APPEAL NO. 92499

On August 17, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The claimant, (F H), is the surviving spouse of the deceased, (W H). The issue at the hearing was whether the deceased's heart attack is compensable under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). The hearing officer determined that the deceased's heart attack of (date of injury), is compensable under the 1989 Act, and ordered appellant, hereinafter the carrier, to provide benefits to respondent, hereinafter the claimant, in accordance with his decision, the 1989 Act, and rules of the Texas Workers' Compensation Commission.

The carrier contends that the decision of the hearing officer is against the great weight of the evidence, that there is no evidence or insufficient evidence to support certain findings of fact, and that the claimant has failed to satisfy her burden of proof. The claimant responds that the decision is in all things correct, is properly supported by the weight of the evidence, and that she has met her burden of proof.

DECISION

The decision of the hearing officer is affirmed.

This is a heart attack case under the 1989 Act. Article 8308-4.15 of the 1989 Act 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.

The claimant and the deceased were married in 1946. Around 1970 they opened a wholesale plumbing supply business. The deceased had diabetes and was 63 years of age at the time of his death on (date of injury). On that day, the claimant and the deceased

were moving the warehouse stock to a new warehouse location and were moving office files from the business office to an office in their home in order to cut overhead. The morning of (date of injury), the claimant, the deceased, and their daughter went to the business office and packed the legal size office files into two-foot high cardboard boxes that plumbing supplies had been received in. A year's worth of files was stacked to the top of each box. The claimant estimated that each box weighed between 20 and 50 pounds. She said that she could not move them. Photographs of the boxes were in evidence. About 11:00 a.m., the deceased and the daughter rented a 24 foot truck. The claimant testified that two contract laborers hired by the deceased loaded warehouse stock from the old warehouse into the truck and the deceased drove the truck to the new warehouse where the truck was unloaded. The claimant said that the deceased did not help in the loading or unloading of the truck but that he supervised the laborers. The deceased drove the truck back to the old warehouse and office location where the laborers loaded more stock into the truck and then the boxes of office files were loaded into the truck.

The claimant returned home about 5:00 p.m. and the deceased returned home alone with the truck loaded with warehouse stock and boxes of office files about 6:00 p.m. According to the claimant, the deceased backed the truck into the driveway just a little past the end of the garage, and then went into the house were he checked and recorded his blood pressure and blood sugar level, and took insulin. The claimant said the deceased was very conscientious about his health and checked and recorded his blood pressure and blood sugar every morning and every night. She said the deceased told her that evening that his blood pressure and blood sugar were normal. The claimant said that the deceased then ate a sandwich, changed clothes, and then, by himself, began to unload the boxes of office files from the truck about 7:00 p.m. The claimant said that the deceased put some of the boxes in the garage, some in the home office, and others in a bedroom on the other end of the house.

The claimant said that she went outside and asked the deceased if she could help him and that he said no. She then went inside, got a flashlight, and went back out and looked in the back of the truck. She did not see the deceased at that time, but when she went back inside she saw him carrying a box to the bedroom. The claimant said that at about 7:30 p.m., she took her dogs out to the back yard and when she looked over the fence she saw the deceased lying face up on the driveway. She tried to resuscitate the deceased, was unsuccessful, and then called the emergency medical services which took the deceased to the hospital where he was pronounced dead at 8:38 p.m. An autopsy was performed the next day. The claimant said that the deceased had unloaded between 15 and 20 boxes from the truck into the garage, office, and bedroom before she found him on the driveway.

The claimant testified that the deceased's normal activities consisted of sitting behind a desk during the day and walking in the evening. However, she also said that for the last several months before he died, the deceased and herself were the only employees of the company. She described the items the company sold as plastic plumbing supplies which

came in 12 to 16 pound boxes on wooden pallets. She testified that the boxes were unloaded at the 10,000 square foot warehouse by freight line workers and when sold were loaded at the warehouse by the buyers. The deceased would move the stock around in the warehouse by use of a pallet jack. The claimant testified that from her knowledge of the deceased's physical activities at home and at work, moving the boxes of office files from the truck to the house was something out of the ordinary for the deceased to physically do, and that the activity of moving the boxes of files was more stressful and more exerting on the deceased than were the things she had observed the deceased do day in and day out. She testified that the deceased had not lifted anything as heavy as the boxes of files. She said that the deceased had never had a heart attack before and that he did not have heart problems.

After making findings in the autopsy report that the deceased had arteriosclerotic cardiovascular disease, severe coronary artery atherosclerosis, thrombosis of left anterior descending and circumflex arteries, scars of posterior left ventricle, hypertensive cardiovascular disease, arteriolar nephrosclerosis, and a history of diabetes mellitus, the medical examiner, (Dr. G), M.D., concluded that the deceased died of severe coronary artery atherosclerosis.

In a letter to the carrier dated March 5, 1992, the deceased's personal physician, (Dr. R), M.D., stated that physical exercise or work can precipitate a heart attack in someone with known coronary artery disease, but that he had no way of knowing whether the deceased's physical work at the time that he had his heart attack caused it or whether it simply occurred as a natural progression of his arterial sclerotic disease. He also stated the following:

> In overview, [the deceased] did have diabetes and did have a known elevation of triglyceride levels, both of which can predispose to arteriosclerosis and myocardial infarctions. He was evaluated on a fairly regular basis and his diabetes was under reasonable control. He did have a stress test performed about one year prior to his death and this stress test was normal with no indication at that time of any severe coronary disease. Likewise he did have an x-ray of his chest, again which was normal. Myocardial infarction is a sudden event and obviously occurred within minutes to hours of his death. His myocardial infarction was complicated by cardiac arrest. Autopsy results confirmed coronary arteriosclerosis and also an acute thombis of the anterior descending and circumflex arteries. It is certainly possible that physical exercise could have precipitated a myocardial infarction but it is also possible that this myocardial infarction could have occurred spontaneously. I cannot say whether [the deceased's] work was the sole factor causing his myocardial infarction.

We note that Article 8308-4.15 does not require that the employee's work be the sole factor of the heart attack, but rather requires that the preponderance of the medical evidence

indicate that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the heart attack.

The claimant's attorney asked (Dr. S), M.D., whose letterhead indicates he is a Diplomate American Board of Internal Medicine and a Diplomate Subspecialty Board of Cardiovascular Disease, to review records regarding the deceased. In a letter dated July 27, 1992, (Dr. S) stated that he had reviewed the records of the deceased's personal physicians, the autopsy report, the Fire Department's report (EMS), electrocardiograms (including one performed on January 6, 1992), a statement from the claimant, photographs, (Dr. R's) letter, and a plethora of diabetic records including blood pressure determinations. In giving his opinions, (Dr. S) said that it was presumed that the boxes that were being moved by the deceased weighed between 20 and 50 pounds. (Dr. S) made a written review of the deceased's records, and then stated that:

> Based upon this data, it should be clear that this patient had no antecedent history of cardiovascular disease. Specifically, he had no angina, no previous myocardial infarction, no congestive heart failure and no known cardiac arrhythmias. It is also clear that this gentleman had several risk factors associated with the development of arteriosclerosis. Such arteriosclerosis was not clinically manifest.
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> According to [the claimant], on the day of the patient's demise after eating a light dinner of a sandwich, this patient somewhat hurriedly unloaded numerous boxes of office files from a rental truck. He was subsequently found dead in his driveway. The autopsy report, which is Case No. [* *], performed by the [medical examiner], revealed thrombosis of left anterior descending and circumflex coronary arteries and severe coronary atherosclerosis.
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> It is my firm opinion that this patient with no known antecedent heart disease died suddenly of acute myocardial infarction directly related to his unloading the numerous boxes of office files. This activity was a substantial contributing factor to the patient's death by cardiac cause.

The carrier contends that there is "no evidence" to support the following findings of fact:

> **Finding No. 7**. The deceased had worked a full day supervising the move prior to his heart attack.
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> **Finding No. 8**. The deceased's normal work-related activity was to serve as a wholesaler of plumbing products. In this capacity he operated a 10,000 square foot warehouse, spent the majority of his time doing office work, and did not engage in lifting over 20 pounds.

Finding No. 13. A substantial contributing factor of [the deceased's] heart attack of (date of injury), was the work-related activity of carrying boxes from a truck into his home rather than the natural progression of his preexisting coronary artery atherosclerosis.

In deciding a "no evidence" contention on appeal, we consider only the evidence and the inferences tending to support the finding and disregard all evidence and inferences to the contrary. Garza v. Alviar, 395 S.W.2d 821, 823 (Tex. 1965). The claimant testified that on (date of injury) the deceased supervised the contract laborers in loading and unloading the truck prior to taking the truck home, that the deceased's normal work activity consisted of sitting behind a desk, that he had not lifted anything as heavy as the boxes of files, which she estimated weighed between 20 and 50 pounds, and that moving of stock at the warehouse was done with a pallet jack. We conclude that the claimant's testimony is evidence of probative force to support Findings of Fact Nos. 7 and 8. The carrier's no evidence contention is overruled.

After reviewing the deceased's medical records, diabetic records, autopsy report, personal physician's report, electrocardiograms, photographs of the boxes, and a statement of the claimant concerning the deceased's activity in moving the boxes, (Dr. S) stated that the deceased's arteriosclerosis was not clinically manifest, that the deceased had no antecedent history of cardiovascular disease, and that it was his opinion that the deceased died suddenly of acute myocardial infarction directly related to his unloading the numerous boxes of office files. He stated that this activity was a substantial contributing factor to the deceased's death by cardiac cause. We conclude that the statements and opinions of (Dr. S) constitute medical evidence of probative force to support Finding of Fact No. 13. The carrier's no evidence contention is overruled.

The carrier contends that there is "insufficient evidence" to support Finding of Fact No. 6 and that that finding conflicts with Finding of Fact No. 9. The findings of fact are as follows:

Finding No. 6. The boxes weighed in excess of 20 pounds each and the deceased had moved approximately 15 boxes at the time of his heart attack.

Finding No. 9. The plumbing supplies in the deceased's warehouse were received on pallets and he used a pallet jack to move the product. The boxes on the pallets were in the 12 to 16 pound range.

When a contention is made that the evidence is factually insufficient to support a finding we consider all the evidence in deciding that question to determine if the evidence supporting the finding is so weak or the evidence to the contrary is so overwhelming that the finding should be set aside. *See* Garza, *supra*. Having reviewed all the evidence, we conclude that Finding of Fact No. 6 is sufficiently supported by the testimony of the claimant and that the finding is not against the great weight and preponderance of the evidence. We

also conclude that Findings of Fact Nos. 6 and 9 are not in conflict. Finding of Fact No. 6 concerns the weight of the boxes when filled with office files, whereas Finding of Fact No. 9 concerns the weight of the boxes when filled with plumbing supplies.

The carrier also disputes Conclusion of Law No. 2, which reads as follows:

Conclusion No. 2. [The deceased's] heart attack of (date of injury), is compensable under Section 4.15 of the Texas Workers' Compensation Act.

In disputing Conclusion of Law No. 2, the carrier asserts that the claimant has failed to satisfy her burden of proof. The carrier does not dispute the findings that the deceased died as a result of a heart attack, that the deceased suffered the heart attack at approximately 7:30 p.m. while unloading boxes from a truck and carrying those boxes to his house, and that no emotional or mental stress factors triggered the deceased's heart attack. The carrier's argument is that the evidence "supports the conclusion that [the deceased's] heart attack cannot be attributed to the activity being conducted on (date of injury), but rather, to the severe arteriosclerosis."

In addressing the carrier's argument, we recognize that it is the claimant's burden to establish that an injury was received in the course and scope of employment, Spillers v. City of Houston, 777 S.W.2d 181, 186 (Tex. App. - Houston [1st Dist.] 1989, writ denied), and that under Article 8308-4.15 of the 1989 Act, the preponderance of the medical evidence regarding the heart attack must indicate 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. In this case, the medical evidence was conflicting with the medical examiner reporting that the deceased died of severe coronary artery atherosclerosis, the deceased's personal physician stating that it was possible that physical exercise could have precipitated the myocardial infarction, but it was also possible that the myocardial infarction could have occurred spontaneously and that he could not say whether the deceased's work was the "sole factor" causing his myocardial infarction, and, after reviewing pertinent medical records, (Dr. S) opining that the deceased's arteriosclerosis was not clinically manifest, that the deceased had no antecedent history of cardiovascular disease, and that the deceased's myocardial infarction was directly related to the unloading of the boxes and that that activity was a substantial contributing factor to the deceased's death by cardiac cause. After noting the requirements of Article 8308-4.15, the hearing officer stated in his discussion of the evidence that after evaluating the facts of the case and weighing the medical evidence it was clear that the claimant had satisfied her burden. The hearing officer is the sole judge of the weight and credibility to be given the evidence. Article 8308-6.34(e). As the trier of fact the hearing officer resolves conflicts and inconsistencies in the expert medical testimony and judges the weight and credibility to be given the expert medical testimony. *See* Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App. - Houston [14th Dist.] 1984, no writ). We hold that the hearing officer's conclusion that the deceased's heart attack is compensable under Article 8308-4.15 is sufficiently supported by the findings and the evidence, and that the conclusion and the hearing officer's decision are not against the

great weight and preponderance of the evidence. *See* Texas Workers' Compensation Commission Appeal No. 92390, decided September 8, 1992.

The carrier cites several Appeals Panel decisions in support of its contention that the evidence supports a conclusion contrary to the conclusion reached by the hearing officer. We find the decisions cited by the carrier to be distinguishable from the instant case. In Texas Workers' Compensation Appeal No. 91009, decided September 4, 1991, we reversed a decision for the claimant in a heart attack case and observed that the medical evidence indicated that the work was no more than a contributing factor of the heart attack rather than the statutorily imposed higher standard of a substantial contributing factor. In Texas Workers' Compensation Commission Appeal No 91031, decided October 24, 1991, we determined that the evidence was sufficient to support the hearing officer's conclusion that the deceased died as a result of a natural progression of a preexisting disease. An autopsy report stated that the deceased died a natural death caused by arteriosclerotic cardiovascular disease, and a doctor specializing in cardiology concluded that the deceased died from sudden cardiac death; that his death was not connected with any specific event at work and could have just as easily occurred at home while relaxed; and that the condition leading to the deceased's demise was a condition that most commonly occurs when a person is not engaged in strenuous activity or work. Apparently, the claimant did not offer any medical evidence indicating that the deceased's work was a substantial contributing factor of his heart attack. In Texas Workers' Compensation Commission Appeal No. 91061, decided December 9, 1991, we affirmed a decision that the claimant had not sustained his burden of proof in a heart attack case where one doctor stated that he could not assess whether the heart attack was work-related or a natural progression of coronary artery disease, and another doctor stated only that it was possible the myocardial infarction was related to stress that the claimant experienced at work. In the present case, the claimant presented medical evidence that the deceased's work-related activity of unloading boxes of office files was a substantial contributing factor of his heart attack, that the deceased had no antecedent history of cardiovascular disease, and that his arteriosclerosis was not clinically manifest. The weight to be given the conflicting medical evidence was for the hearing officer's determination. *See* Appeal No. 92390, *supra.*

The decision of the hearing officer is affirmed.

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Robert W. Potts
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Thomas A. Knapp
Appeals Judge