

## APPEAL NO. 93926

This appeal arises 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 (CCH) was held on September 16, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were whether the deceased employee (decedent herein) had a compensable heart attack and whether or not the decedent's heart attack of (date of injury), led to his death on (injury). The hearing officer concluded that the decedent suffered a compensable heart attack on (date of injury), and the heart attack which caused the decedent's death on (injury), was a direct and natural result and was caused by his initial heart attack of (date of injury). The hearing officer ordered the appellant (carrier herein) to pay benefits to the decedent's widow (claimant herein). The carrier appeals contending that certain findings and conclusions of the hearing officer were not supported by the evidence and that, in particular, the evidence failed to support the conclusion of the hearing officer that the decedent's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack. The claimant responds requesting that the decision of the hearing officer be affirmed.

### DECISION

We reverse the decision of the hearing officer and render a new decision that decedent's heart attack suffered on (date of injury), was not compensable.

On (date of injury), the decedent was employed by a company (employer herein) which provided food services to hospitals and privately owned prisons. On that date decedent was working at a prison facility near (city), Texas, and was attempting to push a heavy cart loaded with over 700 pounds of food up an inclined ramp. This work was normally done by one of employer's workers and two prison inmates, but, due to illnesses, decedent was performing the task alone. As the cart reached the top of the ramp, the decedent later reported it felt as if his heart had exploded and he collapsed near the door. The decedent was rushed to a nearby hospital and was attended by (Dr. B), a doctor with whom he worked on a daily basis at the prison cafeteria.

Dr. B immediately transferred the decedent to (city) under the care of (Dr. M), a cardiologist who diagnosed the decedent as having a massive heart attack. The decedent had another heart attack in the emergency room and two other mild attacks in the hospital's intensive care unit. The claimant testified that Dr. M told her that these later heart attacks were a natural result of the original heart attack. After a hospitalization of several days, the decedent was released to return home.

The claimant had another episode of chest pain on April 22, 1993, which resulted in a two day hospitalization. On June 4, 1993, the decedent had another heart attack and was again hospitalized for five days. On June 9, 1993, the claimant testified that Dr. M told her that there was essentially nothing that could be done to repair the decedent's massively damaged heart. Dr. M gave her the choice of leaving the decedent in the hospital or taking

him home, which she did. On (injury), the claimant testified that the decedent's eyes rolled back and he told her he was suddenly warm. The claimant then described the decedent as leaning against her and dying.

The claimant and the decedent had been married for 26 years and had five adult children, who at the time of the decedent's original heart attack and of the his death, were not students, not physically or mentally incapacitated and not dependent upon their father for support.

In evidence was a letter from Dr. B dated June 10, 1993, wherein he stated as follows:

On (date of injury) at about 9 a.m., [decedent] suffered an acute myocardial infarction at work at (city) Detention Center (place of employment). He was apparently pushing a heavy cart of supplies up an incline at the time of his injury. He was treated at the emergency room of concho (sic) County Hospital (county hospital) and sent on to Hospital (Hospital S), (city), Texas to the care of Dr. [M].

[Claimant] had no prior history of cardiovascular problems.

Also in evidence was a letter from Dr. M to the Texas Workers' Compensation Commission dated June 23, 1993, in which he stated in relevant part as follows:

The first question requests a response as to whether or not the patient's work was a substantial contributing factor to his heart attack of (date of injury). This patient had expressed to this examiner that his work was extremely stressful and as such, it would have to be considered a substantial contributing factor to that event.

Question number two references whether or not the heart attack of (date of injury) was in fact a substantial contributing factor to his subsequent fatal heart attack. The answer to this question is an unequivocal yes.

The carrier put into evidence a deposition on written questions it took of Dr. M and in which the following exchange may be found:

19. Could you state based on your examinations of [the decedent] and your answers to the above questions whether [decedent's] stress or his pre-existing heart condition was the substantial contributing factor, or did both work together?

Answer: Certainly the existence of his additional risk factors, which included his family history, his long-term smoking history, and the fact that he may have been experiencing unstable angina, which appears to have been unrecognized by the patient, could be

considered substantial contributing factors in addition to the work stress which he perceived.

It would appear inappropriate to separate out any single process as the substantial contributing factor to the event of (date of injury). The co-existence of underlying risk factors and the work environment most likely played equally contributing roles.

The carrier also submitted into evidence a medical record from (Dr. Z), a physician who it retained to examine the decedent's medical records and render an opinion. Dr. Z stated in part as follows:

In summary, the patient suffered a myocardial infarction on (date of injury). He had underlying atherosclerotic coronary artery disease which was the major factor resulting in his myocardial infarction. If he was truly pushing a cart that weighed 400-600 lbs. this may have contributed to his infarction occurring on that particular day.

The claimant testified that decedent was in excellent health prior to his (date of injury), heart attack that he had never suffered any chest pains other than a couple of years before when he suffered a bout of double pneumonia, that he had never experienced any problems with his heart, that Dr. B was familiar with the decedent's physical condition prior to (date of injury), that the only history of heart attack in decedent's family involved two of the claimant's eight siblings both of whom were extremely obese alcoholics, that the decedent watched his diet and exercised regularly following an exercise regimen he had begun while in the Marine Corps, that on (date of injury), the decedent weighed 165 pounds and had a 29 inch waist, that while the claimant smoked cigarettes for over 20 years he had only done so intermittently and had stopped smoking completely in October 1992, that Dr. Z's report contained numerous historical inaccuracies and that she had provided the decedent's history to the claimant's treating doctors and had given no history of chest pains or heart problems prior to (date of injury).

The carrier challenges the following findings of the fact and conclusions of law by the hearing officer as not being supported by the evidence:

### **FINDINGS OF FACT**

3. On (date of injury) EMPLOYEE suffered a massive heart attack while attempting to push a heavy cart loaded with approximately 700 pounds of food up an inclined ramp while working for EMPLOYER.
4. [Dr. M] orally reported to CLAIMANT that the extreme exertion of pushing the heavily laden cart up the inclined ramp placed so much stress on EMPLOYEE's heart that it was severely damaged.

- 5.The exertion from pushing the heavily laden cart placed EMPLOYEE's heart under great stress and he suffered massive heart damage as a result of that exertion.
- 6.Following the (date of injury) massive heart attack, EMPLOYEE experienced a number of subsequent milder heart attacks, which resulted in a heart attack that caused his death on 06-13-93.
- 7.[Dr. M], a cardiologist who continuously treated EMPLOYEE from (date of injury) to the date of his death, told CLAIMANT that these subsequent heart attacks were a natural result of the initial massive heart attack which EMPLOYEE suffered on (date of injury).
- 8.Prior to (date of injury), EMPLOYEE was in excellent physical condition.
- 9.EMPLOYEE had no chest pains prior to his massive heart attack on (date of injury).
- 10.Prior to (date of injury), EMPLOYEE never experienced any problems with his heart, nor had been treated by a doctor for any heart-related ailments.
- 11.[Dr. B] is the only doctor who was familiar with EMPLOYEE's pre-attack condition, and his report states that EMPLOYEE had no history of cardiovascular problems.
- 12.Although some of the medical reports indicate that EMPLOYEE's family history reflected a propensity for heart attacks, EMPLOYEE's deceased mother and father had no heart problems and only two of their eight children had heart problems, and both of those children, which did not include EMPLOYEE, were alcoholics. Although EMPLOYEE had smoked intermittently for approximately twenty years, he had not smoked since October of 1992 and was not a heavy smoker.
- 13.Although CLAIMANT's husband did smoke cigarettes on an intermittent basis for a number of years and some members of his large family had previous heart problems, EMPLOYEE had no pre-existing heart condition or disease prior to (date of injury), when he suffered his initial massive heart attack.
- 14.None of EMPLOYEE's heart attacks were a result of mental stress, although some of the medical evidence, in response to CARRIER's requalified questions, might indicate that stress was one of the contributing factors to some of these heart attacks. The heart attack which killed EMPLOYEE on 06-13-93 was a natural result of and was caused by EMPLOYEE's initial (date of injury) massive heart attack.

15. CLAIMANT was the individual who gave the medical personnel her husband's health history and she did not tell them her husband had chest pains or heart problems prior to his (date of injury) attack and did not tell them that her husband was a heavy smoker.

16. The medical report of CARRIER's testifying doctor is of dubious credibility because it reveals that the reporter is dubious that EMPLOYEE was pushing a heavily laden cart at the time of onset of his initial heart attack. It states that EMPLOYEE was having unstable angina prior to (date of injury) and it concludes (without sufficient medical) that EMPLOYEE had underlyingtherosclerotic (sic) coronary artery disease.

17. CLAIMANT's husband was not able to perform any work continuously after his (date of injury) heart attack until the date of his death on 06-13-93 as a direct result of the (date of injury) heart attack.

### **CONCLUSIONS OF LAW**

2. EMPLOYEE suffered a compensable heart attack on (date of injury) because: (1) the attack occurred at a definite time and place; was caused by a specific event in the course and scope of EMPLOYEE's employment; (2) the preponderance of the medical evidence regarding the attack indicates that 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 solely triggered by emotional or mental stress factors.

3. The heart attack which caused EMPLOYEE's death on 06-13-93 and the intervening heart attacks were a direct and natural result of and were caused by his initial massive heart attack of (date of injury).

Carrier in challenging the hearing officer's Conclusions of Law Nos. 2 and 3 argues that these conclusions are not supported by the evidence because the evidence does not establish that decedent's work rather than his pre-existing condition was a substantial contributing factor of his heart attack as provided in Section 408.008(2). The carrier cites to our decisions in Texas Workers' Compensation Commission Appeal No. 92212, decided July 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992, in support of this argument.

Section 408.008 provides in relevant part:

A heart attack is a compensable injury under this subtitle only if: . . .

(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 evidence in the present case fails to establish that the requirements of this test were met. Dr. Z's report stated that while pushing the cart at work may have contributed to the decedent's heart attack, the major factor of the decedent's heart attack was underlying heart disease. The hearing officer explicitly discounts the evidence of Dr. Z in Finding of Fact No. 16. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. However, the hearing officer's reasoning for discounting the report appears arguable at best. He suggests that Dr. Z's opinion is not credible because Dr. Z is dubious about the decedent's mechanism of injury and that there is no support for Dr. Z's conclusion that the decedent suffered from unstable angina and artery disease. We do not read Dr. Z's report as casting doubt on the mechanism of injury but rather is a reflection of the information in the medical reports he reviewed. Further, the source for Dr. Z's belief that the decedent suffered unstable angina appears to be the decedent's own treating cardiologist, Dr. M, whose discussion of angina is quoted *supra*, and who stated in his deposition on written questions:

[Decedent] experienced an acute myocardial infarction which was a complex event on (date of injury). The nature of heart disease is such that he most likely did have symptomatology predating that acute event. The physiology of obstructive coronary disease in most circumstances is that the disease is a progressive process over weeks, months and/or years leading up to a critical state and possibly resulting in an acute event such as [decedent] experienced.

Even totally discounting the opinion of Dr. Z as to the cause of the heart attack in deference to the fact finder, the only other evidence on this point is the opinion Dr. M. He stated that the "underlying risk factors and the work environment most likely played equally contributing roles" (emphasis added). This evidence is insufficient to establish that by a preponderance of the evidence that work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the heart attack. See Appeal No. 92555, *supra*; Appeal No. 92115, *supra*.

It appears that the hearing officer may have believed Section 408.008(2) was inapplicable if the evidence established that the decedent did not suffer from any preexisting heart condition or disease. In Finding of Fact No. 13, the hearing officer found that the decedent had no preexisting heart condition or disease prior to (date of injury). We determine that this finding is contrary to the great weight and preponderance of the evidence. While there is lay testimony from the claimant concerning the decedent's good physical condition prior to (date of injury), this is contradicted by both the opinions of Dr. M and Dr. Z cited above. Nor does the opinion of Dr. B, when closely examined, lend support to the hearing officer's finding. Dr. B does state that the decedent "had no prior history of cardiovascular problems," but stating no prior history is certainly not equivalent to stating the opinion that the decedent had no heart condition or disease. Also the evidence does not indicate that Dr. B was actually a doctor who treated or otherwise examined the decedent

prior to his heart attack, but one who came into contact with the decedent as part of their mutual work for the employer. We therefore reverse the hearing officer's finding that the decedent had no pre-existing heart condition or disease prior to (date of injury).

Having reversed the above finding, we must apply the test of Section 408.008(2). Doing so, we find that the evidence failed to meet the requirements of this test, as discussed *supra*, and that the decedent's heart attack of (date of injury), was therefore not compensable. The decision and order of the hearing officer are reversed and a new decision is rendered that claimant is not entitled to benefits under the 1989 Act.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Susan M. Kelley  
Appeals Judge