

## APPEAL NO. 931009

Pursuant to the Texas Workers' Compensation Act, TEX. LAB CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas, on July 29 and October 11, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant), who is the wife and surviving beneficiary of the deceased injured employee, did not prove, by a preponderance of the evidence, that her husband sustained a compensable injury on (date of injury), and that the respondent (carrier) timely contested compensability within 60 days of receiving notice of injury. Claimant disagrees with several of the hearing officer's findings of fact and conclusions of law. Carrier urges that there is sufficient evidence to support the findings and conclusions of the hearing officer and asks that the decision be affirmed.

### DECISION

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

This case involves the unfortunate and untimely death of the claimant's husband from a heart attack. The issues in the case were whether the deceased sustained a compensable injury resulting in his death, and whether the carrier timely contested compensability. The deceased was a truck driver for employer and on (date of injury), was found in his truck which had run off the road and hit a tree stump. There was some conflict in the statements of witnesses who came on the scene shortly thereafter as to whether they noticed any injury to the deceased. A couple of witnesses indicated they saw some blood near his ear and others did not see any indication of injury. In any event, the deceased did not appear to be alive at that time. The EMS was called and treated the deceased for cardiac arrest on the way to the hospital. The emergency room medical records show a diagnosis of, and the subsequent death certificate listed as the cause of death, sudden cardiac death. There was no other medical evidence offered into evidence although the claimant indicated on cross-examination that she had attempted to obtain medical evidence in support of her claim. The evidence as to whether the deceased's work preceding his death was stressful, strenuous or in any way out of the ordinary from his usual job was in conflict. The claimant testified that this job, which the deceased had only been working for some 28 days, was much more demanding than previous truck driving jobs. There were mixed statements from coworkers, both indicating no unusual stress or strenuous factors and others indicating some degree of difficulty.

The evidence offered on the notice issue consisted of documents and a deposition of (RB) which stated that a written notice of injury was received and date stamped by the carrier on December 16, 1992. RB also stated that a Notice of Refused or Disputed Claim was filed and mailed out on February 5, 1993. The envelope in which it was mailed is postmarked February 8, 1993. (SA), an employee of employer stated he first learned of the death on (date of injury), and that he called the carrier about the accident on (month date or date) and filled out and mailed the written notice of death/injury to the carrier on December 11, 1992.

The claimant disagrees with the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

3. There is insufficient medical evidence to prove that the deceased's work was a substantial contributing factor in his heart attack.
4. The Carrier received written notice of injury on December 16, 1992 and filed their Notice of Refused or Disputed Claim on February 5, 1993.
5. When [SA] telephoned the Carrier, he did not furnish sufficient facts to establish compensability of this claim.
6. The oral statements made by [SA] to the Carrier prior to December 16, 1992 were insufficient to constitute notice of injury as that term is defined in law.

### **CONCLUSIONS OF LAW**

2. The Claimant did not prove, by a preponderance of the evidence, that her husband sustained a compensable injury on (date of injury).
3. The Carrier received "notice of injury" on December 16, 1992 and contested compensability of the claim within 60 days of December 16, 1992.

The only medical evidence in the record shows that the deceased died of a heart attack. Section 408.008 provides that a heart attack is a compensable injury only if

(1) the attack can be identified as:

(a) occurring at a definite time and place; and

(b) caused by a specific event occurring in the course and scope of the employee's employment;

(2) the preponderance of the medical evidence regarding the attack indicated 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;

As indicated, there is absolutely no medical evidence in this case to show or establish that the deceased's work was a substantial contributing factor of the attack. Even the lay testimony concerning the job conditions on the day of the attack is in conflict as to the stress level or strenuousness. And, the medical evidence shows that the deceased died of a heart attack and not some other injury. There is no more support than a mere suggestion that the deceased may have suffered some other work-related injury that caused his heart attack

and death. This is not a sufficient basis to reject the hearing officer's findings, which we find to be based upon sufficient evidence. Texas Workers' Compensation Commission Appeal No. 93923, decided November 30, 1993. The facts in Appeal 93923, where benefits were denied, are similar in many respects to this case and involved a police officer who suffered a heart attack and subsequently ran into a tree with indications of some head injury.

The evidence on the notice issue is sufficient to support the findings and conclusions of the hearing officer. As the sole judge of the relevance and materiality of the evidence as well as the weight and credibility to be given the evidence (Section 410.165(a)), he resolves any conflicts in the evidence and makes appropriate findings of fact. Section 410.168(a); Garza v. Commercial Insurance Company of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Considering the deposition of RB and statement of SA, together with the documents entered into evidence, there was clearly sufficient evidence to support Findings of Fact Nos. 4, 5, and 6, and Conclusion of Law No. 3 above. Texas Workers' Compensation Commission Appeal No. 93049, decided March 1, 1993; Texas Workers' Compensation Commission Appeal No. 93120, decided April 2, 1993; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6(b) (Rule 124.6(b)).

Determining there was sufficient evidence to support the findings and conclusions of the hearing officer, the decision is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Lynda H. Nesenholtz  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge