

APPEAL NO. 94286

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 6, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He allowed appellant (claimant) to provide an additional statement after the hearing and kept the record open until (date of injury), after which he determined that decedent's heart attack was not compensable. Claimant asserts that the preponderance of the evidence shows that death was compensable because events in the workplace accelerated the heart attack. Carrier replies that the hearing officer should be affirmed.

DECISION

We affirm.

Decedent had worked many years for (employer); at the time of injury, decedent was the mill superintendent, according to (Mr. A), office manager for employer. On October 20, 1992, after normal working hours, a late arriving load of grain caused decedent to open the doors on the "dump pit" by pulling a chain. The amount of effort to open a door was said to be not greater than 40 pounds of pull. Decedent had opened the doors in the past. There was no testimony that on October 20, 1992, the doors were stuck or malfunctioned in any way. Mr. A observed decedent grab his left arm when about halfway through the motion of opening a door; he looked to be in pain. The unloading of this grain took about an hour, at which time decedent and others left for the day. Decedent said nothing of chest pain before leaving. That night claimant testified that decedent fainted while at home and was taken to an emergency room for care. He was treated as if he pulled a muscle in his arm, given a pain pill, and sent home with instruction to see his doctor the next day. Decedent saw (Dr. A) the next day and was told he could go back to work. He had a sling for his arm and was supposed to do light work when he returned on October 22nd.

Claimant characterized decedent as "quieter" in the week following (date). On October 27th while at work, decedent was repairing a door on an electrical breaker box when there was an electrical arc. Claimant said the decedent related that he saw white smoke and orange light. His eyebrows were singed, his eyes were red, and an arm was burned. Claimant testified that after this event, decedent was very fatigued every night. On November 5th decedent went to Dr. A. When Dr. A was told that decedent was tired, Dr. A increased decedent's blood pressure medicine. The next day, November 6th, claimant took decedent to (city) for medical care. (Dr. O) recorded that decedent had experienced chest pain since November 4th. He noted a history of hypertension and cigarette smoking when he admitted decedent. When discharged on November 11, 1992, decedent was stated to have atherosclerotic heart disease with unstable angina and "documented single vessel plus branch coronary artery disease . . ." Claimant did not return to work.

On November 19, 1992, claimant took decedent to (hospital) because of chest pain; she testified that he had chest pain for two days and had taken pills for such pain that he had first been given over a year before. Decedent was resuscitated after having arrested

along the way. Cardiac enzymes showed damage to the heart. EKG showed a possible infarct. Decedent's white blood count raised a question of whether his gallbladder was inflamed and surgery was performed to remove it on December 2, 1992. On (date), decedent died.

An autopsy was performed. (Dr. P) found that death occurred as a result of myocardial infarction "due to coronary artery (thrombosis) which caused abrupt cessation of blood to a large portion of the heart muscle." She found the extent of the infarction out of proportion to the enzymes found. Later, she commented again that myocardial damage was more extensive than was reflected clinically. She could find no evidence of infection in relation to the gallbladder. She closed by stating, "[e]valuation of all materials and history give no indication that [decedent's] death was related to anything but the natural progression of his atherosclerotic disease." Dr. P later added an affidavit that said the arm pain decedent had on (date) was "anginal pain due to ischemic heart disease."

(Dr. S) appeared as an expert witness for claimant. Carrier had objected to this witness because his name had never been provided. The hearing officer found good cause, citing the need for medical evidence in this case, and allowed the testimony. With a decision in favor of the carrier, there was no appeal of this ruling. Dr. S is a medical doctor with 40 years of practice. In answering a question as to factors that can contribute to a heart attack, Dr. S first mentioned trauma. He explained this by recounting the Texas City disaster in which the concussion itself from the explosion of a ship carrying fertilizer caused physical heart damage to many people nearby. He also listed smoking, lack of aerobic exercise, obesity, and high blood pressure. He said that sudden excitement does not cause a heart attack. He said that exertion could contribute to a heart attack depending on how diseased the vessels were at the time. Dr. S saw the reference to decedent's electrical shock of October 27th, but "didn't think it was significant." He added that if electricity were going to cause a heart attack, it would do so "right then." When asked about contributing factors, Dr. S said that the (date) exertion could contribute; he thinks decedent had angina pain on (date), but does not think he had a heart attack then. He does believe that decedent had heart trouble from (date). When questioned further, he said that he was not saying that the (date) exertion was a substantial contributing factor. He said that claimant's going to work in the days thereafter was a contributing factor too, but that the main or worst factor was decedent's artery problem. Carrier did not choose to cross-examine.

In the period while the record was left open, claimant submitted the affidavit of (Dr. M), D.O., and carrier replied to that with the affidavit of (Dr. G), M.D. Dr. M states that the initial injury of (date) was a substantial contributing factor "and it is more probable that this happened at this time because of the injury and his work than any other factor." Dr. G counters by saying there is no medical evidence that the events of (date) or October 27th caused the heart attack of November 19th. He believes that the natural progression of the disease was the substantial contributing factor. He does not believe that the two incidents at work were factors.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He may assign weight to medical evidence just as he does to other evidence. See Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.). In Texas Workers' Compensation Commission Appeal No. 92121, dated May 6, 1992, the applicable section of the 1989 Act, now codified as Section 408.008(2), was said to require a comparison, based on a preponderance of medical evidence, between the natural progression of the disease and the work. See also Texas Workers' Compensation Commission Appeal No. 93926, dated December 1, 1993. Texas Workers' Compensation Commission Appeal No. 93119, dated March 29, 1993, said that medical opinions should be considered by the fact finder in light of their thoroughness, credibility, consistency, and accuracy with regard to the basis or foundation for the opinions expressed.

The finding of fact that decedent's work activities were not a substantial "contributory" factor to his heart attack was sufficiently supported by the testimony of Dr. S and the statement of Dr. G. The hearing officer was not compelled to give more weight to the statement of Dr. M on this point than was given to Dr. S and Dr. G.

The finding of fact that claimant's arm pain while lifting the door at work on (date) did not cause the heart attack was sufficiently supported by the statements of Dr. P and Dr. G and the testimony of Dr. S.

The finding of fact that the electrical shock of October 27th at work did not cause the heart attack is sufficiently supported by the opinions of Dr. P, Dr. S, and Dr. G.

The conclusion of law that the preponderance of medical evidence indicates the natural progression of pre-existent heart disease was the substantial contributing factor to the heart attack is sufficiently supported by the findings of fact and the evidence provided by Dr. P, Dr. S, and Dr. G.

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Alan C. Ernst  
Appeals Judge