

## APPEAL NO. 93963

This appeal arises under 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 was convened in (city), Texas, on July 6, 1993, and was continued to September 29, 1993, with the record closing on that date. Both the employer and the employer's workers' compensation insurance carrier appeared at the September 29th session, where the latter argued that it had timely contested compensability of claimant's injury. Hearing officer (hearing officer) ruled that the carrier had not timely contested compensability of the claim, since it had not done so on a Form TWCC-21, Notice of Refused or Disputed Claim, as required by the applicable rule of the Texas Workers' Compensation Commission, Tex. W.C.Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6), but had instead used a Form TWCC-41 (Request for Setting a Benefit Review Conference). The hearing officer further ruled that the employer, (employer), timely contested compensability and thus was a proper party in this case.<sup>1</sup> Neither the parties to the hearing, PC and (employer), nor the carrier, Transportation Insurance Company, seeks our review of this ruling, although the carrier has filed a response to claimant's appeal.

With regard to the merits of the case, the hearing officer held that claimant suffered a myocardial infarction on or about (date of injury), while on lunch break at his employer's place of business, but that the conditions of work were not a substantial contributing factor to claimant's infarction, which was the result of a the natural progression of a pre-existing heart condition. The claimant appeals this decision, pointing to evidence which he says supports his position and contending that the hearing officer did not consider certain pertinent evidence. Both the employer, (employer), and the carrier respond that the hearing officer's decision should be upheld.

### DECISION

We affirm the hearing officer's decision and order.

We note at the outset that, as the hearing officer's decision that carrier did not timely contest compensability was not appealed, we do not consider carrier's response to claimant's appeal.

The claimant testified that he had worked for (employer) (employer) for about four years, in a job that required him to punch and lift heavy bars of steel. He said that in the three or four months prior to his alleged injury of (date of injury), his workload had increased and he had had to work overtime. He also said that his work place was hot and was cooled only by a single fan.

On (date of injury), claimant said he felt tired when he took his morning break at 9:00

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<sup>1</sup>A prehearing conference on the issue of standing was held on May 6, 1993, and the hearing officer who presided over that conference issued an order which was essentially the same as that of Hearing officer.

a.m. Around lunchtime, as he was walking back to work from the snack machines, he became dizzy and fell to the ground. According to the employer's accident report, the claimant thought the problem was due to his diabetes. He was driven home by a coworker, and around 1:30 or 2:00 p.m. was taken to the hospital by his wife. There, (Dr. B) told him he had suffered a myocardial infarction.

Records from Humana Hospital show that the claimant on July 23rd underwent right and left heart catheterization and was found to have subtotal occlusion of all vasculature including the right coronary artery, the left anterior descending artery, and the proximal segment of the dominant circumflex system. An intra-aortic balloon procedure was instituted, and on July 27th the claimant underwent aortocoronary bypass times five. Claimant's discharge diagnosis was acute anterior wall myocardial infarction, diabetes, and congestive heart failure, resolving.

The hospital records also noted that claimant had had indigestion, both with and without meals, for the past three to six months; however, at the hearing claimant denied that this was the case. The records also show a family history of early coronary disease in his brothers as well as diabetes in his brothers and his mother. The claimant, who was 51 at the time of the incident, testified that his father had died at age 58, and one brother had died at age 41, of heart attack, and that another brother had had triple bypass surgery at age 43. He also testified, however, that he had three older brothers with no history of heart problems.

The claimant was discharged from the hospital with medication and counseled with regard to his weight and his cholesterol level. He said he continues to be unable to return to work because of numbness and pain in his feet, with the pain being greater in the left foot. At the time of the hearing he said he was continuing to treat with (Dr. C) because of vascular problems with his feet.

Claimant's hospital discharge summary of August 8, 1991, noted that claimant's coronary artery disease risk factors were significant for diabetes, hyperlipidemia and strong family history. In addition, (Dr. F), who had evaluated claimant at Dr. B's request, stated that claimant's "high cholesterol is of a major concern given his risk factors of diabetes, male sex and evidence of coronary disease."

Also made part of the record was an affidavit of (Dr. CB), who reviewed claimant's medical records, the pertinent section of the 1989 Act concerning compensability of heart attacks, and the Employer's First Report, and concluded that the claimant had "multiple severe predispositions to cardiac disease" with risk factors including male sex, diabetes, high cholesterol, high triglycerides and "an extremely positive history of heart disease in the family at a very early age." Dr. CB also said claimant had vascular disease elsewhere with significant obstructive disease in both legs and likely in his carotid arteries. He also noted a six month history of symptoms, including indigestion and fatigue, which were "strongly suggestive (in retrospect) of progressive cardiac disease ending in heart attack and followed by leg symptoms of significant peripheral vascular disease." Dr. CB concluded that claimant's heart attack was the result of the natural progression of disease.

The 1989 Act provides as follows with regard to heart attacks:

**Sec. 408.008. Compensability of Heart Attacks.**

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 preexisting 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.

The hearing officer found that the claimant's heart attack occurred at a specific time and place, on (date of injury), as he was on his lunch break at employer's place of business. However, he also found that the medical evidence showed claimant suffered from congestive heart failure and coronary arterial disease, with subtotal occlusions; and that the conditions of claimant's work place were not a substantial contributing factor to claimant's myocardial infarction, which was the result of the natural progression of a pre-existing heart condition. (The hearing officer made no finding regarding emotional or mental stress, which was not alleged by either party.) Therefore, he concluded that claimant did not suffer a compensable injury in the course and scope of his employment on (date of injury).

The claimant basically contends in his appeal that the hearing officer did not consider certain evidence pertinent to his case, including claimant's testimony about his excessive workload, work place conditions, and the fact that claimant has three brothers who suffer from no heart condition. (Despite claimant's statement in his appeal, his testimony about his older brothers was not excluded.) All the above evidence was clearly in the record in this case, and certain of it was recited in the hearing officer's statement of the evidence. Claimant also says Dr. B told him that his work conditions contributed to his heart attack; however, the 1989 Act provides that a claimant's work must be more than a contributing factor in a heart attack, but must be a substantial contributing factor and that medical evidence is required for this. See Texas Workers' Compensation Commission Appeal No. 91031, decided October 24, 1991. In this case, the medical evidence recites numerous risk factors along with severe occlusion and coronary disease which are supportive of the hearing officer's determination that the heart attack was the result of the natural progression of disease. To the extent that the hearing officer relied upon the report of Dr. CB, who did not examine the claimant, we would note that his opinion based on a review of claimant's

medical history is nevertheless medical evidence to which no objection was made.

Claimant also challenges certain written statements by coemployees who saw claimant on (date of injury). We have reviewed this evidence and find it could only have bearing upon the statutory requirement that a heart attack occur at a definite time and place, which the hearing officer found in claimant's favor. Like the affidavit of Dr. CB, these documents were admitted into the record without objection.

The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). We will not substitute our judgment for that of the hearing officer where, as here, his decision is supported by the evidence in the record and is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We affirm the hearing officer's decision.

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Lynda H. Neseholtz  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge