

## APPEAL NO. 94225

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 26, 1994, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer)., presiding as hearing officer. The sole disputed issue presented for resolution was: "Did the deceased die as a result of a compensable heart attack sustained on (date of injury)?" The hearing officer determined that the deceased's death did not result from a compensable heart attack.

Appellants, beneficiary claimants of the deceased, claimants herein, contend that the deceased died as the result of "a cardiac arrest and not a heart attack." Respondent, carrier herein, responds that a cardiac arrest is "within the broader non-medical definition of heart attack" and requests that we affirm the decision.

### DECISION

The decision and order of the hearing officer is affirmed.

The facts are not in dispute. The deceased was a 48-year-old man who was approximately 5' 10½" tall and weighed 202 pounds. On (date of injury), deceased's first day on the job, the deceased was operating a bulldozer or "grader" at a (city) landfill. That day was very hot and muggy with a heat index (combined temperature and relative humidity) of 102°. At approximately 5:20 p.m. on (date of injury), after working 10½ hours of a 14-hour shift, the deceased's supervisor saw the deceased's dozer operating erratically and deceased slumped over the dozer controls. Emergency Medical Services was called and the deceased was taken to a local hospital where he died at 6:24 p.m. without regaining consciousness.

Claimants testified that the deceased had no known heart problems and had passed a pre-employment physical for another employer about three months previously. An autopsy was conducted and the medical examiner concluded that the deceased had:

Arteriosclerotic cardiovascular disease with:

- a. Focal 80% stenosis of the left main coronary artery with focally calcified atherosclerotic plaque.
- b. Focal 80% stenosis of the left anterior descending coronary artery with focally calcified atherosclerotic plaque.
- c. 40% focal stenosis of the right coronary artery with atherosclerotic plaque.

### CONCLUSIONS:

It is my opinion that [deceased], a 48-year-old white male, died as the result of arteriosclerotic cardiovascular disease.

Claimants introduced the oral deposition of (Dr. M), the medical examiner, which also included a report of (Dr. T), a cardiology consultant, and (Dr. N), apparently a medical expert who reviewed the medical reports on behalf of the carrier. In response to a question whether the deceased may have died of "ventricular fibrillation," Dr. M stated: "The cause of death is the arteriosclerotic cardiovascular disease. The fibrillation is a mechanism of death. . . ." Dr. M further stated regarding the "heat and humidity factors" that "I don't believe you can rule them out entirely." Dr. M further stated the heat and lack of air flow "could have contributed [to the deceased's death], but I couldn't be 100 percent certain."

Dr. T's report states, in part:

Although the coronary artery obstructions that were found at the autopsy were not caused by the job, one cannot say that the environment that he was working in with heat and humidity factors involved, did not in any way contribute to his demise, presumably on the basis of a fatal arrhythmia, such as ventricular fibrillation.

Dr. N's report concludes:

In my opinion, this case is a classical example of sudden cardiac death, almost certainly caused by a cardiac dysrhythmia (ineffective heart beat), most likely ventricular fibrillation. The underlying cause was conclusively established by autopsy as very high grade arteriosclerotic occlusions in the left coronary artery system. There was no thrombus or other pathologic feature that might be postulated as directly related to the job or activity of [deceased] at the time of or just prior to his demise. His death was in all medical probability due entirely to the natural history and progression of the underlying coronary artery disease and there is no medical evidence or reason to attribute his death to his work.

The hearing officer recited claimants' position to be that the deceased died from cardiac arrhythmia caused by ischemia (inadequate blood flow) due to operating heavy equipment for over 10 hours in high humidity and temperature on his first work day.

The hearing officer determined that there was no evidence that the deceased's work was a substantial contributing factor of his heart attack but rather that deceased's heart attack was a natural progression of a pre-existing heart condition or disease and, therefore, the death was not due to a compensable heart attack. Claimants' contention is that the hearing officer erred in referring to the deceased's death as being caused by a heart attack because he "had a cardiac arrest and not a heart attack." (Emphasis in the original.)

Carrier notes that in Texas Workers' Compensation Commission Appeal No. 91031, decided October 24, 1991, the medical reports used terms "sudden cardiac arrhythmia," "sudden cardiac death syndrome," and "arteriosclerotic cardiovascular disease" (which was the cause of death in the instant case) and the Appeals Panel held that those conditions

were "cardiac in nature and within the broader non-medical definition of `heart attack.'" That case cited as authority for that proposition Northbrook National Insurance Company v. Goodwin, 676 S.W.2d 451 (Tex. App.-Houston 1984, writ ref'd n.r.e.); Hartford Accident and Indemnity Co. v. Thurmond, 527 S.W.2d 180 (Tex. Civ. App.-Corpus Christi 1975, writ ref'd n.r.e.); and generally 1 MONTFORD, BARBER, DUNCAN, A GUIDE TO TEXAS WORKERS' COMP REFORM § 4A 15, page 4-77, Butterworth Legal Publishers, Austin, Texas 1991; 1B LARSON'S WORKMEN'S COMPENSATION LAW § 38.31, Matthew Bender, New York 1991. The hearing officer did not err in finding that the deceased's heart attack was a natural progression of a pre-existing heart condition or disease being the arteriosclerotic cardiovascular disease. The term "cardiac arrest" would also be included under the definition of heart attack.

Although the above is dispositive of claimants' appeal as presented, we do not want claimants to have the perception that our review of the case was based on semantics. Section 408.008 (formerly Art. 8308-4.15) of the 1989 Act provides that a heart attack is a compensable injury:

. . .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; . . . [Emphasis added.]

The key requirement is that the preponderance of the medical evidence must indicate that the employee's work, rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack. Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993. In Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991, the Appeals Panel said the medical evidence must be weighed or compared as to the effect of the work and the natural progression of a pre-existing heart condition. Further, the work must be more than merely a contributing factor, but rather must meet the statutorily imposed higher standard of a substantial contributing factor. See Appeal No. 93121, *supra*. In the instant case, Dr. M, the medical examiner, at best, stated that the heat, humidity, and lack of air flow "could have contributed to the cardiac arrest," but he couldn't be 100% certain. The hearing officer evidently believed that this opinion was at best a speculation or guess and did not overcome Dr. M's statement that the natural progression of the coronary stenosis (narrowing of the arteries) caused the heart attack. Dr. T, in his October 7, 1993, report, stated (in a double negative) that one cannot say that the environment that the deceased was working in with heat and humidity factors involved, did not in any way contribute to deceased's death. Dr. T, in essence, says the heat, etc., may in some way have contributed to deceased's death. Again, this falls short of the standard that the work conditions be a substantial contributing factor. Dr. N specifically stated that the deceased's death was "due entirely to the natural . . . progression of the underlying artery disease and there is no medical evidence or reason to attribute his death to his work." Consequently,

in considering all the medical evidence, we find that the hearing officer's determinations that there is no medical evidence that the deceased's work was a substantial contributing factor of his heart attack and that the heart attack was a natural progression of a pre-existing heart condition or disease (being the 80% stenosis of the left main and anterior descending coronary arteries) is supported by sufficient evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not so find and consequently the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge