

APPEAL NO. 93240

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held on February 23, 1993, in (city), Texas, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of his employment and was not entitled to benefits under the 1989 Act. The claimant appeals urging error by the hearing officer in his concluding that the preponderance of the medical evidence does not indicate the claimant's work rather than the natural progression of the preexisting heart condition or disease was a substantial contributing factor of the claimant's heart attack. Respondent (carrier) urges that the hearing officer's determination is correct, is supported by the evidence, and should be affirmed. The carrier also filed a separate conditional appeal in the event the claimant appealed and prevailed on the course and scope issue. In view of our disposition of the case, we do not address those matters and note that the claimant timely responded to the carrier's separate appeal.

DECISION

Determining the decision of the hearing officer is supported by sufficient evidence and correctly applies the 1989 Act, we affirm.

This case involves the unfortunate circumstance wherein the claimant, a 58-year-old male, suffered a nonfatal heart attack. Although there is conflicting testimony, he testified that the onset of chest pain occurred when he experienced some difficulty in dislodging a support leg to a dolly that he was in the process of delivering, or shortly thereafter, as he was driving in heavy traffic. In any event, two days later he was still experiencing chest pain and went to the hospital where it was determined that he had suffered a myocardial infarction. Subsequently, a heart catheterization was performed which disclosed atherosclerotic disease including a 100% obstruction of the proximal right coronary artery, 70% obstruction of the proximal left anterior descending coronary artery, 70% obstruction in two places of the proximal circumflex with 100% obstruction of the distal circumflex. Bypass surgery was subsequently performed. The only pertinent medical evidence offered by the claimant to associate his heart attack to his work was a statement from his treating doctor which related the exertion from dislodging the dolly leg and the heart attack by providing that "I believe the stress and heavy exertion involved along with the high blood pressure and obesity has contributed to the myocardial infarction he suffered."

The hearing officer correctly concluded that the preponderance of the medical evidence does not indicate that claimant's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the heart attack. To be compensable, Article 8308-4.15 of the 1989 Act provides, in pertinent part, the requirement that "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." We have previously held that this statutory provision requires not only that the work be a substantial contributing factor (Texas Workers' Compensation Commission Appeal No. 91009, decided

September 4, 1991) but that where, as here, there is medical evidence of cardiovascular disease, there must be some indication of a comparison or weighing between the conditions leading to the attack (emphasis added). Texas Workers' Compensation Commission Appeal No. 92170, decided June 17, 1992; Texas Workers' Compensation Commission Appeal No. 92115, decided May 4, 1992; Appeal No. 91009 *supra*. Clearly, there is support in the record for the hearing officer's conclusion that the medical evidence in this case did not measure up to these requirements. In Texas Workers' Compensation Commission Appeal No. 92170, decided June 17, 1992, a case where the claimant experienced chest pain following exertion in lifting a heavy truck tire and was diagnosed as having suffered a heart attack, we determined that the medical evidence regarding the attack failed to show that the claimant's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack. For an extensive discussion of the requirements under the 1989 Act regarding heart attack cases and the necessity for a comparison or weighing of the work and a preexisting condition see Texas Workers' Compensation Commission Appeal No. 93121 decided April 2, 1993.

Determining that there is sufficient evidence to support the finding and conclusion of the hearing officer that the preponderance of the medical evidence does not indicate that the claimant's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the heart attack, we affirm the decision.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

CONCURRING OPINION:

I agree that the hearing officer's determination that the preponderance of the medical evidence does not meet the standards set forth in Article 8308-4.15(2) is correct. However, to the extent that the majority opinion could be read as requiring that the medical evidence itself must expressly compare between the work-related cause and the natural progression of the disease, I would disagree. While it is desirable to have medical evidence that weighs one factor against the other, I do not believe that medical evidence is defective if it does not make an express comparison. It is ultimately up to the hearing officer to evaluate whether the preponderance of all medical evidence indicates, to him, that the work rather than the natural progression of the underlying heart disease was a substantial contributing (and not the only) factor of the attack.

Susan M. Kelley
Appeals Judge