

## APPEAL NO. 92684

A contested case hearing was held on November 13, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. He determined that the appellant's (claimant) deceased husband did not suffer a compensable heart attack and that the claimant was not entitled to death benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). Claimant urges error in the hearing officer's conclusion that the preponderance of the medical evidence regarding the heart attack does not indicate that the deceased's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack, and the conclusion that the deceased did not suffer a compensable heart attack. Respondent (carrier) asks that the decision be affirmed.

### DECISION

Finding the evidence sufficient to support the determinations and conclusions of the hearing officer, the decision is affirmed.

This is an unfortunate case of the untimely death of a relatively young gentleman in his forties. He had been employed by (employer) for a number of years and performed duties as a warehouseman filing and shipping orders for various sizes and weights of chain. The claimant testified that her husband regularly went into work several hours early and that she had visited his work area and was aware that, as a part of his duties, he actually handled chain, moving and lifting it in the filling of orders. She also testified that her husband was not under treatment for any heart condition, although she suspected he might have some heart problem. She noted he tired more easily in the last couple of years and she suggested he go in for a medical examination, which he refused to do. She indicated that her husband did not appear to be feeling all that well the night prior to his heart attack at work on (date of injury).

The evidence established that the deceased went to work early on (date of injury) but it is not clear what his activities were until the regular starting time when others came to work. Although not known, it would not be unusual for him to fill orders when he went in early. According to a coworker, the deceased was working an order shortly after the coworker came in. He stated that they have dollies, forklifts and a hand truck to assist in moving chain orders. The coworker stated the deceased did not look well, sat down, and that shortly thereafter the deceased stood up and apparently suffered his heart attack at that time. He was taken to the hospital and apparently was dead upon arrival. A (Dr. H), a family practitioner, was at the emergency room at the time although he did not treat the deceased. He was the doctor for the deceased's sister-in-law and had never treated the deceased. He testified that he understood that the deceased died from a myocardial infarction. In response to a hypothetical question which included the deceased's arteriosclerotic coronary artery condition (that the deceased's two coronary arteries were 95% and 90% occluded) and an assumption that the deceased was engaged in a physically demanding activity, such as lifting heavy boxes of chain during the morning of his demise,

Dr. H opined that based upon reasonable medical probability such physical activity was a substantial cause of his heart attack. Dr. H stated that he would agree with the finding that the death was "sudden death" and that sudden death syndrome can possibly happen anywhere--at home, while asleep, at work. He also stated that given the amount of arteriosclerotic disease, "any lifting might suffice and trigger it." He did not know for sure what triggered this particular heart attack.

Considerable evidence concerning orders and the filling thereof on (date) and (date of injury) was admitted into evidence. It was not clear how many orders the deceased handled on either specific day; however, it did not appear that he had been involved in filling any degree of orders on the day of his death. A videotape recorded on November 10, 1992 was introduced showing the deceased's work place and recreating the work involved in the orders the deceased filled on (date).

The autopsy report and a videotape deposition of (Dr. Z) was admitted into evidence. The autopsy report concluded that the deceased died of arteriosclerotic coronary artery disease and showed major stenosis in his right and left coronary arteries, 90% and 95% respectively. Evidence of thrombosis or clotting in the left artery was found. Dr. Z indicated that it took years to develop the condition the deceased had and that it can result in sudden death. He testified that vigorous physical activity in a person in the deceased's condition could have played a role in the specific time of the heart attack but that this heart attack could have happened without any physical activity, and that he could not say that physical activity was the triggering event that cause death. In his opinion, given the deceased's condition, the heart attack could just as well have occurred at home.

The hearing officer concluded that the preponderance of the medical evidence regarding the heart attack did not indicate that the deceased's work, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor of the attack. He obviously weighed the medical evidence before him and determined that it did not rise to the specific requirements of Article 8308-4.15(2) which provides, in this regard, that a heart attack is not a compensable injury unless "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." There is, in our opinion, sufficient evidence in the record to support the hearing officer's determination on this matter. Given the medical evidence of the severity of the deceased's arteriosclerotic disease, the medical opinions to the effect that the deceased was a candidate for a heart attack at any time and that his attack could just as well have occurred at home or elsewhere, together with the inconclusive evidence concerning the degree of any specific physically demanding activity preceding the attack, the hearing officer could reasonably conclude that the requirements of Article 8308-4.15 were not met. His Decision And Order indicates that he did the necessary and proper weighing of the work compared to the preexisting condition provided in that article. Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991; Texas Workers' Compensation Commission Appeal No. 92115, decided May 4, 1992. And, his

factual findings were supported by the evidence before him and support his legal conclusions when applying the 1989 Act to the facts as found. Texas Workers' Compensation Commission Appeal No. 92170, decided June 17, 1992; Texas Workers' Compensation Commission Appeal No. 92190, decided June 22, 1992.

The 1989 Act provides (Article 8308-6.34(e)), and we have repeatedly held, that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Where there is sufficient evidence to support the hearing officer's determinations, as there is here, there is no reason to disturb the decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951). The decision is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge