

APPEAL NO. 990402

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 28, 1999. On the single issue before him, the hearing officer determined that the deceased did not suffer a compensable fatal heart attack on _____, and thus, the appellants (beneficiaries) are not entitled to any workers' compensation benefits. The beneficiaries are the deceased's asserted common-law wife and their son. The beneficiaries appeal several findings of fact and a conclusion of law urging that the evidence proved a compensable heart attack. The beneficiaries also complained that a requested witness did not testify and proffered two prior statements of two witnesses, one of whom testified at the CCH, that were not put in evidence, urging that they would have affected the outcome. An untimely response, as indicated by signed certified receipts and an assertion that the mailed appeal was received on a Sunday, was submitted by the respondent (carrier) and it will not be considered in the decision of the case.

DECISION

Affirmed.

Initially, we note that the requested witness mentioned in the appeal was present at the time of the CCH but was apparently quite ill. Although the beneficiaries indicated at the CCH their desire for the testimony of the witness, they agreed to the witness being released under the circumstance, did not lodge any objection on the record to the excusal, did not request any type of action or relief and offered no written statement or other evidence from the excused witness. Any error, if any error occurred, has not been preserved on appeal. Texas Workers' Compensation Commission Appeal No. 951587, decided October 26, 1995; Texas Workers' Compensation Commission Appeal No. 952036, decided January 12, 1996 (Unpublished). Regarding the statements here first proffered on appeal, we have held that absent some justification such as newly discovered evidence that could not have been reasonably discovered before, the Appeals Panel cannot consider such evidence. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. Further, there is nothing to indicate to us that the statement included in the appeal would be other than cumulative or have any potential impact on the outcome of the case. Texas Workers' Compensation Commission Appeal No. 941150, decided October 7, 1994.

The deceased unfortunately sustained a fatal heart attack while seated in his supervisor's office in the afternoon of _____. A coworker testified that she saw the deceased that morning and he seemed upset and out of the ordinary about some things (unspecific) in the office and that he was going to talk to the manager that evening. The coworker was not aware of what work the deceased did when he left the office that morning although there was an indication that he may have lifted some equipment for dispensing soda. There was evidence that the claimant previously had been unhappy about a commission on a particular contract and that there appeared to be a degree of competition

between a couple of the salespeople. The supervisor, Mr. D, testified that he saw the deceased the morning of _____, that he looked fine and did not indicate any concerns with any problems at work, and that he saw the deceased that afternoon hurrying into the warehouse and asked him to come to his office to discuss a contract matter. Mr. D stated they had a normal conversation and moments after they got to his office a secretary came in to ask a question and the deceased fell out of his chair having the cardiovascular event.

An autopsy report states, that "[i]t is our opinion that the decedent, (name), came to his death as a result of coronary artery sclerosis with hypoplastic right coronary artery and myocardial bridging, while at work." A subsequent report of a cardiologist, Dr. D, generally concurred with the opinion and states, "discussion in this case about work stress do not imply a cause and effect in the death of (deceased). Instead, other underlying factors unrelated to work stress are etiologic in heart disease." A report from a Dr. P addressed to the beneficiaries dated February 20, 1998, opines that there is no question that the deceased had severe heart disease and a heart muscle markedly increased above normal weight, but that it is known that mental stress, strain, anguish and anxiety cause increased demand on the heart and in his opinion the death was "precipitated by the events that took place at his place of employment." A Dr. K opined that the deceased died of a "heart attack" triggered by the stressful conditions at work.

The hearing officer found that the preponderance of the medical evidence indicates that the deceased's work was not a substantial contributing factor to the deceased's _____, cardiovascular event but rather it was the result of the progression of a preexisting heart condition. Clearly, there was medical evidence to support the determination of the hearing officer. That there was other medical evidence tending to be in conflict therewith only presented the hearing officer with an issue of fact to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Under Section 408.008, a heart attack is a compensable injury only if (1) the heart attack can be identified as occurring at a definite time and place and 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. While there was evidence that the deceased was unhappy or upset, perhaps over a period of time about some office practices or working conditions, and he may have experienced a degree of stress, this would not serve as a basis to render a heart attack compensable under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 950349, decided April 18, 1995; Texas Workers' Compensation Commission Appeal No. 961555, decided September 19, 1996. Here, the evidence did not show a sudden stimulus and the opinions of the doctors who spoke of a "triggering" or "precipitating" job-related mechanism tended only toward emotional or mental stress factors unconnected to a sudden stimulus. The Appeals Panel early on stated that the medical evidence must be weighed or compared in determining whether the work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack. Texas Workers'

Compensation Commission Appeal No. 91009, decided September 4, 1991. That comparison was made and the hearing officer found that the deceased's heart attack was the result of the progressing of the preexisting heart condition.

We have reviewed the evidence of record and conclude there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer, and that the hearing officer has correctly applied the law to the facts of this case. Accordingly, we affirm the decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge