

APPEAL NO. 94343

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held in (city), Texas, on February 18, 1994, with (hearing officer) presiding as hearing officer. The sole issue determined at the CCH was whether decedent, whose wife is the claimant and appellant herein, sustained a compensable heart attack on (date of injury). The hearing officer determined that the decedent did not sustain a compensable heart attack, in that it was not shown, through a preponderance of the medical evidence, that his work, rather than the natural progression of a pre-existing heart condition or disease, was a substantial contributing factor of the heart attack. Claimant argues on appeal that the hearing officer "completely missed the point" of the treating doctor's statement relating to the cause of decedent's heart attack and requests that we reverse the decision of the hearing officer and render a decision in her favor. The carrier responds that the hearing officer's decision is supported by sufficient evidence and asks that we affirm.

DECISION

Finding no error on the part of the hearing officer and sufficient evidence to support her determinations, we affirm her decision and order.

On (date of injury), decedent was employed as a welder for (employer) and was working in an underground vault owned by the (employer), installing sump pumps and pipe. (Mr. A), another welder, and (Mr. C), the general foreman, were also working with decedent in the vault on (date of injury). Both Mr. A and Mr. C testified at the hearing that they knew that the decedent had a history of heart problems and that he was restricted from heavy lifting; thus, they made accommodations to ensure that decedent would not have to do any heavy lifting. Decedent, Mr. A, and Mr. C apparently arrived at the job site at approximately 8:30 a.m. Decedent welded pipe in two locations in the morning and Mr. A cleaned those welds. At about noon, decedent, Mr. A, and Mr. C took a lunch break. After lunch, they returned to the vault to continue installing the pumps and welding the pipe. Mr. C and decedent apparently stayed in one section of the vault, while Mr. A went into another section of the vault to prepare additional welds. At some point thereafter, Mr. C came into the section of the vault where Mr. A was working to talk with him briefly. When Mr. C returned to the section of the vault where decedent was working, he found the decedent lying flat on his back on the ground. Mr. C called for Mr. A, who felt for a pulse in decedent's neck. Mr. A did not feel any pulse and decedent was apparently not breathing. Neither Mr. C nor Mr. A knew how to perform CPR; however, Mr. A stayed with decedent and apparently shook him in an attempt to get him to breathe, while Mr. C went for help. A few minutes later, the Fire Department Emergency Rescue Service arrived and began CPR. Decedent was thereafter removed from the vault and transported to the hospital. Attempts to revive decedent proved unsuccessful and he was pronounced dead at the hospital.

An autopsy following decedent's death made the following findings: "severe coronary atherosclerosis; myocardial hypertrophy; myocardial fibrosis; status post op, triple coronary bypass; and, thrombosis of two coronary bypasses." The medical examiner

concluded "[i]t is the opinion of this examiner that this man died as a result of severe coronary atherosclerosis. He had undergone a triple coronary bypass in the past. Two of the coronary bypasses were occluded by thrombi."

Decedent's treating doctor, (Dr. A), in a letter dated December 9, 1993, noted that decedent was his patient since 1978 when he was diagnosed with atherosclerosis heart disease. Dr. A indicated that decedent had had coronary artery bypass surgery in 1978. He also noted that decedent had had cardiac catheterization on January 14, 1991, with findings of "Sever (sic) Triple Vessel Coronary Artery Disease with two of three coronary artery bypasses occluded." Dr. A concluded the letter as follows "[o]ne may wonder on the degree of stress imposed on the patient when he needed to be working underground, having to walk up and down the ladder and even probably carrying some heavy objects. Furthermore, if ventilation was not adequate that could have added to the stress load of his job."

Claimant was married to decedent for five years prior to his death. She testified at the hearing that she knew that decedent had a history of heart disease and surgery. She further testified that decedent had a heart attack on January 7, 1991. She testified that following treatment decedent returned to work and was monitored by his doctor. Finally, she testified that the only time decedent complained of chest pain was prior to his heart attack in January 1991.

Section 408.008 provides:

A heart attack is a compensable injury under this subtitle only if:

(1)the attack can be identified as:

(A)occurring at a definite time and place; and

(B)caused by a specific event occurring in the course and scope of the employee's employment;

(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; and

(3)the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

All of the above elements must be found in order for a heart attack to be compensable. Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992. In order to prevail, the claimant has the burden to prove by a preponderance of the medical

evidence that the employee's work was a substantial contributing factor of the attack when balanced against the natural progression of a pre-existing heart condition or disease. Texas Workers' Compensation Commission Appeal No. 931003, decided December 16, 1993. We have noted on several occasions that this provision of the statute requires a comparison or weighing between the conditions leading to the heart attack. It is insufficient if the medical evidence indicates that the work was a factor related to the attack. "The preponderance of the medical evidence must indicate that the work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor." See Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993 and cases cited therein.

On appeal, claimant asserts that she has satisfied her burden and that the hearing officer has completely missed the point of Dr. A's letter and opinion of December 9, 1993. Claimant argues that Dr. A indicates in his letter that there was no change in decedent's physical condition at the time of the autopsy and the time he was returned to work by Dr. A following the heart catheterization in January 1991. Thus, according to the claimant, she has satisfied her burden of proving that decedent's work was a substantial contributing cause of the heart attack by showing that decedent was under tremendous stress, specifically because he was working in an underground vault with a live electrical transformer, he had not received any orientation or training about working underground prior to starting the job, there was no ventilation equipment in the vault, there was no emergency medical equipment in the vault and no one was trained in CPR, and there was no easy means of egress from the vault in the event of an emergency. Claimant appears to assert that because decedent's physical condition had not worsened from the time that Dr. A returned him to work in 1991, the stress, noted by Dr. A and related to decedent's working conditions, had to be a significant contributing factor of his heart attack.

Claimant's argument misses the mark. At best, Dr. A's statement can be viewed as an acknowledgement that stress relating to decedent's working conditions may have been a contributing factor to decedent's heart attack. This falls short of the required showing that decedent's work as opposed to the natural progression of his pre-existing heart condition or disease was a substantial contributing factor to the heart attack. The hearing officer found that there was no medical evidence that decedent's work was a substantial contributing factor to the heart attack and, as such, decedent did not sustain a compensable heart attack on (date of injury). Given the state of the medical evidence, we cannot conclude that her decision and order are so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Therefore, we find no basis for disturbing them on appeal.

Finding that the hearing officer's decision and order are supported by sufficient evidence, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge