

APPEAL NO. 990491

Following a contested case hearing (CCH) held on January 20, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the sole disputed issue by determining that deceased employee (decedent) did not sustain a compensable heart attack on \_\_\_\_\_, while in the course and scope of his employment with the employer. Appellant (claimant beneficiary) has appealed, contending that the preponderance of the medical evidence regarding the heart attack conclusively proved that the decedent's work rather than the natural progression of any preexisting heart condition was a substantial contributing factor in the fatal heart attack. The claimant beneficiary also asserts error in the hearing officer's recitation of the evidence. The respondent (carrier) contends in response that the evidence is sufficient to support the hearing officer's determination.

DECISION

Affirmed.

The parties stipulated that the date of the decedent's death is (date of death) (all dates are in 1997 unless otherwise stated), and that the claimant beneficiary is the widow of the decedent.

The claimant beneficiary testified that on the Sunday before \_\_\_\_\_, she rode with the decedent when he drove an 18-wheel flat bed truck to (state 1) to deliver a load of rolls of plastic; that they next drove to (state 2) where a load of pipe was picked up; that on \_\_\_\_\_, the decedent pulled off the highway and into a truck stop at, (city 1), where they rested for about three hours because the decedent was tired; that the decedent then went around the trailer checking the status of the load and tightening the chains restraining the load of pipe with the use of a "cheater" bar; and that, as he pulled down on the "cheater" bar with all his strength to tighten a chain, he went down to his knees and told her to call for help. She stated that an ambulance was called and the decedent was taken to a hospital (hospital 1) in (city 2) where he was treated by Dr. NH for a heart attack; that on (2 days after date of injury), the decedent was transferred by air to (hospital 2) in (city 3) where his treatment was continued by Dr. RH; and that he expired on (date of death). According to the death certificate, signed by Dr. RH, the cause of death was myocardial infarction (MI) with an approximate interval between onset and death of two weeks. Claimant beneficiary further testified that although the decedent had been a long-time smoker and had a cold for two or three days before \_\_\_\_\_, and some trouble breathing, he had not, to her knowledge, had any prior heart trouble nor seen a doctor for heart trouble. She introduced a February 6, 1996, driver's physical exam report which reflected the answer "No" to a history of various diseases including cardiovascular disease. She also acknowledged that one of the decedent's brothers had died of a heart attack but was not certain, when asked, whether three other brothers had undergone coronary artery bypass surgery.

A hospital 1 record, Dr. NH's \_\_\_\_\_ report of history and physical, stated that, according to the claimant beneficiary, the decedent, then 58 years old, had been having some problems with cough and congestion for several weeks; that on the morning of \_\_\_\_\_, he developed more congestion and acute shortness of breath; that he was audibly wheezing and short of breath when brought to the emergency room (ER); and that he is a heavy smoker but has apparently not had any serious lung or cardiac problems. Dr. NH further stated that while being evaluated in the ER, the decedent became more short of breath, had acidosis, was intubated, and was moved to intensive care for treatment and ventilator support. The hospital 1 discharge summary of (2 days after date of injury) stated that the decedent was felt to most likely have had a subendocardial MI and that on the morning of (2 days after date of injury), he had episodes of ventricular tachycardia and was airlifted to hospital 2.

A hospital 2 record, Dr. RH's (2 days after date of injury) history and physical report, stated that, the decedent became acutely short of breath at a truck stop and an ambulance was called; that he had been short of breath for about a month with coughing and dyspnea but denied a history of lung disease, heart disease or chest pain even though he had been a heavy smoker; that chest x-rays showed marked cardiomegaly with congestive heart failure and some left ventricular enlargement; and that he smokes one pack of cigarettes per day, quit using alcohol in 1992, has hypertension but no cholesterol problems, and does not perform regular exercise. Dr. RH's impression stated that while the sequence of events and the etiology was not clear, he suspected that the decedent had an MI with congestion failure but that it was possible he had a primary pulmonary event with secondary arrhythmia or that he had a primary arrhythmia which was independent of the reasons for his admission and intubation but that seemed less likely. Dr. RH's impression also included Torsade De Pointes, hypertension, glaucoma, hypokalemia, hypoglycemia, smoker, and very strong history of coronary artery disease.

Dr. RH's September 1st report of a cardiac catheterization stated that the left circumflex artery was totally occluded with faint filling by collaterals; that the left main artery had a 90% stenosis; that the proximal LAD artery had a 95 to 99% stenosis; and that the right coronary artery was totally occluded proximally with some filling of the distal vessel by left to right collaterals.

The claimant beneficiary introduced an April 17, 1998, letter from Dr. G stating that with regard to the decedent's workers' compensation injury of (date of injury 2), he confirms that the decedent was a healthy man with no acute heart problems related to that accident, that the decedent underwent surgery and returned to work, and that in his medical opinion, there was no relationship between the recent heart attack he suffered and the (date of injury 2), injury. There was some indication that the decedent had undergone spinal surgery following a previous injury.

The claimant beneficiary introduced a May 13, 1998, letter from Dr. NH addressed "To Whom It May Concern," which recites the history of claimant's illness on \_\_\_\_\_ and his course in both hospitals until his death. This history included the statement that

"[a]pparently he had been doing fairly well but while doing some fairly strenuous activity cinching down a load on his truck developed onset of some shortness of breath and chest pain which was quite severe." This letter further states that there has been a question regarding whether this was an illness which should be covered under workers' compensation and that it is Dr. NH's opinion that the decedent "did indeed have severe coronary artery disease and peripheral vascular disease but according to the history obtained from his wife his acute problems developed while performing some strenuous activity in regard to securing a load on his truck."

The carrier introduced a May 13, 1998, record of Dr. NH which stated that the decedent's wife and daughter-in-law presented that day to discuss the decedent's case; that the decedent suffered an MI and died in the alleged injury period; that they had no insurance and it was a catastrophic illness with over \$200,000.00 in medical expenses; that the decedent had severe coronary artery disease; and that they are attempting to get this covered under Texas workers' compensation laws. Dr. NH further stated that the history he obtained, including the shortness of breath, apparently came from ER personnel, and that he wrote a letter explaining the claimant beneficiary's chronology of events and asked that it be considered regarding any workers' compensation decision.

Claimant introduced a May 27, 1998, letter from Dr. RH addressed "To Whom It May Concern," which stated among other things that, while passing through city 1, the decedent had stopped his truck to tighten down a load of steel pipes, that this process involved a great deal of exertion in order to tighten the cable holding these pipes onto the trailer bed, and that in the midst of this exertion the decedent collapsed and fell to his knees and complained that he could not breathe right. Dr. RH stated his opinion that while the decedent "had several predisposing factors, the exertion involved at the time he became sick was a substantial contributing factor to his heart attack and subsequent death."

Section 408.008, Compensability of Heart Attacks, provides as follows:

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.

The claimant beneficiary had the burden to prove by a preponderance of the evidence that the decedent's heart attack was compensable pursuant to the provisions of Section 408.008.

The hearing officer found that for several weeks prior to \_\_\_\_\_, the decedent, who was a heavy smoker, suffered from coughing, congestion and shortness of breath; that on \_\_\_\_\_, while hauling a load for the employer in state 2 with the claimant beneficiary accompanying him, he became acutely short of breath and for that reason stopped in city 1 at a truck stop where an ambulance was called and he was taken to hospital 1; that he was diagnosed there with chronic obstructive pulmonary disease with respiratory failure, MI, and cardiac arrest, and his condition improved but by (2 days after date of injury) it deteriorated and he was airlifted to hospital 2; that his heart attack occurred at a definite time (in the morning of \_\_\_\_\_) and place (while traveling in city 1 pursuant to his employment); that the preponderance of the medical evidence failed to establish that his heart attack on \_\_\_\_\_ was caused by a specific work-related event that occurred while the decedent was engaged in an activity that originated in and had to do with the employer and that was performed by him in furtherance of the business or affairs of the employer; and that the preponderance of the medical evidence regarding the decedent's heart attack failed to establish that his work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack.

In her appeal, the claimant beneficiary recounts her version of the evidence adduced below, as well as the April and May 1998 letters from Dr. G, Dr. NH, and Dr. RH, and contends, in effect, that her evidence met her burden of proof. She also takes issue with a reference "by the benefit review officer " to the period of time before \_\_\_\_\_ that the decedent had coughing, congestion, and shortness of breath, asserting it was a few days and of no consequence. The claimant beneficiary further asserts that, contrary to the hearing officer's decision and order, she did not "stipulate" to the facts found in Findings of Fact Nos. 2, 3, and 6 which are included in the findings set forth above. We find no merit in these assertions of error. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer pointedly noted that the credibility of the evidence became pivotal in this case and that the historical evidence of the decedent's having exerted himself on \_\_\_\_\_ while tightening the load of pipes appeared for the first time in May 1998 and, given that timing, is not compelling.

As for the stipulations, the parties stipulated only to the identity of the employer and carrier, the date of death, venue, and that the claimant beneficiary is the decedent's widow. The parties did not stipulate to any of the appealed factual findings.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge