APPEAL NO. 931189

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 November 13, 1993, (hearing officer) presiding as hearing officer. The record closed as of November 30, 1993. The hearing officer determined that the preponderance of the medical evidence regarding the appellant's (claimant) heart attack does not indicate 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 and therefore the heart attack was not a compensable injury sustained in the course and scope of his employment. Since the claimant did not sustain a compensable injury, the hearing officer also concluded that there could be no resultant disability. Claimant appeals urging that the preponderance of the medical evidence establishes that he sustained a compensable heart attack in the course and scope of his employment on (date of injury), and that he had disability. Claimant also complains on appeal that a transcribed interview of him was erroneously admitted. Respondent (carrier) urges that the claimant did not sustain his burden of proof to establish the compensability of his heart attack and that there is sufficient evidence to support the decision of the hearing officer. Carrier also argues that the transcribed interview was properly admitted, and even if not, it was harmless error.

DECISION

Finding sufficient evidence in support of the hearing officer's determinations and not finding such determinations to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we affirm.

The threshold issue in this case was whether the claimant sustained a compensable heart attack. The second issue of disability hinged on a finding of a compensable injury. Briefly, the claimant was a line haul truck driver for the employer, (employer). During the evening of (date), he was called to drive a truck with two trailers from (city), Texas, to (city), Texas. He arrived in (city) after two stops on the way at about 5:00 to 5:30 a.m. on (date of injury). There is considerable conflict in the evidence concerning when he started experiencing chest pains on (date of injury), and how long they lasted at a particular time; however, it is clear that he suffered a myocardial infarction (heart attack) sometime on (date of injury). During his testimony, the claimant indicated that he had stopped to get something to eat. Although not absolutely clear, this apparently occurred about an hour out of (city). The claimant subsequently felt pain in his chest which he thought was "gas" and he later stopped to get some coffee and "tums." He testified that his chest pains abated and that he felt alright when he arrived in (city). There he had to unhitch the trailers and when he lifted a heavy "jiff" he experienced sharp chest pain that temporarily went away but hit again causing him to fall to his knees as he went to drop the "jiff" from the other trailer. He went to his motel room for a period of time and then finally had the motel van take him to one hospital where they could not provide needed treatment and subsequently to another hospital where he was placed in intensive care.

The claimant was diagnosed as having an "acute anteroseptal myocardial infarction," and subsequently underwent heart catheterization and angioplasty. Medical records in evidence show that he had a 99% stenosis of the left anterior descending coronary artery. The impression reflected in the report dated "3-4-93" of (Dr. O), one of the doctors the claimant saw for cardiac evaluation, reflects:

1.Coronary artery disease with recent anterior myocardial infarction and emergency angioplasty of the left anterior descending. An electrocardiogram indicates non Q wave anterior infarction.

2.Adult onset diabetes mellitus.

3.Probable hyperlipidemia.

As stated above, the evidence concerning the onset and duration of the chest pain was in considerable conflict. The claimant's testimony is at odds with other evidence, principally the history reflected in one of the medical reports and the claimant's earlier interview with an adjuster. At the hearing, the claimant testified that the "gas" or suspected indigestion during the trip was only temporary and after he stopped for the "tums" the pain abated---some two hours before he reached (city). In an interview with the adjuster conducted on March 9, 1993, the claimant indicated that the pain did not get any better and that he had it all the way to (city) and that it became much worse when he lifted the "jiff." Several of the medical reports from doctors who treated the claimant indicate their understanding that the first chest pain experienced by the claimant was in lifting the "jiff," and that this lifting was "a substantial, contributing factor to his heart attack" or "contributed to his myocardial infarction." Neither of these reports mentioned the effect of any pre-existing heart condition or disease; however, in a deposition (Dr. A), the claimant's original treating doctor, responded that "it is hard to say" when asked about the heart attack being the natural progression of a pre-existing heart condition or disease. The medical report from the first hospital to which the claimant was taken reflects the onset of pain after eating on the road but that he got temporary relief with antiacid. The admission history at the second hospital to which the claimant was taken on (date of injury), indicates the claimant:

. . . had an episode of retrosternal chest pain following a meal around 11:30. He went to his hotel and slept for about 1 1/2 hours. He woke up complaining of the same pain.

A report from a doctor, (Dr. P), designated by the Commission to review the records and provide answers to several questions regarding causation indicates his understanding that the claimant started feeling unremitting pain in the chest sometime after leaving (city) continuing until he reached (city). Dr. P indicated he had no information as to precipitating cause of the heart attack and had no "opinion regarding whether or not initiation of the heart attack resulted from the employee's work or from the natural progression of a pre-existing heart condition or disease although he indicated his opinion that the heart attack was in progress when the claimant lifted the ‘jiff.’"

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. Section 410.165(a). And where there is conflict and inconsistency in the evidence and testimony, it is for the hearing officer as the fact finder to resolve any such conflict and inconsistency. Garza v. Commercial Insurance Company of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992.

For a heart attack to be compensable under the 1989 Act, it must meet the requirements of Section 408.008 which provides in pertinent part:

A heart attack is a compensable injury under this subtitle 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 indicates 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;

The claimant has the burden to show that a heart attack is compensable. Texas Workers' Compensation Commission Appeal No. 93653, decided September 3, 1993. Clearly, there was conflicting evidence regarding the criteria listed above. Indeed, it is not certain when or where the heart attack occurred. Issues of time, place, causes and contributing factors are generally questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93653, *supra*. The hearing officer did find that the preponderance of the evidence was that the claimant's chest pains continued while en route to (city) and that they became more severe when he lifted the "jiff." However, the key finding of the hearing officer upon which the case was decided was that "the preponderance of the medical evidence regarding the attack does not indicate 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." Clearly, there was evidence before her, and which she could believe, that the claimant had a significant pre-existing heart condition or disease. While the fact that a worker comes to a job with a pre-existing heart condition does not in and of itself preclude compensability (Texas Workers' Compensation Commission Appeal No. 93582, decided August 23, 1993), the claimant has to establish that the heart attack in issue is compensable under the criteria of the 1989 Act. The hearing officer determines the weight to be given the medical evidence in a case and resolves any conflicts in such

evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist] 1984, no writ); Texas Workers' Compensation Commission Appeal No. 93836, decided November 1, 1993. The testimony of a medical expert raises a question of fact and is not binding on the fact finder. Hood v. Texas Indemnity Insurance Co., 209 S.W.2d 345 (Tex. 1948); Texas Workers' Compensation Commission Appeal No. 92500, decided October 30, 1992.

As indicated above, the various medical reports contained somewhat conflicting histories of the onset and duration of the claimant's chest pain. While a doctor's recitation in his history of an injury as reported to him by a claimant may not be competent evidence that an injury in fact occurred, it is admissible to show the basis of the doctor's opinion as to the cause of the claimant's condition. Presley v. Royal Indemnity Co. 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ); Texas Workers' Compensation Commission Appeal No. 92062, decided April 2, 1992. Several of the doctor reports or statements in evidence indicating the claimant's work was a contributing factor to the attack appeared to be premised upon an understanding that the chest pain symptoms occurred when the claimant lifted the "jiff" and the hearing officer found from other evidence that these chest pain symptoms occurred during the trip and continued to (city).

Of significance, there is no medical evidence that definitively makes any comparison between the claimant's work and his pre-existing heart condition or disease in assessing causal factors. However, based upon the evidence before her, the hearing officer did find that the preponderance of the medical evidence did not indicate the work rather than claimant's heart condition or disease was a substantial contributing factor of the attack. Texas Workers' Compensation Commission Appeal No. 92115, decided May 4, 1992; Texas Workers' Compensation Commission Appeal No. 92460, decided October 12, 1992; Texas Workers' Compensation Commission Appeal No. 93926 decided December 1, 1993.

We do not find merit in the issue concerning the admission of the transcript of the interview of the claimant. Of course, the claimant was present at the hearing and indeed acknowledged that the interview had been conducted. He variously stated that the transcript was not accurate but that he could not remember what he said at the interview because of medication. The adjuster who conducted the interview testified as to its accuracy and the transcriber signed the transcript as true and correct. Further, the claimant in interrogatories submitted by the carrier answered "yes" to the question "were you truthful in the tape recorded statement you gave to (JG) on March 9, 1993?" Although the transcript was not a sworn statement, there is no such requirement under 1989 Act or Commission Rules. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 100 *et seq*. And, as an interested party, the credibility of the claimant is always an issue at a contested case hearing. Texas Workers' Compensation Commission Appeal No. 931004, decided December 14, 1993. A prior inconsistent statement, which the transcripts could be considered under these circumstances, can appropriately be used to impeach a witness including a claimant.

Determining that there was a sufficient evidentiary basis for the hearing officer's

decision, a correct application of the law and no error warranting any corrective action, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge