

APPEAL NO. 92555

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). A contested case hearing was held on September 4, 1992, in (city), Texas, (hearing offering) presiding. The disputed issues were the following: 1. Did claimant timely notify (employer), employer, of her injury; 2. Did claimant sustain a compensable heart attack during the course and scope of employment with employer on (date of injury)?

The hearing officer found that claimant was verbally assaulted by a coworker on (date of injury); that she notified her employer on that date that she was claiming she sustained a heart attack while in the course and scope of her employment as the result of the verbal assault; that claimant's medical records indicated her heart attack was caused by emotional stress, not physical exertion; and that the natural progression of a preexisting heart condition and disease and not claimant's work was a substantial contributing factor to the heart attack. Accordingly, the hearing officer found claimant's heart attack not compensable.

In her request for appeal claimant disagrees with certain of the hearing officer's findings of fact concerning lack of causation from physical exertion and causation by emotional stress. She also disagrees with a portion of the statement of evidence. The carrier responds that the hearing officer correctly concluded that claimant's heart attack was not compensable because the preponderance of medical evidence indicated that a substantial contributing factor of the attack was the natural progression of a preexisting heart condition or disease and not the claimant's work. It also contends that the hearing officer correctly concluded that the claimant's heart attack was not compensable because it was triggered solely by emotional stress factors.

DECISION

Finding no error on the part of the hearing officer, we affirm his decision and order.

On (date of injury), claimant was working for (employer) as a stocker and receiver. She testified that early that afternoon when she asked a coworker who was unloading buggies not to push the buggies so hard, another coworker began to yell at her and curse her. The coworker did not strike her or hurt her in any physical way. Claimant said she started crying and shaking as a result of the incident, and she asked and received permission from a supervisor to go home. On the way home, she said, her vision became blurred and she had difficulty breathing. Her brother-in-law, who testified as a witness for claimant, said he was driving on the same road when he saw the claimant's car weaving. He pulled her over and took her to a hospital in (city). There, her doctor, (Dr. B), arranged to have her transferred to (Center) in (city).

A (date of injury) report by (Dr. P) at (Center) noted that the claimant presented with the acute onset of left inframammary discomfort or chest pain which resolved as she was being transferred between hospitals. The report stated Dr. P's impression as follows:

My impression is that she had prolonged angina, I doubt if she had a myocardial infarction at the present time. She has a history of myocardial infarction in the past and electrocardiographic changes probably are such.

Dr. P's impression also included hypertension, controlled, and mitral prolapse clinically.

The report of a left heart catheterization and coronary angiography performed on (date) disclosed the following: "Mild to moderate disease in the proximal portion of the LAD. No other significant coronary disease detected. Evidence of apical infarction most likely due to spasm in the LAD at the site of the mild to moderate stenoses."

Upon claimant's discharge from the hospital on (date), (Dr. R) wrote Dr. B, summarizing the results of her catheterization and arteriography, and stating with regard to her electrocardiogram, "[o]rdinarily, by our usual criteria, this would not be considered sufficient evidence for acute myocardial infarction. However, the changes on her electrocardiogram certainly very strongly suggested subendocardial myocardial injury."

Dr. R also noted, as did Dr. P, the fact that the claimant had suffered a myocardial infarction in 1982. At that time she underwent a heart catheterization and was found to have single vessel coronary artery disease. Dr. R wrote on (date) that the claimant "had been relatively stable from a cardiac standpoint until the day of admission. Her cardiac risk factors are positive for hypertension, family history, and cigarette smoking." Dr. B's notes and discharge summary dated (date of injury) noted that claimant's family history was positive for death at an early age from myocardial infarcts, and stated that "[t]his 54-year old smoker has been known to us with ischemic heart disease. She was hospitalized in Intensive Care in December 1990 and then was followed up by the cardiologist in the interval."

Dr. B's discharge summary from claimant's December 26-27, 1990 hospitalization stated that she was admitted with hypertension and chest pain. Her EKG revealed ischemic changes. Dr. B referred claimant to a cardiologist, (Dr. A), who examined the claimant and on January 8, 1991 wrote Dr. B noting claimant's "history of coronary disease dating back nine years" and her inferior myocardial infarction in 1982. He also stated that "[a]bout four years ago, she began experiencing recurrent episodes of chest pain which occurred extremely infrequently about 2-3 times per year. These episodes are usually precipitated by emotional stress. For example, she has suffered the loss of her mother, her sister, and her brother all within the past several years and experienced anginal pain around the time of each of these emotional traumas." Dr. A found the claimant to have the following coronary risk factors: cigarette smoking since age 11, currently down to 1/2 pack a day; hypertension since 1982; and family history of early coronary disease.

Dr. A performed stress testing and electrocardiography and in the same letter stated his impressions as follows:

1. Coronary artery disease.
 - a. Status post inferior myocardial infarction in 1982.
 - b. Single vessel disease by cardiac catheterization in 1983.
 - c. Infrequent episodes of angina pectoris precipitated by emotional stress.
 - d. Clinically and electrocardiographically negative stress test at slightly suboptimal heart rate.
2. Auscultatory evidence of mitral valve prolapse.
3. Hypertension, with hypertensive blood pressure response to exercise, in part due to temporary omission of B-blocker therapy.
4. Peripheral vascular disease with bilateral femoral bruits and symptoms of intermittent claudication predominantly on the right.
5. Cigarette smoking with acute and chronic bronchitis.

The 1989 Act sets forth new and more demanding standards for the compensability of heart attacks. Article 8308-4.15 provides that a heart attack is a compensable injury only if:

- (1) the attack can be identified as occurring at a definite time and place and 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.

All the above elements must be found in order for a heart attack to be compensable. In addition, "heart attack" has been held to encompass conditions that are cardiac in nature and within the broader, nonmedical definition of "heart attack." Texas Workers' Compensation Commission Appeal No. 91031, decided October 24, 1991.

In her appeal, the claimant challenged the following Findings of Fact:

7. Claimant's medical records indicated claimant's heart attack was not caused by claimant's physical exertion while performing claimant's work with employer.

8.Claimant's medical records indicated claimant's heart attack was triggered solely by emotional stress factors.

With regard to Finding of Fact No. 7, the claimant says she has never contended her heart attack was the result of physical exertion. We will therefore assume she is in agreement with this finding, which is supported by the evidence.

It is appropriate for us to state at this point that Finding of Fact No. 8, along with Conclusion of Law No. 4 which says that claimant's heart attack is not compensable because it was triggered solely by emotional stress factors, does not correctly state the appropriate statutory requirement. Article 8308-4.15(3) includes as one element of compensability the requirement that a heart attack was "not triggered solely by emotion or mental stress factors, unless it was precipitated by a sudden stimulus (emphasis added)." Because, as noted earlier, each element of Article 8308-4.15 must be met in order for a heart attack to be compensable, and because we herein uphold the hearing officer's decision based on Finding of Fact No. 9 and Conclusion of Law No. 3 which are based on Article 8308.4.15(2), we find this misstatement of the law to be harmless error.

As to Finding of Fact No. 8, claimant says she has never seen any medical records indicating her heart attack was triggered solely by emotional stress. In her discussion of the hearing officer's statement of evidence she says her earlier condition has improved and has been controlled by medication, and that she has not had any additional heart attacks until (date of injury), despite the deaths of several family members. She disagrees with Dr. P's statement, as quoted by the hearing officer, that she has had chest pain since 1982, mostly related to emotional stress. We infer that the gist of claimant's argument on this point is that her (date of injury) heart attack was attributable more to the incident at work rather than the natural progression of any preexisting condition, (See Article 8308-4.15(2)), contrary to Finding of Fact No. 9 and Conclusion of Law No. 3. These state as follows:

FINDING OF FACT

9.Claimant's medical records indicated that the natural progression of a preexisting heart condition and disease was a substantial contributing factor of claimant's heart attack.

CONCLUSION OF LAW

3.Claimant's heart attack is not compensable because the preponderance of the medical evidence regarding claimant's heart attack indicated that a substantial contributing factor of claimant's heart attack was the natural progression of a preexisting heart condition or disease and not claimant's work with employer.

We have held that under Article 8308-4.15(2), the claimant has the burden to prove

by a preponderance of the medical evidence that the work rather than a preexisting condition or disease was a substantial contributing factor rather than one contributing factor; moreover, such medical evidence cannot come from a lay person. See Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991. Furthermore, this provision of the statute requires a comparison or weighing between the conditions leading to the heart attack. The preponderance of the medical evidence regarding the attack must indicate that the work rather than the natural progression of a preexisting condition was a substantial contributing factor. Texas Workers' Compensation Commission Appeal No. 92115, decided May 4, 1992.

Upon review of the record in this case, we find a lack of medical evidence linking work as a substantial contributing factor to claimant's heart problems. Indeed, the only reference to claimant's work in the medical records generated around the time of the incident is contained in Dr. B's (date of injury) report. Dr. B noted that claimant "today had an upset at work with a fellow employee and there had been an altercation and she developed chest pain. . .[she] has been under some stress lately. She had an altercation with a fellow employee today and words were exchanged. . .She has been known to have vasospastic angina in the past and indeed that seems to be occurring at this time. The patient had been smoking 1 1/2 ppd and has cut it back to about 1 ppd." These references to the work-related altercation were apparently not sufficient for the hearing officer to tip the balance of evidence of work as a substantial contributing factor, especially in light of Dr. B's (as well as Drs. R, A, and P) references to other factors such as preexisting heart problems, family history, and smoking. We do not disagree. Claimant also offered into evidence an April 12, 1991 claim form for accident or disability insurance ostensibly prepared by Dr. B or under his authority. That form gives a diagnosis of acute myocardial infarct, angina, and hypertension, and answers affirmatively the question whether claimant's condition is due to injury or sickness arising out of her employment. Under the category Mental/Nervous Impairment, in answer to the question, "What stress and problems in interpersonal relations has claimant had on job?" the response given is "Much stress from a particular employee which caused her MI." However, in the context of all the medical evidence in this case, this document would not compel the hearing officer to determine that a preponderance of the medical evidence indicated that the work rather than the natural progression of a preexisting condition was a substantial contributing factor. Texas Workers' Compensation Commission Appeal No. 92174, decided June 10, 1992.

Upon review of the record, we find that the hearing officer's decision and order are supported by sufficient probative evidence. Accordingly, we affirm.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge