APPEAL NO. 92540

A contested case hearing was held on September 8, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. She determined the respondent's husband (respondent is hereinafter called claimant) suffered a heart attack as a result of treatment for a compensable back injury suffered in the course and scope of his employment. She accordingly awarded death benefits, including funeral and medical expenses, to the deceased's surviving widow (claimant) and his surviving dependent son in accordance with the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq* (Vernon Supp. 1992) (1989 Act). Appellant (hereinafter called self-insured) urges that the evidence was legally insufficient to support the hearing officer's finding that the treatment for the compensable back injury rather that the deceased's preexisting coronary artery disease was a substantial contributing factor of his heart attack. Self-insured also urges that the findings of fact do not support a conclusion that the heart attack was a compensable complication of the deceased's compensable back injury. Claimant asks that the decision of the hearing officer be upheld.

DECISION

Finding the evidence sufficient to support the determinations of the hearing officer, and finding a correct application of the law as regards the basic premise upon which the decision is footed, namely, that complications of treatment of a compensable injury are compensable, we affirm.

The facts in this case are not in dispute and involve the unfortunate and untimely death of a man of 42 years of age. The pivotal question to be resolved is whether or not the provisions of Article 8308-4.15 (compensability of heart attacks) apply to this case. Succinctly, the deceased was a policeman with the self-insured city. He had a history of severe coronary artery disease and had several of the risk factors associated with the disease including being overweight, being a heavy smoker, and having a father who died at an early age from a heart attack. The deceased had suffered a heart attack in December 1988 and a heart catheterization performed at the time indicated severe coronary artery disease including significant total obstruction of the right coronary artery. From that point, he remained under the care of a cardiologist, was treated with a number of medications, and was ultimately returned to work. In (month) (year), he suffered a job-related back injury, the compensability of which is not contested, and underwent a course of treatment which eventually led to back surgery on September 10, 1991. The deceased's cardiologist was consulted prior to the surgery and indicated it was medically acceptable for the deceased to undergo the surgery. Fifteen minutes following surgery the deceased began to experience severe chest pains subsequently determined to be a heart attack (myocardial infarction). He was rushed into emergency surgery for a heart catheterization followed by emergency by-pass surgery. His post-operative course of recovery was extremely stormy and he subsequently expired (apparently without regaining consciousness) on September

12, 1991. The emergency heart catheterization showed that his coronary artery disease had progressed significantly from the previous one and that he now had a total blockage of another artery. There was expert medical evidence presented that the surgery for the work-related back injury was a producing cause of the heart attack the deceased sustained on September 10th. (Dr. L.), who examined and treated the deceased on September 10, 1991, stated:

> It is within the realm of medical probability that the back surgery had a contributing factor in causing a heart attack on that given day.

(Dr. T.), who examined the deceased's medical records, rendered the following opinion:

> . . .his second heart attack in the recovery ward occurred during a period of increased cardiovascular stress related to surgery, general anesthesia, and 1,000 cc. blood loss.
>
> Thus, in my opinion, the surgery for his work-related back injury was a contributory factor to the cause of his fatal heart attack.

It is widely accepted in workers' compensation law that incapacity, or disability in the physical sense as opposed to the economic sense as is the definition of disability under the 1989 Act (inability to obtain or retain employment at wages equivalent to the preinjury wages because of a compensable injury, Article 8308-1.03(16)), resulting from medical treatment instituted to cure or relieve an employee from the effects of an injury is properly compensable. Sutherland v. Illinois Employers Insurance Company of Wausau, 696 S.W.2d 139 (Tex. Civ. App.-Houston [14th Dist.] 1985, no writ). In Hartford Accident & Indemnity Co. v. Thurmond, 527 S.W.2d 180, 190 (Tex. Civ. App.-Corpus Christi 1975, writ ref'd n.r.e.) the Court stated that "[i]t must be remembered that where disability results from medical treatment instituted to cure or relieve an employee from the effects of his injury, it is regarded as having been proximately caused by the injury and is compensable." (citations omitted). *See also* Home Insurance Company v. Gillum, 680 S.W.2d 844 (Tex.App.-Corpus Christi 1984, writ ref'd n.r.e.); Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975). Professor Larson states it thus: "[i]t is now uniformly held that aggravation of the primary injury by medical or surgical treatment is compensable." Larson, Workmen's Compensation Law, Vol. I, § 13.21(a), Matthew Bender, 1992.

Prior to the 1989 Act, there was no specific or special provision regarding heart attack injuries in the Texas statutes covering workers' compensation. The 1989 Act changed that by including Article 8308-4.15 which provides:

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.

At the outset, it is clear to us from the facts and circumstances in this case, including the well documented fact of severe cardiovascular disease, substantial evidence of the grave progression of the disease between the first and second heart attacks, and the total occlusion of a second artery at the time of the second attack, that if the heart attack had been occasioned on the job it would not have been a compensable injury under Article 8308-4.15. The matter remaining in dispute is whether Article 8308-4.15 applies to the situation we face in this case. The claimant urges that it does not and the self-insured argues to the contrary.

We cannot discern any intention by the legislature to overturn the well established and widely accepted and followed principle that compensates an injured employee for the adverse results of medicinal or surgical treatment of a compensable injury. Neither the prior statutes nor the 1989 Act specifically provide for compensating the negative results of medicinal or surgical treatment of a compensable injury. If the legislature, knowledgeable of the considerable case law in this area, had intended to overrule this principle, it would have specifically done so. City of Lubbock v. Knox, 736 S.W.2d 888 (Tex. App.-Amarillo 1987, writ denied); Texas Workers' Compensation Commission Appeal 92172, decided June 19, 1992; Texas Workers' Compensation Appeal 91026, decided October 18, 1991. When a statute is reenacted without material changes, it is generally presumed that the legislature knew and adopted the interpretation placed on the legislation by the courts. *See* Coastal Industrial, Etc. v. Trinity Portland, 763 S.W.2d 916 (Tex. 1978). In this regard, the wording of Article 8308-4.15 indicates that it is directed at and concerned with heart attacks that occur on the job. This is clear from the balancing or weighing requirements under subsection (2) which pit the "employee's work" against the "natural progression of a preexisting heart condition or disease," and the provisions of subsection (1) (B) which refer to a specific event "in the course and scope of employment." The Appeals Panel decisions cited by the self-insured all deal with heart attacks where the injury for which compensation was sought occurred in an on-the-job situation. In those cases we held that Article 8308-4.15(2) required a comparing or weighing between the work and the progression of a preexisting heart condition or disease. This is not the case where, as here, the compensable injury for which benefits are being sought is some other compensable injury

and the complications from the surgical treatment thereof. The deceased's preexisting coronary disease was not a factor that had to be weighed under these circumstances. There was medical evidence before the hearing officer that the back surgery was a contributing factor to the subsequent myocardial infarction. We further note that authorities which hold the results from the treatment of an injury to be compensable do not predicate this on the lack of any preexisting condition or infirmity on the part of the injured employee. *See* Texas Employers Indemnity Company v. Etie, 754 S.W.2d 806 (Tex. App.-Houston [1st Dist.] 1988, no writ).

As indicated, there is sufficient evidence to support the hearing officer's determination and conclusion that the deceased's myocardial infarction of September 10, 1991 is a compensable complication of his (date of injury), compensable back injury, and her order for the payment of benefits under the 1989 Act. Accordingly, only so much of her decision as holds that deceased's death resulted from complications in the treatment and surgery from his compensable back injury and that such is compensable, and her order for the payment of the specified benefits, is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge