APPEAL NO. 92673

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp 1992). On October 23, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant, claimant herein, suffered an angina attack in the course and scope of employment but that subsequent coronary artery bypass surgery resulted from claimant's underlying condition, as shown by medical tests, and was not caused by the angina. As a result, no disability was found. Claimant asserts that the hearing officer did not discuss all the evidence and did not apply all the evidence which included medical evidence that the bypass surgery was the final resolution of the claimant's angina; claimant asks that disability be awarded for all his time away from work resulting from the surgery. Respondent, carrier herein, did not appeal the hearing officer's decision that applied Article 8308-4.15 heart attack standards to angina attacks and the determination that these standards were met in regard to the angina. Carrier states that there is sufficient evidence to support the decision.

DECISION

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Claimant works as an insulator. On (date of injury), claimant was applying insulation to pipes in a basement of a building. The basement was described as poorly ventilated and several pieces of machinery powered by gasoline were operating in the basement that day. The evidence of record indicates that claimant, 49 years old, and several other workers were impaired by the exhaust fumes on (date of injury). He did not have a diagnosed heart condition. He was taken to a medical center in (city) because of "burning chest pressure" which was associated with numbness in his left arm. On the way to the center, claimant was given nitroglycerin. Even though his chest pain had stopped while in the emergency room of the hospital, he was admitted for observation and more tests because of the "intensity of the pain and involvement of the left arm (as well as risk factors and EKG findings)." In addition to the entry diagnosis of chest pain, Dr. H his treating doctor, also described him as having a history of hiatal hernia plus non-insulin dependent diabetes mellitus; he also referred to claimant's participation in a research study involving asbestosis.

The hearing officer considered three issues: whether claimant was compensably injured; whether his heart was compensably injured; and whether claimant incurred disability. Although the hearing officer's decision that the course of employment caused an episode of angina, which the hearing officer brought under the "broader" requirements of a heart attack as set forth in Article 8308-4.15, was not appealed, several observations regarding that determination will be mentioned. Angina pectoris is referred to in Dorland's Illustrated Medical Dictionary, 27th Edition, as recurring thoracic pain due generally to lack of oxygen to the heart. While Northbrook National Insurance Company v. Goodwin, 676 S.W.2d 451 (Tex. App.-Houston [1st Dist] 1984, writ ref'd n.r.e.) dealt with angina, described

therein by medical evidence as a "temporary constriction of the heart arteries", that case also found injury in considering angina within the definition of a "heart attack". It defined a heart attack as "some form of cardiac injury", adding that there was some evidence to support a finding of injury. *See also* Hartford Accident & Indemnity Company v. Thurmond, 527 S.W.2d 180 (Tex. Civ. App.-Corpus Christi 1975, writ ref'd n.r.e.) where severe ischemia of the myocardium was brought under the umbrella of heart attack where some harm or damage to the physical structure of the body results.

In the case before us on appeal, the hearing officer, as fact finder, found that claimant had been exposed to carbon monoxide which caused angina pectoris on (date of injury). There was evidence that carbon monoxide at the time reduced the availability of oxygen to the heart. (The hearing officer did not find that the carbon monoxide exposure caused unstable angina pectoris, which was diagnosed two days later.) As stated, claimant experienced chest pain at the time of exposure. With no other finding of damage or harm to the physical structure of the body, the hearing officer still said in Conclusion of Law No. 2 that the definition of heart attack was so broad that the episode of angina pectoris should be considered under the criteria of Article 8308-4.15. He then limited the determination he made in Conclusion of Law No. 3, after applying part of the criteria of Article 8308-4.15, by saying that work "was a substantial contributing factor to cause his angina pectoris attack on (date of injury)." Since his decision in this regard was not appealed, we will not address further whether Conclusions of Law Nos. 2 and 3 in applying Article 8308-4.15 are correct.

The medical evidence largely consists of the records provided by Dr. H, the treating doctor. In different letters and entries in claimant's records, Dr. H, provided the following account:

Data at the time of admission on (date of injury) as set forth in the first paragraph of this decision. (Chest pain resolved by medication.)

On April 19, 1992, claimant was transferred to another medical center (HCA) for "arteriography to define the presence and significance of coronary artery disease" because he still had chest pain. At time of transfer his diagnosis was changed from angina pectoris to unstable angina pectoris.

Dr. H admitted claimant to HCA on April 19th with arteriography planned for the next day. He noted that a more detailed history from claimant showed that claimant was adversely affected by his "hiatal hernia" (also located in the center of the chest), and the doctor concluded that his exercise capacity had decreased over the last two to three months.

On April 21, 1992, after catherization found lesions in three coronary arteries, Dr. B did triple coronary bypass surgery under both preoperative and postoperative diagnosis' of "unstable angina." Dr. B described claimant as having "developed an unstable pattern of his angina recently." In discharging

claimant on April 27, Dr. H states that claimant's "hiatal hernia" was "self diagnosed" and repeats that claimant's "hiatal hernia" negatively affected him when he walked or exercised. Dr. H said claimant tolerated the surgery well with some post-surgical pulmonary problems. He was released on medication and a restricted diet.

On May 5, 1992, in answer to questions from the carrier, Dr. H said that claimant did not have a myocardial infarction/heart attack. He added that the bypass surgery was required by the coronary artery disease. He went on to describe the carbon monoxide inhaled on (date of injury) as "the triggering factor" and as "related to precipitation of unstable angina and the need for hospitalization." He then added, "Again, I state that (claimant) did not have a `heart attack'."

On July 30, 1992, in answer to more questions from the carrier, Dr. H added that claimant's angina "was resolved in the Emergency Room with nitroglycerin but recurred and required additional intravenous and sublingual nitroglycerin. The final resolution occurred with the coronary bypass grafting."

Finally, in answer to another carrier's question propounded on October 20, 1992, Dr. H said that his reference to carbon monoxide was based solely on the history given. In answer to a question about whether it was probable that the angina was caused by carbon monoxide exposure, Dr. H said, "(i)t is <u>possible</u>--I do not know the probability or likelihood."

The other medical evidence was that of a consultant to the carrier, a cardiologist (Dr. Z), who reviewed the records and spoke with Dr. H in providing his opinion. The hearing officer obviously did not follow all Dr. Z's opinions in that report because Dr. Z stated, "(i)t is my opinion that the carbon monoxide inhalation is totally irrelevant to this case." Dr. Z also commented that "even if he did have carbon monoxide inhalation there is no evidence that this would affect the progression of his coronary disease." Dr. Z concluded by saying that there was no evidence that the employment had anything to do with development of the coronary artery disease.

Appellant took issue with Findings of Fact Nos. 7, 8, 9, and 11. They state the following:

7.Upon further testing the claimant was diagnosed to have preexisting coronary occlusive disease which required triple by-pass surgery.

8.The claimant had risk factors generally associated with coronary artery disease including cigarette smoking, diabetes, high blood cholesterol, and a history of artery disease among members of his immediate family.

9.The claimant's physical condition prior to (date of injury), was such that he experienced "chest discomfort" when he attempted to perform his normal work activities or engage in vigorous physical activity.

11.Exposure to carbon monoxide neither caused the claimant's coronary artery disease, nor did it aggravate the disease and thereby necessitate by-pass surgery.

Finding of Fact No. 7 is taken directly from Dr. H's letter of May 5, 1992 and is consistent with Dr. B's surgical report dated April 21st and Dr. H's discharge note concerning claimant. Finding of Fact No. 8 is not necessary to the decision and may be disregarded. *See* Article 8308-4.15 which only considers work and the natural progression of a preexisting heart condition or disease. *Also see* Texas Indemnity Insurance Company v. Staggs, 134 Tex. 318, 134 S.W.2d 1026 (1940), which states that an unwarranted finding may be disregarded. Finding of Fact No. 9 comes from the medical records of Dr. H dated April 19th and those dated April 27th which stressed that claimant's report of a hiatal hernia was self diagnosed, clearly adding to the episodes of chest pain claimant had undergone prior to (date of injury). Finding of Fact No. 11, is consistent with the medical evidence. Dr. H said that the coronary artery disease required the surgery; Dr. H never said that angina (pain due to limited oxygen) aggravated claimant's diseased arteries, and he did not find that any part of the heart was injured. The most that Dr. H said was that the final resolution of the angina occurred with the surgery. In so saying, he did not say that the angina caused the surgery. The cause of the surgery was the occluded arteries. Dr. H did say that claimant, his patient, did not have a heart attack. Unlike a heart attack that involves myocardial infarction which itself causes damage to the heart, no evidence was provided that claimant's angina damaged the heart or restricted further the limited movement of blood through his arteries. The only other doctor providing an opinion, Dr. Z, was even more adamant that there was no connection between work and the disease. All findings of fact that are relevant to this decision to which claimant objects are not against the great weight and preponderance of the evidence.

The only other assertions of error made by claimant that are not addressed in the above treatment of disputed findings of fact concern the Summary of Evidence and Discussion provided by the hearing officer. Claimant states that the hearing officer did not discuss all the testimony, did not apply all the evidence provided by Dr. H, and did not discuss certain articles regarding carbon monoxide and angina/causation of angina. The hearing officer is not required by the 1989 Act to provide a Summary of Evidence or Discussion. However, we note, that when such is made a part of the Decision and Order, it should fairly and adequately set forth the relevant and material evidence admitted at the hearing. The observations in the decision, made in addition to the Findings of Fact and Conclusions of Law, reasonably reflected the evidence in the record. *See* Texas Workers' Compensation Commission Appeal No. 92185, decided June 18, 1992. Claimant's concern as to causation of angina is moot in that the hearing officer made findings and conclusions in the claimant's interest to the effect that carbon monoxide caused the angina on (date of injury). The conclusions of law that the heart disease did not arise out of the

compensable injury and that claimant has not shown that the injury caused him to have disability are consistent with the findings of fact and are sufficiently supported by the evidence.

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

DISSENTING OPINION:

I share my fellow panel members' concern, given the evidence in this case, as to the correctness of the hearing officer's conclusion that claimant's angina pectoris "falls with[in] the broader definition of `heart attack'," and that claimant's entitlement to benefits is to be decided pursuant to Article 8308-4.15. I also share their view that because such conclusion was not appealed, however, we are not at liberty to determine its validity. Article 8308-6.42(c) instructs this panel to determine each issue on which review was requested. In the majority opinion, there is discussion of medical evidence to the effect that claimant did not suffer a "heart attack," and that there was no evidence of the compensable angina damaging claimant's heart. While I do not necessarily disagree, I do not find that assessment particularly relevant here because the hearing officer concluded that claimant's angina qualified under the heart attack statute and that determination was not appealed.

Once the hearing officer concluded that claimant's angina pectoris was compensable under Article 8308-4.15 (in effect, that it qualified as a "heart attack"), then claimant was "entitled to all health care reasonably required by the nature of the compensable injury as and when needed," and was specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Article 8308-4.61. According to claimant's hospital records, he was admitted to the hospital on (date of injury), the day of his injury at work, and while his EKGs and enzymes showed no evidence of myocardial infarction, "with antianginal medications and attempts at ambulation, [claimant] continued to complain of epigastric and retrosternal discomfort. . . . [and] was therefore placed back on

intravenous nitroglycerin and prepared for transfer . . . for coronary arteriography to define the presence and significance of coronary artery disease." On April 20th, claimant underwent a left heart catheterization which showed three vessel disease. On April 21st, claimant underwent coronary artery bypass surgery. The "Operative Report" stated that claimant had "developed an unstable pattern of his angina recently," and the preoperative and postoperative diagnosis was "unstable angina." In a report to the carrier, claimant's doctor stated that claimant came under his care on (date of injury), was admitted for unstable angina pectoris, did not sustain a myocardial infarction but had continued chest pain with activity, underwent arteriography which revealed "multi vessel coronary disease," "was treated with coronary artery bypass grafting and has done well since that time." That report also stated the following: "The angina pectoris resolved in the Emergency Room with nitroglycerin but recurred and required additional intravenous and sublingual nitroglycerin. The final resolution occurred with coronary bypass grafting."

I believe claimant to have been entitled to all medical benefits upon being admitted to the hospital on the day of his injury, after his initial pain subsided in the emergency room, for further observation and testing. Such benefits would also include the diagnostic arteriograph studies on his fourth day of hospitalization because, as his records indicate, his pain was continuing, and the subsequent by-pass surgery not only treated claimant's previously undiagnosed coronary artery disease, but also "finally resolved" his angina condition.

The pertinent findings and conclusions of the hearing officer, as well as his Decision and Order, follow:

FINDINGS OF FACT

4. On (date of injury), the Claimant was overcome by exposure to carbon monoxide fumes while performing his job for the named Employer.

5. Upon being hospitalized the Claimant was diagnosed to have suffered from unstable angina pectoris which was treated and resolved with medication.

6. The Claimant suffered no other bodily injury or illness as the result of the (date of injury) incident.

7. Upon further testing the claimant was diagnosed to have preexisting coronary occlusive disease which required triple by-pass surgery.

8. The claimant had risk factors generally associated with coronary artery disease including cigarette smoking, diabetes, high blood cholesterol, and a history of artery disease among members of his immediate family.

9.The claimant's physical condition prior to (date of injury), was such that he experienced "chest discomfort" when he attempted to perform his normal work activities or engage in vigorous physical activity.

10.Exposure to carbon monoxide fumes caused the Claimant to suffer the angina pectoris on (date of injury).

11.Exposure to carbon monoxide neither caused the claimant's coronary artery disease, nor did it aggravate the disease and thereby necessitate by-pass surgery.

CONCLUSIONS OF LAW

2.The Claimant's angina pectoris falls with (sic) the broader definition of "heart attack" and, therefore, his entitlement to benefits is to be decided in accordance with Article 8308-4.15 of the Act.

3.The Claimant established by preponderance of the medical evidence that his working conditions rather than his preexisting heart disease was a substantial contributing factor to cause his angina pectoris attack on (date of injury), in accordance with Article 8308-4.15(2) of the Act.

4.The Claimant has not established that he was rendered unable to obtain and retain employment at his preinjury wage level for more than 7 days as the result of his compensable injury.

5.The Claimant's heart disease (and resulting incapacity due to surgical treatment) did not arise out of the above referenced compensable injury and, therefore, is not compensable under either Article 8308-4.15 or Article 8308-3.01.

DECISION

The claimant suffered a compensable injury to his heart on (date of injury), (i.e. angina pectoris). However, the Claimant did not suffer disability as a consequence of this injury. The Claimant's subsequent inability to obtain and retain employment was due to treatment for his non-compensable heart disease.

ORDER

The Carrier is ORDERED to pay medical benefits for the claimant's compensable angina pectoris injury. The Claimant shall be paid temporary income benefits only if he can establish disability for eight or more days as a consequence of this injury.

The net effect of the hearing officer's determinations is that while claimant suffered a compensable injury (angina pectoris), which the hearing officer qualified as a "heart attack" under Article 8308-4.15, and for which "compensation," including medical benefits (Article 8308-1.03 (11)), is payable, claimant's by-pass surgery did not qualify because it treated his coronary artery disease, a previously undiagnosed condition which was discovered only after claimant was admitted to the hospital and was being treated, tested, and diagnosed for his compensable injury. The hearing officer appears to reason that while claimant's job-related injury, which caused his hospitalization in the first place, is compensable, claimant's by-pass surgery is not compensable and did not result in disability because it treated a preexisting, non-compensable condition. Indeed, the hearing officer in his discussion stated that "[t]he chain of causation stops there," apparently referring to the compensable angina pectoris, "that the by-pass surgery (and resulting disability) was neither necessitated by, nor did it arise out of the angina episode;" and that such surgery "was caused solely by claimant's preexisting coronary occlusive disease" and thus was not compensable.

Article 8308-4.15 is entitled "Compensability of Heart Attacks." It provides, in part, that a "heart attack is a compensable injury" if it meets the three criteria in that statute. The hearing officer determined that it did. Yet the hearing officer would cut off "compensation" and find no disability, apparently after the date of the injury, because, while still in the hospital for observation and testing, claimant experienced continued pain which two days later led to the arteriograph studies which led to the surgery which not only treated his previously unknown coronary artery disease but also "finally resolved" his angina pectoris. The hearing officer appears to determine that sometime after claimant was given a nitroglycerin tablet for his compensable injury on the day it occurred and the pain subsided, his entitlement to benefits for that compensable injury, including all reasonable and necessary medical treatment, and any ensuing period of disability, came to an abrupt halt.

In my view, the scenario amounts to an unbroken chain of events flowing directly from claimant's undisputed on the job injury. While in the hospital for the reasonable and necessary medical treatment to which he was entitled for his compensable angina pectoris, including a period of observation and additional testing, he continued to experience pain which led to additional diagnostic studies, revealing a need for the surgery which not only treated the previously unknown coronary artery disease but also "finally resolved" the compensable injury. Claimant's doctor's records indicate the inhalation of the carbon monoxide fumes triggered or precipitated the unstable angina and the need for admission to the hospital, and that while the angina pectoris initially resolved in the emergency room, it recurred, necessitating additional nitroglycerin and the diagnostic studies which led to the surgery.

I disagree with the hearing officer's statements that the chain of causation stops with the angina pectoris, that the surgery was neither necessitated by nor arose out of the angina episode, that the surgery was solely caused by the preexisting disease, and that the surgery was not compensable. I view such of the findings and conclusions as reflect the hearing officer's rationale, as well as his decision and order, as an effort to limit claimant's entitlement

to benefits, including a period of disability, to only the day of the injury at the point his pain subsided in the emergency room, or perhaps to the point his chest again began to hurt. This I find to be an unsupportable interruption in the compensability of his reasonable and necessary medical care, and the period of disability which ensued during and following his surgery. Those findings and conclusions, which lead to that result, as well as the decision and order, are, in my judgment, against the great weight and preponderance of the evidence, and manifestly wrong and 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). I would reverse and render for claimant.

Philip F. O'Neill
Appeals Judge