APPEAL NO. 94202

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On January 26, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issues considered were whether the appellant, JP, who is the claimant herein, sustained a compensable heart attack on (date of injury), and whether he gave timely notice of that heart attack to his employer. The hearing officer determined the notice issue favorably to the claimant, and this decision was not appealed.

On the heart attack issue, the hearing officer determined that claimant failed to prove that he sustained a compensable heart attack.

The claimant has appealed. The claimant argues that the pre-existing condition does not preclude compensation. The claimant further argues that the preponderance of medical evidence proves that the work, rather than the natural progression of a pre-existing condition, was the "precipitating" factor in the heart attack. The carrier responds by arguing the factual difference between a case cited by the claimant and the facts of this case, and further recites other Appeals Panel decisions in favor of affirming the hearing officer.

DECISION

We affirm the hearing officer's decision and order.

In brief summary, the facts are these. Claimant, 62 years old, who was employed for over 20 years as maintenance employee for (employer). (employer), an operator of two motels and restaurants, performed numerous functions related to furnishing or repairing the physical premises of the employer. Claimant said his work for the employer was primarily physical labor. He stated that the ongoing project at the time he was stricken with a heart attack was to put up new facia boards in the gutter area to correct incorrect drainage.

On the morning of (date of injury), claimant had nailed up one facia board. The boards were plywood pieces about one inch thick, six inches wide, and 16 feet long. Claimant first sawed off half an inch of the width, and then began mounting the boards on the roof area, working with his hands over his head. He said that the boards weighed about a pound per foot. He put up one board, then drove to a lumber yard to pick up six other facia boards. When he returned, he began preparing the boards for mounting but was approached by coworker (Mr. H) to go for a cup of coffee. Claimant said it was while he was having coffee that he began to feel dizzy.

Claimant thereafter left the coffee shop and walked back toward the maintenance area where there was a soft drink machine. He sat down on the sidewalk. He stated that he also thought, although he could not clearly remember, that he mounted one more facia board. He was eventually transported to a hospital after he was found laying on the sidewalk of the employer's premises, and a doctor who was a guest at the motel determined he had a heart attack.

Claimant testified both that he first had chest pains while nailing up the first facia board, and that he first had chest pains when he walked over to the soft drink machine after having coffee. Mr. H testified that while they were having coffee, the claimant said he felt sick and got up without finishing, and walked outside to sit in his pickup truck.

Claimant said he felt fine before his attack; the only thing that had happened in the week before the attack was that he ate and then vomited a hamburger. Claimant acknowledged that three years earlier he had stated to coworkers that he thought he was having a heart attack, but had not. He further said that a year and a half before his attack he had been diagnosed with high blood pressure and put on medication and advised to stop smoking. At that time he smoked two packs of cigarettes a day, but by the time of his attack had cut back to half a pack. Claimant confirmed that two men in his immediate family died of heart disease in their early 50s. Claimant stated that his private insurance would not pay the medical charges because of the pre-existing condition of high blood pressure and that he then explored with his boss whether workers' compensation would cover this. He said that he felt his heart attack was caused by stress at work. Claimant said that he had already planned to retire at the end of March 1993. When asked what "stress" he felt at work had caused his heart attack, claimant said it was the mental stress.

In the hospital, it was determined that claimant had significant lesions and blockage in various arteries of his heart, as well as a left ventricular aneurysm. The doctor who treated him at the hospital was (Dr. N). Dr. N's reports characterized claimant as having "severe three vessel coronary artery disease." Claimant's regular doctor was (Dr. GO).

The claimant presented opinions given by (Dr. G), an associate professor of medicine at the (center). Dr. G's involvement in claimant's treatment was not clearly established, although it appears that claimant was referred to the center for cardiac evaluation. Dr. G noted that claimant had asymptomatic coronary artery disease, with multiple underlying causes for this. In a November 19, 1993 letter, Dr. G stated: "It is probable that the physical exertion at the time of the infarction was a precipitating factor for the acute myocardial infarction" and that physical exertion precipitated the infarction despite the underlying coronary disease. The history portion recited that claimant first felt chest pain putting up a facia board and developed severe chest pain after completing this task. Dr. G also noted a previous abnormal electrocardiogram, recorded in the notes of Dr. GO.

In subsequent addenda to this letter, Dr. G noted that he had been supplied with additional medical information. The first addendum pointed out that while claimant denied having a prior problem, Dr. GO had noted an abnormal electrocardiogram. The second addendum, while purporting to stand by the previous statement as to precipitating factor, stated: ". . . however, since the patient had evidence of prior coronary artery disease there is no way to know if the infarction would have occurred on (date of injury), even if no exertion had been involved."

Dr. GO, on October 1, 1993, wrote that although there was no way to prove that claimant's exertion was the cause of his problem, "there is a reasonable probability that the heavy exertion precipitated this event." Noting that claimant's recited history of his activities

that day did not seem out of character as to intensity, the fact that it required upper body work would tend to increase metabolic demand on the cardiovascular system, according to Dr. GO.

Although the claimant argues that a predisposing condition does not preclude compensability, we have previously discussed the heart attack statute (Section 408.008) in the 1989 Act, concluding that it represents a significant change from prior law, such that the general law cited by claimant no longer controls. As noted in Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991, work must no longer be merely a contributing factor, but must be a substantial contributing factor, and medical evidence is required to establish this.

In this case, the medical evidence presented was for the hearing officer to weigh and consider, as the person with the sole responsibility for assessing the weight, credibility, relevance and materiality of the evidence. Section 410.165. The hearing officer may have determined that however strong Dr. G's first opinion was, the receipt of additional evidence caused him to qualify his opinion to the extent where he could not say that the heart attack would not have happened regardless of exertion. The hearing officer could have considered that claimant's testimony about the extent of his exertion prior to his attack was less than understood by the doctors in question, given the extent of claimant's underlying disease. Although Texas Workers' Compensation Commission Appeal No. 92501, decided November 4, 1992, noted that a hearing officer "could" consider terminology "precipitating factor" to rule out other causes (and that such a statement would provide sufficient evidence supporting the hearing officer's determination of compensability in that case), we have not held that a trier of fact is required in all cases to so interpret such language.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers' Insurance Ass'n v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Co. of Pittsburgh, Pa. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). That is not the case here.

For the reasons stated above, the decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge