APPEAL NO. 931066

This case returns for review pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*) (1989 Act), following this panel's decision in Texas Workers' Compensation Commission Appeal No. 93740, decided October 4, 1993. In that decision, we reversed the decision of the hearing officer that the claimant's heart attack was noncompensable and remanded to allow the hearing officer to weigh the effects of the claimant's work versus pre-existing heart condition or disease, pursuant to the requirements of the 1989 Act. Upon remand the hearing officer, (hearing officer), reconsidered the evidence and concluded that the claimant did not have a pre-existing heart condition or disease, and that the preponderance of the medical evidence indicates that the claimant's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack. Accordingly, he determined that the claimant's heart attack was compensable.

The carrier, who is the appellant in this action, contends on appeal that the hearing officer erred in determining that the claimant did not have a pre-existing heart condition or disease, and that the hearing officer did not correctly balance whether claimant's work, rather than the natural progression of claimant's underlying heart disease, contributed substantially to his heart attack. The claimant counters that the decision of the hearing officer is supported by the evidence and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The facts of this case, including the medical evidence, are fully recited in Appeal No. 93740, *supra*, and will not be set out at length here. Basically, the claimant experienced chest pains on (date of injury), as he was using a hammer to try to "stretch" a trailer. He was taken to the hospital the same day where he was diagnosed with atherosclerotic coronary artery disease with inferior myocardial infarction.

Claimant's treating doctor, his cardiologist, and carrier's doctor (who reviewed claimant's records but did not examine him), gave opinions as to the underlying causes of claimant's heart attack. In his discussion of the evidence contained in the original decision and order, the hearing officer wrote that the report of carrier's doctor, (Dr. Z), was of questionable value because it was based in part on a mistaken fact (i.e., that claimant was not engaged in strenuous work at the time he experienced chest pains). The hearing officer noted that claimant's treating doctor, (Dr. R), stated that physical exertion rather than the natural progression of heart disease was the precipitating cause of the heart attack; however, the hearing officer said this assertion "seems inconsistent with his diagnosis shortly after the heart attack of atherosclerotic coronary artery disease." The hearing officer found the report of (Dr. P), claimant's cardiologist, the most objective and credible, as he had tested the claimant in 1985 for heart disease and was familiar with his previous

condition; Dr. P concluded that the claimant's physical exertion was only a contributing factor leading to the heart attack.

The Appeals Panel remanded the decision of the hearing officer for a specific finding under that portion of the statute concerning compensability of heart attacks (Section 408.008) which includes as a factor in determining compensability that "the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack."

Upon remand, the hearing officer reconsidered his original decision and determined that the claimant did not have a pre-existing heart condition or disease. He also determined that work, rather than the natural progression of a pre-existing condition or disease, was a substantial contributing factor in the heart attack. In discussing the evidence, the hearing officer restated his belief that Dr. Z's opinion was of questionable value. He noted that Dr. P concluded that stress (physical exertion) contributed some to the claimant's heart attack, but stated the major reasons were heavy smoking; hypertension, obesity, and family history of heart disease. The hearing officer also noted that Dr. P on June 2, 1985, reported claimant negative for subendocardial ischemia and angina and that he had "a very low likelihood for angiographically significant coronary artery disease." The hearing officer stated that Dr. R had treated claimant for years, was aware of Dr. P's 1985 test (as well as one performed by Dr. B in 1990, which was also negative for subendocardial ischemia), and that Dr. R concluded the physical labor was the substantial contributing factor to claimant's heart attack and that he had no evidence of pre-existing heart disease.

The carrier's first point of error is that the hearing officer's determination that the claimant did not have a pre-existing heart condition or disease is so against the great weight and preponderance of the evidence as to be manifestly unjust. In support of its argument, carrier cites statements from all three doctors, including Dr. R's initial diagnosis of "atherosclerotic coronary disease," and Dr. Z's statement that claimant had "significant underlying coronary artery disease caused by high blood pressure, smoking, abnormal lipid profile, and a family history of coronary artery disease;" carrier contends that Dr. Z's mistaken belief as to when the claimant first experienced pain does not invalidate his ultimate diagnosis. Finally, carrier points to Dr. P's statement--that stress contributed some to the claimant's myocardial infarction but the major reason was heavy smoking, hypertension, obesity, and family history of heart disease--and says that these risk factors, while not equating to a pre-existing condition or disease, are corroborative of such condition, if the condition or disease is independently diagnosed.

The record in the case shows that the evidence as to whether claimant had a pre-existing condition or disease is conflicting. Dr. Z opined that the claimant had "significant underlying coronary artery disease" caused by high blood pressure, smoking, abnormal lipid profile (citing test results from August of 1992), and family history. Dr. P stated that claimant

had multiple risk factors, including those cited by Dr. Z, but did not state per se that claimant had an underlying condition at the time of his heart attack. Dr. R made a discharge diagnosis on May 29, 1992, of atherosclerotic coronary artery disease with inferior myocardial infarction, and on October 29, 1992 stated that claimant had the "underlying machinery" for an infarction, reciting the same risk factors, but also cited 1990 tests including a stress test and EKG (which showed a rare ventricular contraction and left atrial abnormality) but said that these findings are not "necessarily related to significant atherosclerotic coronary artery disease." In a letter dated July 7, 1992, Dr. R had stated that a review of claimant's records "fails to reveal any evidence of prior ischemic heart disease symptomatology and I find no evidence of pre-existing heart disease." A July 24, 1992, letter from Dr. R made essentially the same statement.

The hearing officer, as sole judge of the relevance and materiality of the evidence and of its weight and credibility, Section 410.165(a), is entitled to resolve conflicts in the evidence before him, including conflicts in the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). With the evidence in the posture described above, we cannot say that the hearing officer's determination that the claimant had no pre-existing condition or disease is so against the great weight and preponderance of the evidence as to be manifestly unjust and clearly wrong. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We note, however, that a finding of pre-existing condition or disease is not a bar to compensability in cases involving heart attacks. Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993. In addition, the statute's requirement that work be balanced against pre-existing condition or disease must still be complied with. *See* Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991 (no evidence that deceased was under any physician's care for coronary disease nor that he or his family was aware of any atherosclerosis condition; however, medical evidence offered by the claimant still determined to be insufficient to meet the requirements of the 1989 Act). *And see* Texas Workers' Compensation Commission Appeal No. 92121, decided May 6, 1992 (no evidence in the record of any heart disease or condition prior to the heart attack; however, provisions of Act held to require a comparison or weighing of the conditions leading to the heart attack and a conclusion that it was the work rather than the natural progression of the disease or condition that was a substantial contributing factor of the attack).

The carrier's second point of error was that the hearing officer did not correctly balance whether claimant's work, rather than the natural progression of disease, contributed substantially to the heart attack, contending claimant did not sustain his burden to prove that job exertion was a substantial contributing factor of the attack and that the preponderance of the medical evidence does not support a finding of compensability; specifically, carrier questions the reliability of Dr. R's reports, and contends that Dr. R failed to balance the medical evidence of pre-existing heart disease versus the claimant's work.

Numerous decisions of this panel have discussed the degree of evidence necessary for a finding of compensability in heart attack cases. As stated in Texas Workers' Compensation Commission Appeal No. 92115, decided May 4, 1992, "[i]t is not enough . . . to show by some evidence that some work-related stress was a substantial contributing factor of the attack. The preponderance of the medical evidence regarding the attack must indicate that the work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack." "Substantial" has been held to mean "more than insubstantial or slight." Texas Workers' Compensation Commission Appeal No. 91046, decided December 2, 1991.

The hearing officer as fact finder was entitled to reject the opinion of Dr. Z based on that doctor's mistaken belief that claimant's chest pains did not occur during manual labor. Looking to the remaining two opinions, Dr. P stated his belief that the "major cause" of claimant's heart attack was the enumerated risk factors. This panel has held that risk factors such as those stated by Dr. P are not synonymous with the terms used in the 1989 Act, including "pre-existing heart disease or condition." Appeal No. 91046, *supra*. The remaining evidence was in the form of numerous reports of Dr. R, which state variously that "the precipitating problem . . . was stressful physical labor while he was at work," and "[t]he preponderance of the medical evidence . . . indicates that [claimant's] work was a substantial contributing factor of the heart attack occurring at the time and place it occurred." Dr. R also answered the following question, "Which of the following in you (sic) opinion was the most substantial contributing factor of [claimant's] heart attack" by marking a "1" next to "the work he was doing at the time the heart attack occurred," and a "2" next to "the natural progression of a pre-existing heart condition or disease." All these opinions when read together, we believe, constitute more than a determination that claimant's work was merely a contributing factor. To the extent there may have been somewhat conflicting statements within the opinions given by Dr. R, the hearing officer was entitled to resolve them. Campos, *supra*. We therefore find sufficient evidence to support the hearing officer's conclusion that the preponderance of the medical evidence indicates that work rather than pre-existing condition or disease was a substantial contributing factor of claimant's heart attack.

We accordingly affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge