APPEAL NO. 93740

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on July 28, 1993, to decide a single disputed issue: whether appellant's (claimant) heart attack meets the 1989 Act's standards for compensability pursuant to Article 8308-4.15 (now Section 408.008). The claimant appeals hearing officer (hearing officer) determination that the preponderance of the medical evidence indicates that claimant's work was not the substantial contributing factor of his heart attack, contending that the hearing officer failed to properly apply the statute and the decisions of the Appeals Panel interpreting the statute to the facts of this case.

DECISION

Because the hearing officer failed, in determining that claimant's heart attack was noncompensable, to weigh the effects of claimant's work versus pre-existing heart condition or disease, pursuant to the requirements of the statute, we reverse and remand.

It was stipulated by the parties that the claimant was an independent contractor providing services to (employer) but that he was covered by employer's workers' compensation insurance and paid the cost of such coverage.

Claimant, who was 51 years old at the time of the hearing, drove an 18-wheel tractor trailer rig which he owned but leased to employer. On (date of injury), he was shuttling trailers between two of employer's plants. Around 1:00 p.m., as he was squatting underneath a trailer hitting a pin with a hammer so that the trailer could be "stretched," he first felt pains in his chest. He said he had "banged on the pin" about four or five minutes before he felt pain. At that point he gave up and drove his truck to the other plant, about a 10-15 minute drive. He said he still had chest pain, but that he felt better when he arrived and went inside the plant's air conditioned office (he testified that it was very hot and humid that day). When he went to get back into his truck, he became nauseated. At that point RP, who had been with him in the office, took him home, and claimant's wife took him to his doctor, (Dr. R). Claimant said Dr. R ran an EKG which he said showed claimant was having a heart attack. Claimant was admitted to Hospital the same day; upon his discharge on (date), Dr. R stated a diagnosis of atherosclerotic coronary artery disease with inferior myocardial infarction.

Upon claimant's hospitalization, Dr. R had referred him to a cardiologist, (Dr. P). Dr. P had previously seen claimant in 1985, when he performed a stress test which he concluded was negative for subendocardial ischemia, no angina. While Dr. P, in a February 2, 1985, summary, found claimant to have a "coronary risk profile that is worse than average for his age," he also observed that claimant complained of no symptoms suggestive of myocardial ischemia, and said claimant's "clinical history and observed test responses result in a very low likelihood for angiographically significant coronary artery disease."

Claimant underwent a second stress test conducted by (Dr. B) in 1990. In a report dated June 8, 1990, Dr. B gave claimant's medical history to include chest pain, hypertension, chronic obstructive disease and family history of arteriosclerotic heart disease, and found claimant to have rare premature ventricular contractions. However, he concluded that claimant's test was negative for subendocardial ischemia.

Following claimant's heart attack, Dr. P wrote in a February 17, 1993, letter as follows:

> [Claimant] had multiple risk factors for hypertension, which included history of heavy smoking of 1½ packs of cigarettes a day, hypertension, obesity and family history of hypertension and heart disease. Also, he worked as a truck driver and says that his work exposed him to a lot of stress. [Claimant's] hypertension has been under control with medication, given by [Dr. R]. Stress contributed to some of the patient's myocardial infarction but the major reason was heavy smoking, hypertension, obesity and family history of heart disease. He has been advised to quit smoking. . . . He is still overweight. Now he says his work is not as stressful because he has been placed in a different kind of work. As far as the degree of contribution of stress to his myocardial infarction, we do not have a scientific way to measure this.

Claimant's treating doctor, Dr. R, wrote a series of letters concerning the various factors which were causative of claimant's condition. On July 7, 1992, he wrote that a review of claimant's records "fails to reveal any evidence of prior ischemic heart disease symptomatology and I find no evidence of preexisting heart disease. There is an abundance of evidence in the records, however, that [claimant] has had hypertension for quite some time."

On July 24, 1992, Dr. R wrote that "[p]rior to [claimant's] myocardial infarction . . . I have never treated him for ischemic heart disease or atherosclerotic heart disease. A perusal of my records which go back for many years also confirms that I have not treated him for such diseases and, as a matter of fact, on June 8, 1990, I did treadmill exercises on him that were negative for myocardial ischemia. . . . He has had hypertension in the past and he is obese, but he had no evidence of heart disease prior to the aforementioned myocardial infarction."

On September 29, 1992, Dr. R wrote:

> [Claimant] suffered . . . a rather significant myocardial infarction in (date). At the time he noticed the first pain, he had just finished some rather strenuous work on his equipment. . . . Of the 7 to 9 predisposing factors for heart disease, [claimant] had about 6 of them. He was obese with poorly controlled hypertension principally. Some times there is a clear cut precipitating incident in which vigorus (sic) exercise, increased heart rate, increased interventricular pressure and coronary artery pressure can rupture a

> cholesterol plaque and cause occlusion of the vessel. This is particularly so in persons with multiple predisposing factors for coronary artery disease. All of the above may very well describe what may have happened to [claimant].

On October 29, 1992, Dr. R wrote that he "[took] no issue" that claimant "undoubtedly had the underlying machinery for myocardial infarction with a strong family history for same and pre-existing hypertension. He also is obese and had mild obstructive pulmonary disease and history of cigarette smoking." He went on to state, however, that "I believe that the precipitating problem in his case was stressful physical labor while he was at work." Dr. R noted that the June 1990 EKG showed a rare ventricular contraction and left atrial abnormality, although he said neither are necessarily related to significant atherosclerotic coronary artery disease and that an isolated resting EKG "is probably the most unreliable tool that we have in which to make a concrete diagnosis."

On October 31st Dr. R signed a statement as follows: "The preponderance of the medical evidence regarding [claimant's] heart attack indicates that his work was a substantial contributing factor of the heart attack occurring at the time and place it occurred."

On November 4th Dr. R completed a statement which asked, "Which of the following in you (sic) opinion was the most substantial contributing factor of [claimant's] heart attack occurring at the time and place it occurred: a. the work he was doing at the time the heart attack occurred; or b. the natural progression of a preexisting heart condition or disease." The form reflects that Dr. R marked a "1." next to a., above, and a "2" next to b.; in addition, he wrote, "3. The work was the precipitating factor."

At carrier's request, (Dr. Z) reviewed claimant's medical records, although he did not examine him. As the hearing officer notes in his decision, Dr. Z's understanding was that claimant did not experience any chest pains while hammering the pin, but believed that his pain arose while he was driving the truck. He wrote,

> It is my medical opinion that [claimant] has significant underlying coronary artery disease caused by high blood pressure, smoking, abnormal lipid profile, and a family history of coronary artery disease. . . . I do not feel that [claimant's] work contributed to the development of this underlying coronary disease. One might speculate that the exertion performed at work on the day he had his heart attack was a contributing factor to his heart attack. There is no mention that he had any chest pain or problems at the time he was doing the strenuous exertion, but apparently he was on the job driving his truck when the chest pain developed. Certainly his underlying aterosclerotic (sic) heart disease was not the result of his job and he would not have suffered his heart attack if he did not have this underlying heart condition. In my opinion, his work was aggravating an underlying medical condition.

Unlike the prior workers' compensation law, the 1989 Act sets forth new and more demanding standards for the compensability of heart attacks. Section 408.008 of the Act

provides as follows:

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 pre-existing heart condition or disease was a substantial contributing factor of the attack; and

(3)the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

In finding claimant's heart attack noncompensable, the hearing officer made findings that claimant had tested negatively for subendocardial ischemia in 1985 and 1990; that Dr. R concluded the cause of claimant's heart attack was stressful physical labors and not the risk factors of family history, hypertension, obesity, mild obstructive pulmonary disease, and cigarette smoking; that Dr. Z's opinion was based on incorrect information; that Dr. P had tested claimant in 1985 for heart disease and was familiar with his previous condition and history; that Dr. P's report was the most credible and objective assessment; and that Dr. P concluded physical exertion was only a contributing factor leading to claimant's heart attack. The hearing officer also made the following Conclusions of Law:

CONCLUSIONS OF LAW

2.Claimant's heart attack occurred at a definite time and place.

3.Physical exertion was only a contributing factor of claimant's heart attack that occurred while he was attempting to stretch a trailer in the course and scope of his employment.

4.The preponderance of the medical evidence indicates claimant's work was not the substantial contributing factor of the heart attack.

5.Claimant's heart attack was not triggered solely by emotional or mental stress factors.

Pursuant to the statute's four-pronged test, the claimant does not challenge Conclusions of Law Nos. 2, 3, and 5 as meeting three of the four requirements. He

contends, however, that under Section 408.008(2) (formerly Article 8308-4.15(2)), the hearing officer was required to weigh the medical evidence as to work versus the natural progression of a pre-existing heart condition or disease; however, the claimant contends the hearing officer made no findings of fact that claimant had a pre-existing heart condition or disease. He further argues that the evidence shows pre-existing risk factors, but not a heart disease or condition.

We have previously held that the criterion found in the above-cited statutory provision limits the hearing officer to considering the preponderance of the medical evidence and requires him to determine whether the work, rather than the natural progression of a disease or condition, was a substantial contributing factor. The statutory provision does not require that the medical evidence be in the form of a statement from a doctor using the precise statutory words. Texas Workers' Compensation Commission Appeal No. 92501, decided November 4, 1992. Further, as we held in Texas Workers' Compensation Commission Appeal No. 91046, decided December 2, 1991, the only things to be weighed are the employee's work and the natural progression of a pre-existing heart condition or disease; risk factors for heart disease, such as family history, gender, smoking, cholesterol count, and hypertension, while possibly contributing to a pre-existing heart condition or disease, were nevertheless held not to be synonymous with those terms. This conclusion was reiterated in Texas Workers' Compensation Commission Appeal No. 93402, decided June 17, 1993, and in Appeal No. 92501, *supra*. (While other cases involving noncompensable heart attacks contain medical opinion enumerating a claimant's risk factors, the record in those cases contained other medical evidence that would sustain a finding of the existence of a pre-existing heart condition or disease. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 92355, decided August 28, 1992.) Key to a determination under Section 408.008(2), however, is the requirement that effects of work and pre-existing heart disease or condition be compared or weighed. Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993.

Upon review of the record and the hearing officer's decision, we agree with the claimant that this weighing and comparison have not been done by the hearing officer, who was required to consider all the medical evidence in the record to determine whether the preponderance of such evidence indicated that work rather than a pre-existing heart condition or disease was a substantial contributing factor. The finding of fact which supports Conclusion of Law No. 4 states that Dr. P "concluded physical exertion was only a contributing factor leading to claimant's heart attack," without finding that such opinion resulted from a weighing of claimant's work (i.e., physical exertion) versus pre-existing heart condition and disease (as opposed to merely risk factors). We further note that no finding of fact directly states that claimant had a pre-existing heart disease or condition, and in the absence of any explicit balancing or weighing, we are reluctant to imply such a finding. In addition, Conclusion of Law No. 4 itself misstates the statutory requirement by holding that claimant's work was not "the substantial contributing factor of the heart attack" (emphasis added). We have in an earlier case stated our disagreement with a finding of fact regarding the absence of medical opinion about whether a claimant's work was "the substantial producing cause" of a heart attack rather than "a substantial contributing factor (emphasis

added);" however, we held that misstatement to be harmless error in light of a conclusion of law and language in the decision using the correct term, thus indicating that the conclusion was not premised upon an erroneous finding of fact. Texas Workers' Compensation Commission Appeal No. 92034, decided March 19, 1992. In light of our holding that this case be remanded for a finding or findings which perform the weighing required by Section 408.008(2), we also remand to allow the hearing office to make a conclusion of law consistent with the new finding or findings.

The decision and order of the hearing officer are reversed and remanded to allow all appropriate reconsideration of the medical evidence, and for the inclusion of findings and conclusions consistent with the weighing and comparison language requirements of Section 408.008(2). Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party 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's division of hearings, pursuant to Article 8308-5.41. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge