

APPEAL NO. 93923

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*) On June 8, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. His determination that appellant's (claimant) husband's (decedent) head injuries contributed to his death was remanded in Texas Workers' Compensation Commission Appeal No. 93589, dated August 26, 1993, for findings of fact in regard to decedent's heart attack that immediately preceded the head injuries. The hearing officer in his decision dated September 17, 1993, then issued findings of fact that decedent's heart attack was not compensable. Claimant appeals stating that the heart attack was caused by a specific event and that the medical evidence shows work was a substantial contributing factor rather than the natural progression of a pre-existing disease or condition. Respondent (carrier) replies that the hearing officer's determination is correct but, within the time to appeal, takes exception to one finding of fact that stated decedent did not have a pre-existing heart condition.

DECISION

We affirm.

The evidence was summarized in Appeal No. 93589, *supra*. The hearing officer made additional findings on remand without a rehearing. Briefly, decedent was a law enforcement officer, who on the day of the accident had been upset about news reports that could compromise a narcotics investigation. That morning he had also "moved some things around." In the afternoon, while accompanying a high school band, his vehicle left the road, drove through fences, and hit a tree. Statements of law enforcement personnel and emergency medical technicians who arrived at the scene indicated that decedent had head injuries. After initial treatment in Refugio, decedent was taken to a hospital in (city), Texas.

As discussed in Appeal No. 93589, the doctor's notes of the hospitalization did not indicate that the head injuries contributed to the loss of life.

Upon remand, findings of fact were made in regard to the heart attack as follows:

FINDINGS OF FACT

6. Decedent's death was a direct result of a sizeable myocardial infarction which led to ventricular fibrillation.
7. Claimant experienced emotional stress on the day of his heart attack when he discussed a newspaper article critical of the Sheriff's department.
8. Claimant exerted himself more than usual on the day of his heart attack when he moved heavy furniture at his office.

9. There is no medical evidence that link's decedent's heart attack to any specific event or events that occurred at work on the day of his heart attack.

10. Claimant did not suffer from a pre-existing heart condition or disease.

The hearing officer in his Discussion of the Evidence on Remand, cogently summarized the evidentiary problem that both he and this Appeals Panel face in this case. He stated:

It is notable that there is no medical evidence of previous heart problems, no evidence of any kind of pre-existing cardiovascular disease, as well as there being no medical evidence discussing whether Decedent's work was a substantial contributing factor of his heart attack. These short comings were compounded by the failure of any authority to order an autopsy. The failure of medical authorities to develop probative evidence indicating what, if any, impact Decedent's head injuries had in causing his death compounds the adjudication of this claim. . . .

Under the 1989 Act, Section 408.008 sets forth requirements specific to whether or not a heart attack can be compensable. It states, "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; . . ."

The medical reports in evidence indicate that decedent suffered a heart attack on (date of injury); they indicate that he died on (date), as a result of the heart attack. No medical records show that claimant had a history of a heart condition and no autopsy was performed. No physician's statement addresses work as a factor in the heart attack. As a result, the hearing officer's findings of fact, particularly Findings of Fact Nos. 6 and 9 are sufficiently supported by the evidence. Finding of Fact No. 10 indicates that there was no evidence of a pre-existing heart condition or disease. Since this finding is not necessary to the decision in the case, it will be disregarded. See Texas Indemnity Insurance Company v. Staggs, 134 Tex. 318 134 S.W.2d 1026 (1940).

Without supportable findings that the heart attack was caused by a specific event in

the scope of employment and that the preponderance of medical evidence shows that the work was a substantial contributing factor rather than the natural progression of the existing disease, a decision by a hearing officer that the heart attack was compensable cannot be upheld. In this case, Finding of Fact No. 9 addresses both criteria. While medical evidence is not always necessary to determine that a specific event caused the attack, medical evidence is necessary to determine whether work was a substantial contributing factor. Since the finding in question indicates "no medical evidence that links. . .," that finding, in effect, states that medical evidence did not indicate work was a substantial contributing factor. As such, the decision that the heart attack was not compensable was sufficiently supported by the evidence; the findings of fact also support that decision. Affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge