

APPEAL NO. 94037

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On November 12, 1993, a contested case hearing was held in (City), Texas, with (Hearing Officer) presiding. He determined that the decedent's heart attack of (date of injury), was not a compensable injury. Appellants (claimants) assert that evidence shows the attack came after decedent was preparing his truck to receive cargo and that medical evidence indicated that sudden cardiac death can occur at times of excessive stress. The carrier replied that the appeal was not timely made, but if considered, states that the decision is sufficiently supported by the evidence.

DECISION

We affirm.

I

The decision was distributed on December 21, 1993. Claimant's appeal was received on January 10, 1994. Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides that receipt of communications from the commission will have a deemed receipt date five days after mailing. Claimant's attorney says he received the decision "in our office" on December 27, 1993. The important point is that there is no indication that the decision was received prior to the deemed date of December 26, 1993. Section 410.202 requires the request for review to be filed "not later than the 15th day after the date on which the decision of the hearing officer is received" In this case claimant had until January 10, 1994, to file, and the appeal was received by fax on January 10, 1994; it is timely.

II

Decedent had worked as a truck driver for approximately 18 years. He was born in 1934. On the day of the attack, he drove his tractor and trailer to a cable manufacturer to be loaded with cable. While removing sideboard panels from the trailer (each was approximately 3.5 feet by 4.0 feet; witnesses estimated the weight of one panel at 20 to 45 pounds), the decedent collapsed. The hearing officer found that two panels had been moved and that a tarp (witnesses testified that the tarp weighed from 45 to 75 pounds) had also been moved. Decedent was taken to a hospital where he died that day. The medical certification on the death certificate showed cause of death to be "cardiomegaly with myocardial fibrosis."

An employee of the cable manufacturer, (GH) testified that at about 8:00 in the morning when decedent arrived with his truck, he talked with him, and decedent was upset that he had put sideboard panels on the truck when he now learned that for this load, they would need to be removed. GH did not see him remove any panels. GH has helped with removal of truck panels in the past and said that panels can become stuck in the brackets that each end of the panel frame slides into. He added that at times a forklift has to be used to free one from a bracket. He further described that if one end is lifted too far, the angle created may cause the panel to stick, whereas if the panel is lifted so that the two ends in the brackets are raised together, less sticking occurs; a more experienced driver has less trouble getting panels out.

Another employee of the cable manufacturer, (GP), testified that he was working with a forklift when decedent arrived; he told decedent it would be about 15 minutes before he finished doing what he was doing and could start loading cable on the truck. As GP later brought the forklift to the truck to load it, he could see that decedent had moved the tarp; he also said that he saw decedent remove one (of the two panels found to have been removed) panel and that decedent did not ask him for help in removing it. (He has seen panels get stuck in truck bed brackets and then require great pressure to remove them.) GP said he then reached down into his boot, where he kept cigarettes, and got a cigarette. At some point when he had a cigarette, his eyes returned to the truck, and he did not see the decedent. Thinking that decedent may have exited the truck for the restroom or to attend to some paperwork, GP waited for some period of time, perhaps five to ten minutes. He then started looking and saw decedent lying on the bed of the truck. He obtained help.

Carrier called (AV). AV testified that he is general manager for (employer). Decedent was an employee of this corporation (employer). He said that decedent's job called for him to routinely lift or push up to 50 pounds. Decedent had been with the employer for a year and one-half. Decedent was also said to have been with another named company for four years before that which AV referred to as the "same company." He said that decedent was an excellent truck driver. As part of his duties, decedent would have removed side panels on his truck on a daily basis. He said that he knew decedent had heart disease but a doctor had said it was under control. He said that decedent could work no more than 60 hours in one week for this employer.

Decedent's wife (a claimant) testified that they had been married in 1984. She said that decedent had the mitral valve in his heart replaced in 1989. She said that he worked 12 hours a day six days a week. Decedent had not complained of pain or fatigue prior to going to work the day of the attack, but had complained on occasion in the past after strenuous physical activity. Claimant felt that decedent's death was caused by the work.

(Dr. L) testified for the carrier. He did not treat the decedent but reviewed the records of doctors who had treated decedent, along with the hospital record made the day of the attack. Dr. L is a board certified cardiologist. He stated that at autopsy, decedent's heart weighed 620 grams, approximately twice normal size. He noted that the records showed a mitral valve replacement and the insertion of a pacemaker. He said that mitral valve replacement was consistent with rheumatic heart disease with mitral regurgitation and that a pacemaker is commonly inserted when the heart rate has slowed. Dr. L said that there was no evidence that decedent did die of a heart attack in his record, calling "cardiomegaly and myocardial fibrosis" descriptive terms, not diagnoses. The terms mean enlarged heart and areas of scarring of the heart muscle. He did say that decedent did have an enlarged, scarred heart from which ventricular fibrillation can occur. He said that there are a number of factors that can play a part in a heart attack, but usual day-to-day activities are not a precipitating factor for sudden cardiac death. Dr. L said, "it's neither logical nor does it fit the medical facts that this gentleman had anything other than the

natural progression of his heart disease." In addition, the medical records indicated a possibility that decedent had had a heart attack at some past time. He said in decedent's case that the enlarged heart would naturally dilate more and more - decedent would either die of congestive heart failure or die suddenly (sudden cardiac death). On cross-examination, Dr. L stated, "he did have sudden death and I would apply it as sudden cardiac death syndrome." He added that sudden cardiac death syndrome is not a synonym of myocardial infarction.

In Texas Workers' Compensation Commission Appeal No. 92673, decided January 28, 1993, Northbrook National Ins. Co. v. Goodwin, 676 S.W.2d 451 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.) was quoted as saying that a heart attack is "some form of cardiac injury." The claimant's appeal indicates agreement that sudden cardiac death syndrome is within the term "heart attack" in the 1989 Act.

The testimony of the workers who saw decedent the morning of the attack did not indicate that he was doing anything other than duties that were routine to him. While instances were described in which removal of side panels could be very physically exerting, there was no testimony that decedent encountered such instances of sticking panels. The elapsed time between decedent's arrival and his movement of the tarp, removal of two side panels, and collapse was approximately one-half hour.

Decedent's medical records showed that he had been treated for heart problems in the past. Dr. L did not think that the decedent's duties precipitated his attack on (date of injury), but did think that the natural progression of his heart disease was the basis for death. He even stated that the condition of claimant's heart indicated that he would die either from congestive heart failure or sudden cardiac death. A statement of (Dr. P), entered into evidence on behalf of the claimants, indicated that the death certificate did not adequately explain the cause of death. (Dr. L's testimony shows that he agrees with this.) Dr. P also said that "sudden cardiac death can occur in times of excessive stress . . ." (emphasis added). She did not say that decedent had undergone excessive stress and did not attempt to weigh in any way the criteria of the statute in regard to whether decedent's work rather than the natural progression of his preexisting heart disease was a substantial contributing factor. See Section 408.008.

The finding of fact that sudden cardiac death is a heart attack within the meaning of the 1989 Act is consistent with prior decisions of the Appeals Panel (See Appeal No. 92673, *supra*), is a logical determination based on the testimony of Dr. L, and is not appealed by the claimants. The finding of fact that medical evidence did not establish that decedent's work rather than the natural progression of the preexisting heart disease was a substantial contributing factor is sufficiently supported by the testimony of Dr. L, and there is no medical evidence that indicates otherwise.

Since Section 408.008 requires medical evidence to show that work is a substantial contributing factor rather than the preexisting heart disease for a heart attack injury to be compensable, and work was not shown to be a substantial contributing factor, the finding

that there was no compensable injury was sufficiently supported by the evidence. The hearing officer as finder of fact is the sole judge of the weight and credibility of the evidence. See Section 410.165. The Appeals Panel will not reverse a decision based on factual determinations unless the decision is against the great weight and preponderance of the evidence. See In re King's Estate, 244 S.W.2d 660 (Tex. 1951). In this instance, the decision and order are not against the great weight and preponderance of the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge