APPEAL NO. 94205

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on January 7, 1994, with (hearing officer) presiding, to determine one disputed issue which was not resolved at the benefit review conference (BRC), broadly stated as whether respondent (claimant) sustained a compensable injury on (date of injury). There was no evidence of any effort by either party to narrow the issue such as by adding a disputed issue concerning the extent or scope of the compensable injury should such be determined to have occurred. Finding among other things that while at work claimant suffered a cerebral vascular accident (CVA and/or stroke) and fell aggravating his pre-existing back condition, the hearing officer concluded that claimant sustained a compensable injury on (date of injury). The carrier challenges certain of the factual findings for evidentiary sufficiency while the claimant's response urges affirmance.

DECISION

Affirmed.

Claimant, the sole witness, testified that on (date of injury), he drove to a site to change a flat tire on the tractor of an 18-wheel truck. There was no dispute regarding the job relatedness of this activity. Claimant said he made the trip at approximately mid-morning and that the temperature was around 92 to 95 degrees and the air humid. Claimant testified that he used a hydraulic jack to jack up the vehicle and a compressed air impact wrench to remove the wheel lug nuts. He estimated the weight of the truck tire at between 175 and 200 pounds and the air impact wrench at around 50 pounds. Claimant, whose medical records indicated he was age 57 at the time, stated that after he had put on the new tire and as he was replacing the last lug nut, a procedure he estimated to have taken approximately 20 to 25 minutes, he "felt like somebody hit me upside the head." Claimant said he "fell against the tire and dropped the air impact wrench." He said he then spit up and lost his speech and right hand strength. When the truck driver asked what was wrong claimant said he responded that he had a heat stroke. Claimant said he then drove himself to a nearby pump station, wrapped some towels with ice around his neck, and then drove another 20 miles to Goliad. Claimant further testified that at about 12:30 p.m. that day, he went to (Dr. H) office and told him he thought he had had a heat stroke. According to claimant, Dr. H started an IV to treat him for heat stroke and while he was in Dr. H's office claimant developed breathing problems, was transported to a local hospital, and was later transferred to another hospital. Claimant said he was unconscious for about two days and was told by (Dr. K) that he had had a blood clot in his head which traveled down to his heart and which has resulted in his having irregular heartbeats. Claimant said he assumed his problem was related to having been out in the heat and he further stated he was not on any medications prior to (date of injury). Dr. H's records state that claimant "has had a history of hypertension which had been untreated prior to his CVA" and other reports mention claimant's not having seen a doctor for 20 years and having unsuspected, untreated hypertension.

At the BRC and at the hearing, claimant's position was that he felt the sharp pain in his head after changing the truck tire and fell against the truck injuring his back. The carrier's position was that claimant's CVA resulted from a pre-existing condition (apparently hypertension), that his back problems resulted from pre-existing degenerative arthritis, and that neither condition was related to his employment. Claimant contended that the job-related causation of his stroke and back injury was established by the opinions of his doctors, Dr. H and Dr. K, both of whom treated him. The carrier contended that the reports of (Dr. M), (Dr. F), and (Dr. HO) showed that claimant's stroke and back problems were neither caused nor precipitated by his work on (date of injury), but were, rather, attributable to his pre-existing, underlying conditions.

The hearing officer's decision discussed none of the medical evidence though stating all the evidence was considered. The pertinent factual findings are as follows and in its appeal the carrier specifically challenges the sufficiency of the evidence to support Finding of Fact Nos. 6, 7 and 8:

FINDINGS OF FACT

4.On (date of injury), Claimant suffered a cerebral vascular accident (stroke) while performing duties in the furtherance of his Employer's business.

5.At the time Claimant suffered the cerebral vascular accident he was working outside and the temperature was very hot.

6.Claimants' exertion in hot weather while changing a large truck tire caused him to have a cerebral vascular accident.

7.The pain which Claimant felt to his head while changing the tire caused him to fall and led to an aggravation of his pre-existing back conditions.

8.The fall and working in the heat aggravated Claimant's previously existing degenerative arthritis and undiagnosed cardiovascular problems.

Dr. H, in an August 12, 1993, letter to the carrier stated that claimant initially had a heat stroke which resulted in a CVA, that the CVA was hemorrhagic and bled into his brain tissue, and that the CVA was not congenital but was probably related to blood pressure elevations due to claimant's heat stoke. Dr. H's letter went on to state: "The stress of your body's heat control mechanism breaking down, can result in multiple problems and acute CVA is one of these." Dr. H further stated that the complications of claimant's CVA resulted in congestive heart failure leaving claimant with atrial fibrillation which caused vascular problems in his arms and legs, and that his resultant back pain was also a complication. In an October 19, 1993, letter Dr. H stated that he had reviewed the reports of Drs. F and M and their discussions of heat stroke and that "it may be more appropriate to conclude that [claimant] suffered an "Acute CVA realted [sic] to his heat exhaustion, volume depletion and Hypertension." Dr. H's letter went on to state: "The other physicians have commented that his acute CVA could not have been caused by a simple changing of a tire. If you speak

with the patient this was not a normal tire that he was changing but an extremely large tire on a large work related vehicle. The patient pinpoints the initiation of his symptoms to that time when he was actively pulling on his lug wrench." Dr. H's note of "1/13/93" stated that claimant "has been seen by [Dr. K] for some strange pains he is having extending down the right leg in from the buttocks and low back. Etiology is not clear. He is pending an MRI report of his low back and neck."

Dr. K's letter of October 17, 1993, stated that he concurred with Dr. H that claimant's CVA "was the result of a `heat stroke' he suffered on (date of injury) which was work related." Dr. K's report of October 21, 1992, stated that when claimant felt the sharp pain on the left side of his head he fell forward slightly but balanced himself against the truck. Dr. K's reports of December 7 and 8, 1992, reflected that claimant had an increase in lumbar pain bilaterally and severe right leg pain. An EMG report of December 8, 1992, by Dr. K recited an impression of right C-7, L4, and L5 radiculopathy and stated: "This finding has unclear etiology; however, based on the history that this patient has had a fall and consider he injured his spine, he is now starting to progressively worsen. Further workup in the form of an MRI scan of the cervical spine." Dr. K's report of June 18, 1993, summarized the January 7, 1993, MRI lumbar and cervical scans as revealing, respectively "mild degenerative changes seen somewhat diffusely through the lumbar spine, probable extruded disc on the right side posterior to the upper L3 vertebral body and mild bulging at L4-5:" and "central and right sided extradural defect at the C3-4 extending into the neruo-foramen and broad based extradural defect at C6-7 with bilateral foraminal changes."

In a report of August 10, 1993, Dr. K indicated he was transferring claimant's care back to Dr. H, that with claimant's multiple medical problems, "the issue that has to be decided on this patient is what is related to the heat stroke and if he suffered a fall that might account for his spinal problems. I have asked [Dr. H] to review [claimant's] records and get back with me." In a December 15, 1993, letter, Dr. K stated there were two types of heat stroke, namely, classic and exertional, that claimant suffered the latter type but that both forms may be complicated by hemorrhage and the dysfunction of numerous body systems. According to Dr. K, the complications of claimant's heat stroke resulted in hypertension and congestive heart failure which, in turn, resulted in atrial fibrillation and further vascular problems.

Dr. F's report of October 11, 1993, indicated that he reviewed many of claimant's medical records and also examined claimant. Dr. F opined that there was no causal relationship between claimant's initial diagnosis of heat stroke and his ultimate diagnosis of CVA and cervical and lumbar disc disease, and that the medical records did not validate the diagnosis of heat stroke. Asked whether it was likely a CVA could have been precipitated by the changing of the tire if a heat stroke did not occur, Dr. F replied that he was "not familiar with the syndrome of exertional stroke," that strokes may happen at bedrest or at any other time, and in his experience "are not directly related to specific external environmental factors." Dr. F's report further stated that a lumbar spine MRI (1/7/93) showed narrowing of the L2-3, L3-4 and L4-5 discs, a defect at L2-3 consistent with an extruded disc, and a bulging disc at L4-5; and that a cervical spine MRI showed an extradural defect consisting

of a herniated disc and spurs and C6-7 spondylosis. Dr. F stated that cervical and lumbar disc diseases are degenerative arthritis conditions, that herniated discs are caused by severe strain on the back, and that the "partial falls" that claimant said he experienced after his stroke "would not be expected to produce chronic degenerative arthritis." Dr. F's report did not state, however, whether such a fall may have aggravated the degenerative arthritis condition and have caused or aggravated any of the disc problems.

Dr. M's report of July 2, 1993, indicated she reviewed many of claimant's medical records but did not examine him. In her opinion, the clinical data in claimant's records did not validate the diagnosis of heat stroke. Asked whether claimant's stroke could have been precipitated by changing the tire if a heat stroke did not occur, Dr. M stated: "Ordinarily, no. Simply because the patient began to have stroke symptoms during that activity does not necessarily mean that changing a tire was the cause of the stroke. It is important to realize that [claimant] clearly had long-standing untreated hypertension which is a major risk factor for stroke." Dr. M further opined that claimant's falling would not be likely to produce the findings demonstrated on the cervical and lumbar MRIs in that "the changes described include spondylosis or bony overgrowth which are of a chronic nature." Dr. M also stated there was no history "of any substantial fall provided" and she considered such to be primarily conjecture on the physician's part. Dr. M concluded that claimant "clearly had a small [CVA] on (date of injury)." However, she did not feel claimant's medical records indicated he had a heat stroke nor did she feel his changing the tire caused the stroke. Further, she saw no causal relationship between claimant's episode on (date of injury) and his subsequent complaints of back and leg pain with evidence of cervical and lumbar disc disease.

Dr. HO's report of November 23, 1993, contained the details of Dr. H's examination of claimant. Dr. HO's impression was that claimant had a CVA "which may well have been hemorrhagic and/or embolic," that it occurred while claimant was on the job, and that he found no evidence in the data provided that claimant had a "heat stroke." Dr. HO concluded that "the problem suffered by the patient occurred while on the job but does not, to me at this time, appear causally related to it."

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility to be given the evidence. It is for the hearing officer as the fact finder to sort through and resolve the conflicts and inconsistencies in the evidence including expert medical evidence such as is present in this case. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Though to be certain the medical evidence is in conflict, we are satisfied there is sufficient evidence to support the challenged findings. In Texas Workers' Compensation Commission Appeal No. 92076, decided April 3, 1992, the Appeals Panel stated that "a review of the Texas case law reveals that stroke can indeed amount to a compensable injury for workers' compensation benefits." That decision cited authority for the proposition that benefits are recoverable if the employee sustains a hemorrhage or rupture as a result of exertion or a strain on the job, notwithstanding that the employee has predisposing factors

which contributed to the incapacity or death. As noted, the question whether the hemorrhage which led to the incapacity was precipitated by a strain or exertion by the work being performed is a fact question for the trier of fact. *See* Mountain States Mutual Casualty Company v. Redd, 397 S.W.2d 321 (Tex. Civ. App.-Amarillo 1965, writ ref'd n.r.e.). In Texas Workers' Compensation Commission Appeal No. 93476, decided August 12, 1993, the hearing officer determined that the claimant had sustained a compensable stroke and the Appeals Panel affirmed. The employee in that case, whose exertion was unloading bags of feed under hot working conditions for several hours, also had a prior history of untreated hypertension which was stipulated to have been a contributing factor. *Compare* Texas Workers' Compensation Commission Appeal No. 93470, decided July 26, 1993, where the Appeals Panel affirmed the hearing officer's decision that the claimant did not sustain a compensable stroke. In that case, the employee testified to doing heavy work in a very hot environment and to having suffered from heat exhaustion in the past. The Appeals Panel observed in that case that not all stroke cases necessarily required that causation be proven by expert medical testimony.

As for the findings that claimant fell and that his fall aggravated his pre-existing back condition, while the medical evidence connecting claimant's back problems to the event of (date of injury), is more tenuous, the hearing officer could credit claimant's testimony that upon feeling the pain in his head after changing the truck tire he fell against the tire and could conclude he aggravated his prior back condition. We cannot say that the challenged findings are so against the great weight and preponderance of the evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge