APPEAL NO. 93032
FILED FEBRUARY 26, 1993

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. 1993). On November 10, 1992, a contested case hearing was held to determine whether the claimant, _____, the respondent in this appeal, sustained an injury in the course and scope of employment on _____, while working with a survey crew for (employer). The hearing officer determined that claimant sustained the compensable injury of heat exhaustion on that date, became physically ill, and suffered a Mallory-Weiss tear of the esophagus when he became ill.

The carrier appeals, arguing that there is no evidence to prove that the condition, which it states is essentially an ordinary disease of life, was caused at work, or that the claimant suffered heat exhaustion at work. The carrier argues that medical evidence was required in this case because the link between the claimant's condition and work cannot be ascertained by common experience of the trier of fact. The claimant did not file a response.

DECISION

After reviewing the record of the case, we reverse and remand the case for further consideration and development of the evidence, as necessary.

The claimant had worked for about a month on a survey project near (city 1), Texas, for the employer. His job was to clear brush out of the way of surveyors' line of vision, and he did this with a machete. The claimant said that the morning of _____, it was raining when the supervisor, Mr. H picked him and some coworkers up from the hotel where they stayed, and took them to the job site. He said they arrived at the location around 8:00 a.m. It had stopped raining, but due to the muddy roads the truck could not drive into the site and they had to walk. Claimant said he was carrying a bucket of paint, some stakes, and his machete, and walked about three miles. When he began work, the sun came out, and it became humid. He stated that he began to feel dizzy shortly after he started clearing the area. He stated that he began sweating and sweating, and indicated it was more than usual. When the crew stopped for lunch around noon, he stated he wasn't hungry, and was feeling dizzy, and only drank two bottles of apple juice and some water. He started to feel tired, and pale, as the crew headed back to work. He states that a coworker, [A], expressed concern about him but he responded that he would make it, and declined to tell Mr. H. The claimant said that there was no water at the job site nor did he have a canteen. He said that [A] told him that he had seen other people get "dehydration" with similar effects.

Around 3:00, claimant stated that he vomited blood. He stated that he dropped to his knees when this happened. When he finished, he got up and started working again until around 3:30. He stated that he vomited again before they left, and [A] again told him to tell the boss.

The drive back from the site lasted around 30-40 minutes, and claimant said that he did not vomit. He said that he did not want to tell Mr. H he was sick because he was afraid he would lose his job. He said that from 4:30 to 9:30, he stayed in his hotel room and drank only a little Sprite. He started vomiting blood again, and did so at least once again during the early morning hours. He said that by 7:00 a.m. the next morning, when Mr. H arrived to pick up the workers, that he told Mr. H he was unable to work, and was taken to the local hospital. Eventually, he was transferred to a hospital in (city 2).

Mr. H , who said he was a senior surveyor for the employer, agrees that it had been raining and was too wet to drive in to the work site. Mr. H said that the distance walked to job site was about a mile. He stated that ordinarily, the truck would be driven to the job site, and that they were able to drive it part, but not all, of the way in by lunch time. The crew's drinking water was on the truck.

Mr. H agreed that, because of the location of the truck, there was no drinking water at the job site, and that this was not the usual situation. He said that, by lunch, the truck was driven part-way to the job site. He agreed that claimant had correctly characterized the job site conditions, and said that he thought the temperature was around 95 degrees that day. He did not see claimant being ill, although he said typically the crew worked spread out and would be out of view during part of the working day.

Mr. H did notice, however, that claimant was standing back in the shade by himself. He stated that this was not normal behavior for the claimant. Mr. H stated that, to his knowledge, no one else at the job site became sick. Mr. H said that there would have been no problem if the claimant had told him he was sick and needed medical attention on the afternoon of _____.

The claimant did not have records from his most recent treating doctor, Dr. T. He said he saw him twice but could not see him again because the carrier would not pay for his treatment. The claimant said that he wanted to return to work, that he was tired of sitting around, but could not return to work without a release. He stated that he felt the reason he became sick was not because of anything else, because he had been well, but because of his work that day.

The claimant denied that he had been ill on _____, or that he had a history of gastric upset or other related illness. Claimant also asserted that he had not vomited before, and had never had the flu. He denied drinking alcoholic beverages the night of _____.

Medical records in evidence were submitted by the carrier in a bundle without benefit of explanation of what the carrier expects them to say or prove. Many records are illegible or use codes that cannot be readily interpreted by a lay person. Nevertheless, the following facts emerge:

- On _____, claimant was admitted to the emergency room of (hospital 1) at 7:30 a.m. His temperature was below normal (95 degrees F), he denied having nausea, and he had vomited blood. A bowel x-ray was normal. Blood urea nitrogen and glucose were much higher than normal range. He was transferred that afternoon to (hospital 2).

- Records from (hospital 3) show he was admitted the afternoon of _____. The medical history says claimant was clearing land with a machete when he began vomiting blood. He had no fever, was not in pain but was experiencing dizziness. He stated that he had not had alcohol for three weeks. Because of great blood volume loss, claimant required a blood transfusion. Nursing notes indicate he was also treated for apprehension and agitation.

- On _____, a very illegible note indicates that speculated causes were alcohol withdrawal, occult infection, or liver problems. That day, however, claimant had panendoscopy which revealed a Mallory-Weiss tear, with a small clot in the center, and duodenal erosion. There were no ulcers.

- A _____ transfer note completed by Dr. H, M.D., recommends claimant for a work up for possible alcohol liver disease. He had an equivocal EKG and follow up on that was also recommended. There are no records indicating, however, that either prospect was explored further.

- Dr. H's notes further state that claimant had upper GI hemorrhage secondary to Mallory-Weiss tear. A _____ discharge summary completed by Dr. L, M.D., repeats this. The discharge summary also relates that claimant had a high ammonia level initially, which apparently caused mental status changes.

Claimant was treated for his tear and released; Dr. H's and Dr. L's reports indicate that his care would be handled by his own doctor. He was required to take iron supplements after his discharge, as well as Zantac.

There was no evidence generally describing what the symptoms of heat exhaustion are. The claimant himself did not describe his condition as heat exhaustion, nor do any medical records in evidence reflect that he was treated for heat exhaustion.

At the end of the hearing, the parties discussed that claimant had been advised to get medical evidence from his doctor. The hearing officer considered whether the record should be held open in order to receive records from Dr. T. The hearing officer then indicated that during the pre-hearing phase (not on the record), a notation had been discovered in the records of the Texas Workers' Compensation Commission (Commission) that Dr. T had been contacted at some point and said that he could not say one way or the other what caused the Mallory-Weiss tear.

Because of this, the hearing officer determined he would not hold the record open to obtain records from Dr. T. The claims file notes that the hearing officer entered into evidence, however, indicate that the carrier's adjuster had not received any response to two letters to Dr. T, and that the Commission employee who made the note also telephoned and left a message with Dr. T's office expressing the importance of responding to the letters.

The hearing officer found that the claimant developed heat exhaustion due to his work, that this made him ill, and that when he became ill, he suffered a Mallory-Weiss tear. The decision conceded that the claimant had not identified his condition as heat exhaustion "as such." He concluded that heat exhaustion was a compensable injury which resulted in the Mallory-Weiss tear.

By invoking the defense "ordinary disease of life", the carrier refers to the definition of occupational disease, which specifically excludes ordinary disease of life to which the general public is exposed outside of employment. Article 8308-1.03 (36). However, an episode of heat exhaustion may be viewed as an accidental injury, rather than a disease. Guthrie v. Texas Employers' Insurance Ass'n, 203 S.W.2d 775, 777 (Tex. 1947). The thrust of the carrier's argument may be more nearly that the accident was excepted from coverage as an "Act of God", under Article 8308-3.02(6). Either analysis directs inquiry as to whether the conditions that claimant testified about on May 22, 1992 subjected him to greater hazard than that undertaken by the general public.

The extra hazard of exposure to heat exhaustion may be supplied by evidence of the nature of the work itself. Texas Employers' Insurance Ass'n v. Rogers, 487 S.W.2d 807 (Tex. Civ. App.-Eastland 1972, no writ).

However, carrier argues that there was no medical evidence to establish the occurrence of heat exhaustion, or the relationship of the esophageal tear to illness resulting from heat exhaustion. We agree that this omission constitutes reversible error. The case of Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-

Texarkana 1974,writ ref'd n.r.e.), discusses at length the long-standing Texas law that lay testimony alone can establish a compensable injury, even when that testimony is against medical evidence. An exception exists, however when the subject is of such scientific or technical nature that the trier of fact cannot be assumed to have, or be able to form, an opinion based the evidence as a whole and common experience and knowledge of the subject of inquiry. We believe that the symptoms of heat exhaustion, or the cause of a Mallory-Weiss tear, are not subjects within common knowledge. The omission of such evidence results in nothing directly linking the illness to work other than the timing of his illness during the workday and the meteorological conditions to which he testified.

We remand the case because the hearing officer considered but declined to hold the record open to receive records from the claimant's doctor, Dr. T. He did so based upon an alleged conversation between the ombudsman and Dr. T which led him to conclude that Dr. T's records would duplicate those in evidence. The file notes in the record, however, fail to support this, and show instead that Dr. T failed to respond to requests from the adjuster and, apparently, the Commission. Therefore, the hearing officer's basis for not holding the record open appears to be erroneous. This may have been a critical matter in the posture of this case.

The hearing officer shall ensure the full development of facts for the determinations to be made. Article 8308-6.34(b). The hearing officer may have had this duty in mind when he considered holding the record open to receive Dr. T's records. He declined to do so, based upon a possibly erroneous impression that Dr. T's records would not shed light on the issue of injury.

Accordingly, we reverse and remand the case for further development and consideration of the evidence. In this case, the hearing officer should also consider the development of any evidence which would enable interpretation of such medical records as are entered into evidence. Pending resolution of the remand, a final decision has not been made in this case.

However, since reversal and remand necessitates the issuance of a new decision and order by the hearing officer, a party, including claimant who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation

Commission division of hearings, pursuant to Article 8308-6.41. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge