APPEAL NO. 991835

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 27, 1999, a contested case hearing was held. With regard to the issues before her, the hearing officer determined that respondent (claimant) sustained a compensable heart attack on _____, and that claimant had disability from April 17, 1998, and continuing.

Appellant (carrier) appeals, contending that the preponderance of the medical evidence did not show that the work, rather than the natural progression of claimant's heart disease, was a substantial contributing factor of claimant's heart attack as required by Section 408.008 and that the hearing officer's reliance on a theory that since claimant did not have dead heart tissue he did not have naturally progressing heart disease was incorrect. Carrier contends that a proper weighing of the evidence would have established that claimant's work was only a "triggering mechanism" and that the hearing officer has chosen to disregard precedent on the interpretation of Section 408.008. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds, urging affirmance and explaining his theory relying heavily on excerpts and definitions from Mosby's Medical Encyclopedia. Claimant urges affirmance.

DECISION

Reversed and a new decision rendered.

The background facts are not in dispute. Claimant was employed as an equipment operator for a construction company and on the day in question was furthering the employer's business driving grade stakes into compacted crushed limestone with a 12-pound sledge hammer. It is undisputed that this was very strenuous labor on a hot day (temperature was in the 90's). Claimant testified that he began sweating more than normal, even for a hot day, and felt a crushing pain in his chest. Claimant finished his job, drove the water truck back to the employer's premises, went home, took two aspirins and laid down. When claimant's wife came home, she took claimant to the hospital where it was determined he had suffered an inferior non-Q myocardial infarction (MI). Claimant's treating cardiologist was Dr. G. Claimant was hospitalized for about four days and in the discharge summary Dr. G noted:

> Cardiac catheterization revealed subtotal stenosis of the distal right posterolateral vessel that 90% or greater, 25% of the right the lesion was noted of the right coronary artery. There was a 70-75% apical LAD stenosis noted. There was inferobasilar hypokinesia of a mild degree with 1+ MR.

The record contains extensive medical reports and excerpts from Mosby's Medical Encyclopedia. Also in evidence is a deposition by written questions of Dr. G. In response to the question of whether the work activity rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor to the heart

attack, Dr. G replied "Physical activity initiated the MI in the setting of underlying coronary disease." In a report dated August 13, 1998, Dr. G stated:

> In my medical opinion, the patient did suffer a heart attack which was incited by employment related activities. Without question, coronary artery disease is not caused by employment per say [sic], however, the initiation of the infarction began directly as a result of performing job related activities.

In cross-questions to Dr. G, Dr. G stated that on April 17, 1998, coronary artery disease (CAD) was present and in a response as to whether two-vessel CAD (which is what claimant had) is a substantial contributing factor to a non-Q MI Dr. G answered "Yes. The most common cause of MI is CAD." In answer to another question, Dr. G said "CAD develops over time, generally months to years however in some individuals it can occur in a few weeks."

Claimant's records were sent to Dr. S for a record review. In a report dated June 2, 1999, Dr. S stated that the "two vessel [CAD] is a substantial contributing factor to MI because those vessels represent 2/3 of the heart blood supply."

Other medical records, and claimant's testimony establish that claimant, at a physical exam before his MI, was 5'10" tall, weighed 242 pounds and had a cholesterol level slightly elevated at 218. Claimant said he had had the physical about two months prior to his MI and that he had not had any prior heart symptoms. The medical records establish that he has some family history of heart disease.

Both parties and the hearing officer quote Section 408.008 which states:

> Sec. 408.008. COMPENSABILITY OF HEART ATTACKS. 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 heart attack; and
>
> (3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

It is not seriously disputed that claimant's MI occurred at a definite time and place or was caused by a specific event in the course and scope of employment and that the attack was

not triggered solely by emotional or mental stress. At issue is whether the medical evidence regarding the attack indicates that the claimant's work rather than the natural progression of a preexisting heart condition was a substantially contributing factor of the attack. Claimant and the hearing officer rely heavily on Mosby's Medical Encyclopedia, selected excerpts of which are in evidence. While we may agree that information in a medical encyclopedia may constitute medical evidence in some cases, in this instance, the information from the excerpts is interpreted to mean that occluded arteries cause the death of heart muscle tissue which is indicative of natural progressive heart disease and that arguably, since claimant did not have dead heart muscle tissue, he did not have naturally progressing heart disease. This appears to be contrary to Dr. G's statement that claimant did have CAD. We decline to hold on that issue only noting that claimant's and the hearing officer's disputed lay interpretation from a medical encyclopedia does not constitute medical evidence.

The parties set out the elements of Section 408.008 and Dr. G is directly asked whether the work, rather than the natural progression of claimant's preexisting CAD was a substantial contributing factor of the MI and Dr. G would only say the work was a physical activity which initiated the MI "in the setting of underlying coronary disease." The claimant had the burden to prove that the heart attack was compensable. Texas Workers' Compensation Commission Appeal No. 931189, decided February 4, 1994. Further, Section 408.008(2) requires that a preponderance of the medical evidence (not lay speculation about what excerpts from a medical encyclopedia mean) indicates that it was claimant's work, rather than claimant's preexisting CAD, that was a substantial contributing factor of the MI. In Texas Workers' Compensation Commission Appeal No. 972600, decided January 28, 1998, where the doctor appeared to say that both the work and the progressive heart disease contributed to the heart attack, the Appeals Panel held that "we cannot agree that this provides a preponderance of medical evidence that the work *rather than* the natural progression of the heart disease caused the heart attack." In this case, Dr. G agrees that claimant had preexisting CAD, that CAD is the major cause of MI and that Dr. G was only willing to say that the work "initiated the MI in the setting of underlying coronary disease." As in Appeal No. 972600, we cannot agree that that statement provides the preponderance of the medical evidence that the work rather than the natural progression of the CAD caused the heart attack. We hold that the hearing officer's finding that the medical evidence showed that claimant's work, rather than the natural progression of his CAD, was a substantial contributing factor of the heart attack to be so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, we reverse the hearing officer's decision that claimant sustained a compensable heart attack and render a new decision that claimant did not sustain a compensable heart attack. In that we are reversing the hearing officer's decision that claimant had a compensable heart attack, claimant cannot, by definition in Section 401.011(16) have disability and we reverse the hearing officer's decision on that issue also.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

DISSENTING OPINION:

I respectfully dissent. I believe that the majority has simply substituted its judgment for that of the hearing officer, who, as trier of fact, is responsible for evaluating all the medical evidence and determining whether it was the work, rather than the *natural progression* of the claimant's heart disease, which has been a substantial contributing factor of the attack. It is not required (and indeed would obviate the necessity of having a hearing officer) for the doctor to perform the weighing exercise, in words parroting the statute, to conclude that the work substantially contributed to the heart attack.

However, I believe that the treating doctor in this case said just that. It is harder to think of anything more substantial in causation than that which initiates or triggers an occurrence. *See* discussion of substantial "contributing" factor and case law in Texas Workers' Compensation Commission Appeal No. 91046, decided December 2, 1991. The doctor is saying that but for the work the claimant was doing, he would not have had a heart attack at that time. Whatever natural progression existed to his heart disease, it was altered. This makes the heart attack compensable. The majority must be mindful that the legislature could have pronounced all heart attacks not compensable and did not do so. If, as has been said, healthy hearts do not "attack," then the fact that there are compensable heart attacks remaining in the 1989 Act tells me that persons with unhealthy hearts could nevertheless receive workers' compensation benefits when activities at work substantially altered what would have otherwise occurred. This decision is plainly sustainable under our standard of review and in line with the statute, and I am disinclined to charge the hearing officer with error for not seeing the facts a different way.

Susan M. Kelley
Appeals Judge