APPEAL NO. 92660

A contested case hearing was scheduled in (city), Texas, for September 16, 1992; however, when called to order, the appellant (claimant) stated he had not gotten any written notice and was not ready to proceed. A former attorney, the claimant represented himself at the hearing. After considering the presentations of both parties, the hearing officer granted a continuance. The hearing was subsequently held on October 20, 1992. The hearing officer determined that the claimant had not established by a preponderance of the evidence that he suffered an injury that arose out of and in the course and scope of his employment on (date of injury) or that he suffered a repetitive trauma injury or occupational disease that arose out of and in the course and scope of his employment with (employer) and, accordingly, denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Claimant urges reversal, complaining of due process denials in being restricted in his cross-examination, in his requests for some subpoenas, by the hearing officer inquiring *ex parte* about the availability of medical records from claimant's medical providers, and also generally argues that there was insufficient evidence to support the hearing officer's decision. The respondent (carrier) posits that the evidence is sufficient to support the hearing officer and asks that the decision be affirmed.

DECISION

Finding no error warranting corrective action and that the evidence before her sufficiently supported the hearing officer's determinations, the decision is affirmed.

This was a somewhat difficult contested case hearing and the hearing officer displayed considerable judicial temperament in presiding over and in containing the apparent acrimony and emotional state that was occasionally displayed by the claimant at the hearing. Although the issue was stated at the beginning of the hearing as whether the claimant had a compensable injury on (date of injury), it became apparent the claimant's theory involved two different injuries: a specific injury of heart fibrillation following his termination on (date of injury) and "an occupational hazard." The occupational hazard, according to claimant's theory, apparently resulted in "a closed artery" because of long term stress on the job caused by "lies" of other employees, politics on the job, and a manager described by the claimant as a "wimp." In any event, the claimant had been fired by the employer in the morning and when he had not left by that afternoon, employer's manager approached him and told him to remove his things and be out within 15 to 20 minutes. The claimant, who had previous heart and blood pressure problems, states that the expedited movement of his personal things caused him to perspire, to have shortness of breath, chest pain, and to take some "nitro" pills which had been prescribed for him some time ago. He asserts that his specific injury at that time was "fibrillation" and an increase in his blood pressure, a condition for which he had been under a doctor's care. He testified that after he left the work place premises, he immediately went to the doctor at (BT) hospital. He stated he did not see anyone "because I left early because I had been there sitting around all day and I was hurting more from sitting there than I was--so, what I did, I called in and

made an appointment for HMO the next day." He testified that the next day he saw a doctor who gave him some more "nitro" pills because he was out and also gave him "some more blood pressure medicine and she gave me some Isodol." There were no medical records offered into evidence; however, the claimant testified he has high blood pressure and heart trouble that he thinks existed for a long time and were caused by "an occupational hazard," presumably meaning a repetitive stress or mental trauma.

We do not here decide the matter argued at the hearing, and mentioned in the response, to the effect that since the alleged injury on (date of injury), occurred after the claimant had been terminated and since the evidence did not establish he was then in the furtherance of the affairs of the employer, a compensable injury was not established. We do note that we have previously held that just because an injury occurs subsequent to a termination does not necessarily bar recovery particularly when an injury occurs while operating under directions of the employer. *See* Texas Workers' Compensation Commission Appeal No. 91096, decided January 17, 1992.

Regarding the claimant's specific injury on (date of injury), namely, perspiring, increased blood pressure, fibrillation and chest pain, we agree with the hearing officer that he has failed to establish, by a preponderance of the evidence, any compensable injury. Injury is defined in the 1989 Act in Article 8308-1.03 (27) as meaning "damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm." "Occupational diseases" are also included in the term. In addressing the terms damage or harm, the Supreme Court of Texas in Bailey v. American General Insurance Co., 279 S.W.2d 315 (Tex. 1955) opines that harm "in fact means essentially that the structure no longer functions as it should" and states that "[i]t is a natural construction of the word `harm' with reference to the physical structure of a living person, to look to the effect of the event or condition in question upon the effective functioning of that structure." It has been held in Hartford Accident & Indemnity Co. v. Thurmond, 527 S.W.2d 180 (Tex. Civ. App.-Corpus Christi 1975, writ ref'd n.r.e.) that a heart attack is not only defined as a myocardial infarction and that other conditions such as severe ischemia of the myocardium may be brought under the umbrella of the term heart attack. However, there must be some harm or damage to the physical structure of the body and "[h]arm with reference to a living, active structure (as the body is) means essentially that the structure no longer functions as it should." Thurmond, *supra*, at page 188. In both Bailey and Thurmond, there was medical evidence establishing the damage or harm to the body. In this case, there is no such medical evidence; indeed, there no probative evidence, if any at all, to show that the claimant suffered any harm or damage to the physical structure of his body on (date of injury); that is, that his body no longer functioned as it should as a result of the activities of that day. At most, the claimant testified that he had some symptoms relating to his previously diagnosed heart and blood pressure conditions. If, as it appears, the claimant was attempting to relate his condition on (date of injury) to a heart attack, Article 8308-4.15 requires that to establish a compensable injury the preponderance of the medical evidence regarding the attack indicates that the work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack.

The hearing officer, as the fact finder and assessor of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence, determined that the claimant did not establish that he suffered an injury that arose out of and in the course and scope of his employment on (date of injury). There is clearly a sufficient basis in the evidence, or lack thereof, for this determination.

There is no basis in law or fact in this case for the claim of occupational disease or "occupational hazard." Claimant testified that his heart condition, which he described as "closed artery" or a method "that harden the artery muscle," resulted from "lies" told by coworkers, politics in the employment place and weak management which caused stress over a long period of time and caused his prior heart and blood pressure conditions. Aside from the lack of any medical evidence being offered to correlate mental anxiety or stress with a "closed artery" or hardening of artery muscle, or other probative evidence coming before the hearing officer on the matter, such alleged repetitive mental trauma is not recognized as a compensable injury under Texas Workers' Compensation legislation. *See generally*, Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979): Jackson v. Liberty Mutual Insurance Co., (Tex. Civ. App.-El Paso 1979, writ ref'd n.r.e.); Olson v. Hartford Accident Indemnity Co., 477 S.W.2d 859 (Tex 1972); Texas Workers' Compensation Commission Appeal No. 92149, decided May 22, 1992.

We have reviewed the record and do not find any error on the part of the hearing officer in her procedural rulings, her admission of evidence or in her denial of claimant's request for the issuance of subpoenas for his medical records. Clearly, no basis is shown in the record for the need of subpoenas to be issued. In her order denying the questioned subpoenas, and her refusal to grant claimant's request to reopen the hearing, the hearing officer states there is no good cause and that the Commission contacted the offices of the medical providers in question and was advised that the records were available and that the claimant had never requested his medical records. The record shows the claimant authorized the release of his medical records to the carrier. The Commission may issue a subpoena upon request if the hearing officer determines there is good cause. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.12(b) (TWCC Rule 142.12(b)). We do not find any abuse of discretion on the part of the hearing officer in determining no good cause was shown and in refusing to reopen the hearing. See Texas Workers' Compensation Appeal No. 92547, decided November 30, 1992; Texas Workers' Compensation Commission Appeal No. 92581, decided December 14, 1992; Texas Workers' Compensation Commission Appeal No. 92029, decided March 11, 1992.

The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge