APPEAL NO. 93764

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on June 2, 1993, (hearing officer) presiding as hearing officer. He determined that the deceased's death was compensable having resulted from complications of an injury suffered in the course and scope of his employment. Accordingly, benefits under the 1989 Act were awarded to the deceased's beneficiaries. Appellant (carrier) appeals this decision complaining of error in several of the hearing officer's findings of fact and conclusions of law, in essence urging that a causal relationship between the injury and the subsequent death had not been established by a preponderance of the evidence. Respondent (claimants) request that the decision be affirmed.

DECISION

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

The single issue in this case was whether the deceased's death was the result of an accident suffered in the course and scope of his employment. The fact that the deceased suffered an on-the-job injury was not disputed, although the extent of it and the body area involved was a matter of some dispute, particularly in the medical evidence offered by the parties. In any event, there was evidence that the deceased was injured on (date of injury), when he slipped attempting to lift a heavy portable generator and that he suffered muscular injury to his groin, hip and leg (there is also some mention of a back injury in a medical record). It was also established that the deceased was a diabetic and suffered from cirrhosis of the liver. Through testimony of the deceased's wife and son, a statement of his employer, and the medical records, it was established that the deceased was in pain but worked a "short day" the following day. When he attempted to work the day after he was still in considerable pain and his employer, noticing the trouble deceased was having, had him go to a doctor, (Dr. M), on December 23rd. He never returned to work. He was in such pain that his son took him back to Dr. M on December 24th. The deceased began to run a fever and returned to Dr. M on December 26, 1991 and an antibiotic was prescribed. He was referred to an orthopedic specialist, (Dr. R), on December 30th and an x-ray of the hip was read as normal. He started therapy the next day but because of extreme pain, had to stop by January 4, 1992. He attempted to get an appointment with Dr. R but could not get one before the 27th of January because of Dr. R's unavailability. The claimant, being in severe pain, saw a Dr. G on January 9th and more x-rays were taken which showed degenerative joint disease in the left hip. When he saw Dr. R on January 27th, new x-ray revealed total destruction of the left hip joint as a result of a staph infection. The deceased was immediately hospitalized and surgery to drain the hip was performed on January 29th. His condition continued to deteriorate and he subsequently passed away in intensive care on February 15, 1992.

There was considerable medical evidence offered into evidence. Of particular significance is the testimony of two experienced, well qualified pathologists. (Dr. B), who

testified for the claimant and (Dr. D), who testified for the carrier. Both detailed their theories of the course of the claimant's injury to his ultimate demise, and arrived at opposite conclusions. Dr. B found, in reasonable medical probability, a causal relationship between the injury and the ultimate death. Succinctly, Dr. B testified that death resulted from complication that arose directly from a traumatically induced septic arthritis of the left hip and that the sequence of events is what would have been expected in the type of injury. Dr. D testified, in essence, that the deceased had limited ability to fight off infection because of his diabetes and cirrhosis of the liver and that something of an unknown origin happened, a scratch, a boil, or pressure spot on the arm which developed into an infection of the skin or cellulitis around January 13, 1992 independent from his injuries of (date of injury). In his opinion, this cellulitis spread to his hip and ultimately ended in the deceased's death and was not causally related to the injury.

In a deposition, Dr. R stated "it's probable" in answer to the question as to whether the deceased's "condition that he was hospitalized for and eventually died from is causally related to his on-the-job injury of (month) of '(year)." A (Dr. S), who saw the deceased on January 27, 1992, stated that "I believe there is a casual (sic) relationship between the accidental injury of (date) -- The events, the Septic Arthritis, and injection complications may have eventually caused his death." On the other hand, Dr. M stated "I don't see how" in answer to the question "[i]n your opinion was there a connection between the lifting injury and the sepsis" and that it is "very good" as to the probality that one of the deceased's other medical conditions caused the sepsis.

Clearly, there was considerable conflict in the medical evidence before the hearing officer. He considered, weighed and discussed the evidence and found there was a causal relationship between the injuries sustained by the deceased in the course and scope of his employment and his ultimate demise. Dr. B, an eminently qualified pathologist, gave his expert opinion connecting the injury to the ultimate death and explained his medical rationale. His opinion finds support in other medical evidence. Dr. D, also eminently qualified, disputes the opinion and rationale of Dr. B, and his opinion too finds some support in other medical evidence. Under the circumstances, we can not say that there was insufficient evidence to support the hearing officer's determinations or that his findings and conclusion were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *See* Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. 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). He resolves conflicts and inconsistencies in the testimony and evidence (Garza v. Commercial Insurance Co. 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), and makes findings of fact. Section 410.168(a). Any conflict among medical witnesses is a matter to be resolved by the trier of fact. Highlands Underwriters Insurance Co. v. Carabajal, 503

S.W.2d 336, 339 (Tex. Civ. App.-Corpus Christi 1973, no writ). Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist] 1984, no writ). The hearing officer apparently gave greater weight to the testimony and opinion of Dr. B. We find no basis to say this was unsupported or was erroneous. Texas Workers' Compensation Commission Appeal No 93078, decided March 15, 1993.

The decision is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Susan M. Kelley
Appeals Judge