APPEAL NUMBER 94773
FILED JULY 29, 1994

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 1994, with the record closing on April 29, 1994, in (City), Texas. (hearing officer) presided as hearing officer. The issues at the hearing were whether the deceased's death was a result of the compensable injury she sustained on or about _____, and who are the proper legal beneficiaries of the deceased. The hearing officer determined that the death was not the result of her compensable injury and that the appellants in this case are beneficiaries. The beneficiaries appeal only the determination of the hearing officer regarding the cause of death arguing that his decision on this issue is not supported by the evidence and is clearly erroneous. The respondent (carrier) replies that the beneficiaries failed to meet their burden of proving the cause of death and that the decision of the hearing officer is supported by sufficient evidence.

DECISION

Affirmed.

This case involves the unfortunate and untimely death of a 35 year old woman. It was not disputed that the deceased was diagnosed with compensable right ulnar neuropathy. A right ulnar nerve partial transposition was performed by Dr. N on the afternoon of March 13, 1993. This operation was originally considered simple surgery with the deceased scheduled to be released from the hospital the same day. However, as the operation progressed, a medial epicondylectomy which involved some painful bone shaving was also performed by Dr. N as medically required. As a result, the operation was not concluded until shortly before 6:00 p.m. Dr. N decided to keep the decedent in the hospital overnight because of the pain associated with the epicondylectomy. A patient controlled analgesic (PCA) pump was inserted in the decedent's arm at approximately 7:30 p.m. This pump enabled the decedent to self administer prescribed amounts of morphine on demand to control her pain. The amount of morphine was limited to 30 milligrams over a four hour period, with no more than two milligrams in any six minute period. At approximately 9:45 p.m., the deceased was transferred from the recovery room to her hospital room. The deceased's husband remained with her at the hospital until approximately 10:45 p.m. Nursing records show that the morphine was administered at about 6:45 p.m., on March 13th and again at about 12:15 the next morning. Though the PCA pump was described as having the capability of recording the amount of morphine dispensed, apparently no records exist with this information. A nurse's log entry records that at 5:45 a.m. on March 14th, the deceased was heard "snoring." The actual entry on the log was described as a "late entry" and not made until 11:30 a.m. At 7:20 a.m., the deceased was found laying supine in bed with bluish color skin over the face and upper extremities. The decedent had no pulse, no respiration or blood pressure. Emergency resuscitation measures were instituted, but she was pronounced dead at 7:50 a.m.

It is well established that workers' compensation benefits are payable "for a condition brought about by reasonable or necessary medical treatment for a work-related injury." Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1993. Neither party disputes that the medical care rendered the deceased was "reasonable or necessary." The only dispute is whether the post-surgery medical treatment was the cause of the decedent's death. The beneficiaries' position is that the morphine prescribed for the deceased when administered caused depressed respiratory function at a time when her respiration was already reduced because of sleep which in turn caused the deceased to become hypoxic which in turn resulted in a sudden, fatal cardiac arrhythmia. The carrier, to the contrary, contends that deceased was a victim of "sudden death syndrome" which is simply a way of saying the death is unexplained.

Three experts provided the primary evidence on the cause of death, the most extensive of which was presented by Dr. D, a board certified pathologist who performed an autopsy. The report of his findings as well as a lengthy deposition was introduced into evidence. In his final autopsy report of June 14, 1993, Dr. D found "[n]o anatomic cause of death" which he explained to mean that he discovered no "mechanism of death." Pertinent diagnoses included obesity, marked hepatic steatosis with hepatomegaly, and focal, mild, fatty infiltration of the myocardium." He wrote that:

death is not a totally unexpected result in a severely obese patient as 'the incidence of sudden death unexplained by autopsy may be up to 40 times higher in severely obese subjects as compared with the general population'. . . The most likely cause of death in these cases is due to cardiac arrhythmias. . . One possible mechanism of arrhythmias is fatty infiltration of the myocardium. This patient did have focal fatty infiltration of the myocardium, albeit mild. The patient's liver showed marked steatosis and this, too, is related to obesity...(and)...is associated with sudden death via fat embolization. No fat embolization, however, is identified. Other causes of steatosis associated with death including a heavy alcohol intake, Reye's syndrome, chronic Q fever, have been excluded. The bronchopneumonia present is mild and noncontributory to the patient's death. [Citations omitted.]

On December 24, 1993, after his deposition was taken by the claimants' attorney, Dr. D wrote an addendum to his final autopsy report in which he stated:

Upon subsequent literature review it has become apparent that the most likely cause of this patient's death was directly related to her marked hepatic steatosis (fatty change of the liver).

In support of this conclusion, he noted studies done on the connection between hepatic steatosis and sudden death in pregnant women, alcohol consumption and animal studies, although the deceased did not fit any of these categories.

In his deposition, Dr. D recalled that in his experience of some 100 autopsies, he never had a case of adult "sudden death syndrome." He admitted his knowledge of analgesics and anesthesia was "almost nil." He concluded that the deceased was obese from the amount of fat he found on opening the abdomen and admitted he did not weigh the deceased. Tests of the blood showed morphine present within the normal range, but he observed that there was no way to determine how much morphine she had in her blood or how fast it got there. He was, however, satisfied that morphine is stable in the blood once a person dies. He admitted that when he made his initial final report he did not know about the potential fatal consequences of a "fatty liver." After he was notified of the deposition, he consulted with colleagues and the literature and reached his revised conclusion, but again conceded that there was no evidence of fat embolization from the liver. He also was satisfied that there was no evidence of hypoxia, or oxygen desaturation, in the brain and he believed the evidence of low oxygen levels in blood tests were meaningless because he did not know when the blood was drawn and, in his opinion, oxygen levels in the blood change rapidly. He conceded that it was "possible" that the morphine, in combination with sleep and the claimant's weight "could have caused the arrhythmia." However, he never considered morphine as a possible cause of death until the subject was brought up at the deposition. Nonetheless, it was his opinion, that morphine did not cause the death and there was no anatomic evidence of hypoxia. Based on this evidence of Dr. D, it was the carrier's view that the death was unexplained, that is, was a case of sudden death syndrome and not the result of any medical treatment the deceased received in connection with her compensable injury.

The claimants introduced and primarily relied on an affidavit of Dr. B, "a physician and anesthesiologist," which in its near entirety stated:

> I am familiar with the applicable medical standards of reasonable care regarding the administration of morphine. It is my opinion that the amount of morphine ordered for (deceased) to be administered by PCA for the postoperative treatment of pain on May 13, 1993 was excessive and below the standard of care that should be used by a physician under the same or similar circumstances. It is also my opinion, to a reasonable degree of medical certainty, that (deceased's) death was caused by the effects of excessive morphine analgesia administered by PCA to (decedent) postoperatively.

He based this opinion on his experience and training and a review of the deceased's medical records.

In response to Dr. B's affidavit, the carrier submitted a letter from Dr. J, a urologist, who concluded, based on his review of the deceased's medical records that "[t]o a reasonable degree of medical probability, it is my opinion that (deceased's) cause of death cannot be determined by the information in the medical records and other materials reviewed."

The hearing officer made the following relevant findings of fact and conclusions of law:

FINDINGS OF FACT:

Finding 7. Deceased's immediate cause of death was sudden death syndrome, resumed (sic, should be "presumed") arrhythmia, cardiac and liver fatty infiltration and obesity.

Finding 8. Deceased's medical records, death certificate, and autopsy reports did not establish a causal connection between Deceased's employment with Employer and Deceased's death following surgery for Deceased's right elbow injury sustained while at work with Employer on _____.

CONCLUSIONS OF LAW:

Conclusion 2: Deceased's death is not the result of the compensable injury sustained on _____, in the course and scope of employment.

The claimants in this case have the burden to establish by a preponderance of the evidence the reasonable medical probability that the deceased's death was caused by the treatment of her compensable injury. Parker v. Employers Mutual Liability Insurance Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969.) Whether the subsequent death in this case was caused by the medical treatment of the original compensable injury was a question of fact. Texas Workers' Compensation Commission Appeal No. 931053, decided December 28, 1993. The hearing officer is the fact finder and in the discharge of this responsibility is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. It is for the hearing officer to resolve conflicts and inconsistencies in the medical evidence and judge the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ.) To this end, the hearing officer as fact finder may believe all, part or none of the testimony or evidence of any expert witness.

The claimant's argue that sudden death syndrome and presumed arrhythmia "was not" the cause of death because Dr. D could find no anatomic cause of death and conclude

that it is "evident from the evidence" that the deceased's arrhythmia was induced by the morphine. Similarly, they conclude that other candidate causes of death offered by Dr. D (such as liver fatty infiltration and obesity) were not in fact the cause of death in this case. They then argue that the morphine was the cause of death and that the hearing officer "totally disregarded" Dr. B's affidavit supporting this theory of causation, something in their view Dr. D did not even consider. They also draw the conclusion from the medical records that the deceased ingested "at least 60 mg. of post-operative morphine prior to her death," as evidence that the morphine caused the death, and asserted that Dr. J is "worthy of no credibility" because he lacks the necessary qualifications to render an opinion in this matter. The carrier responds that the evidence does not establish that the deceased received "excessive morphine;" that the claimants' case amounts to no more than speculation about the cause of death; and that they have not met their burden of proof. The resolution of this hotly contested case comes down to the evaluation of inconsistencies in the medical evidence and the drawing of inferences and conclusions from that evidence. Under the 1989 Act it is precisely the duty of the hearing officer to resolve such conflicts and determine what facts have been established. Texas Workers' Compensation Commission Appeal No. 931053, decided December 28, 1993. The Appeals Panel 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 Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied.) When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986.)

In this case, the hearing officer could well have concluded from Dr. D's reports and deposition, that the exact cause of death was not established and is in fact unexplainable. He also could have concluded that the amount of morphine received by the deceased was not, contrary to Dr. B's affidavit, the cause of her death. The hearing officer could have considered Dr. B's evidence to be without sufficient supporting rationale on which ultimate determinations of causation could be made and that therefore the beneficiaries did not meet their burden of proof. The evidence in this case presented genuine questions for the hearing officer to resolve, made even more difficult by the tragic nature of the case. And while the record here could support contrary inferences, we cannot say that the determination of the hearing officer is so against the great weight and preponderance of the evidence, as to require reversal.

Finding no legal error and sufficient evidence to support the decision and order of the hearing officer, we affirm.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge