordingly, the hearing officer's conclusion that decedent "did not sustain a compensable heart attack" is supported by the evidence.

Pursuant to Article 8308-6.34(e), the hearing officer is the sole judge of the materiality and relevance of the evidence, as well as the weight and credibility it is to be given. It was for the hearing officer to resolve the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We may not substitute our judgment for that of the hearing officer where, as here, there is sufficient evidence to support the findings. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ.) The findings and conclusions of the hearing officer 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge