APPEAL NO. 991916

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 August 4, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on or about _____, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury and thus did not have disability since there was no compensable injury. The claimant has signed an appeal, attaching a lengthy statement and argument from his father regarding the evidence and the decision and urging that the evidence established that the claimant suffered a compensable injury and continues to have disability. Additional statements have been filed by both the claimant and his father expanding on their position that the hearing officer has erred and that his decision should be reversed. Respondent (carrier) responds that the attack is basically on factual findings of the hearing officer which are supported by sufficient evidence, urges that there is no legal error, and asks that the decision be affirmed.

DECISION

Affirmed.

The claimant testified that on (two days prior to date of injury), he was working with cement on a construction job carrying tools and equipment up a ladder to a second floor where cement was being poured and operating a vibrating machine which weighed about 35 pounds. On that day, he states, he was hot and thirsty, that he felt sick and noticed that his fingers and toes seemed to tingle. He states he rested, then continued working and that he also worked the next day. He testified that on _____, he showed up for work and started working (work hours began at about 7:00 a.m.), that the temperature was not hot at the time, and that he subsequently felt faint and his legs gave way and he fell on some rebar. The claimant stated he had heavy clothing on, was hot and thirsty, that he felt nauseous and had a headache. He apparently rested and several hours later was taken to an emergency room (ER) by the employer.

Records from the ER indicate that the claimant was seen at 12:55 p.m., that his blood pressure was 188/111, and that his temperature was 100 degrees. A CT scan of his head indicated an impression of "minimal density in the region of the left thalamus could represent old or new lacunary infarct or artifact" and "otherwise, negative unenhanced head CT." The principal diagnosis was transient ischemic attack (TIA) and accelerated hypertension. As noted in the ER records, against medical advice, the claimant went home the same day. He did not return to work and stated that several days later he had difficulty lifting his left hand and leg. He stated he was told at the ER he would be all right in a couple of days and that when he did not get better he called the employer, who suggested he go to Dr. B. He first went to Dr. B on June 2, 1999. In a letter of July 8, 1999, Dr. B indicated that the claimant "clearly has experienced a severe right sided motor stroke resulting in severe impairment of the left upper and lower extremity" and that in his expert opinion, "this gentleman has suffered a heat related cerebral vascular accident." Dr. B

further stated:

> It is furthermore my opinion that [claimant] while working on [two days prior to date of injury] became overheated and heat stressed. This resulted in a hypertensive response to that stress which resulted in a secondary stroke. This is a classical so called heat stroke. There is in my mind no question that this is directly related to his work.

Claimant stated that he went to therapy and that it has helped him but that he has difficulty lifting anything with his left side. On cross-examination, the claimant acknowledged that he had been a smoker prior to _____; that both his parents have suffered heart attacks; that he rarely went to a doctor prior to the incident in issue; and that he is on high blood pressure medication which he had not been on before _____.

The employer testified about the claimant's job, which was categorized as construction labor, and related that there were heat sources other than the weather on the job including generators, machinery, and heat generated by wet concrete. He thought the claimant worked more than shown on the wage statement which reflected that the claimant only worked nine hours during the period of April 18 to 24, 1999.

The carrier introduced two medical reports concerning causation from its doctors. Dr. S states in a letter of July 1, 1999, that the laboratory and physical findings on claimant were inconsistent with a diagnosis of heat stroke and that the claimant complained of unilateral sensory and motor abnormalities which would not be consistent with a heat stroke, dehydration, or hyperthermia condition. Dr. S's opinion was that the claimant's fainting spell was due to a TIA secondary to atherosclerotic cerebrovascular disease, that there was no industrial component to his fainting spell, and that he was not suffering from either dehydration or heat stroke. Dr. P conducted a review of the medical records and noted that the claimant was a smoker, had a family history of cardiovascular disease, and that he reported numbness and weakness involving the left arm and left leg. Dr. P points out that the data showing new or possible old lacunar infarct in the left thalamus would manifest itself on the right side and that the laboratory studies showed normal sodium and only slightly low potassium readings. Dr. P goes on to state in his report that:

> After complete review of these records, it would be my opinion that this gentleman's problems are not work related, I would point out that his symptoms began two days earlier. There is no such thing as a chronic heat stroke that I am aware of. If this gentleman had had heat exhaustion of some type, in general, he would have improved with some rest, cool-down and fluid and electrolyte replacement. Two days' worth of symptoms, however, very well could have been related to an elevation of blood pressure. This actually seems much more likely.

It is of note that this gentleman is a smoker, he has elevated blood sugars, there is some suggestion that he may have some problems with alcohol and he does have a history of hypertension with a positive family history of cardiovascular disease. All of these are risk factors for developing stroke, especially in a 48 year old, overweight gentleman.

Dr. P's final conclusion was that the claimant's left-sided weakness is not related to any specific work-compensable event and that the bulk of the medical records clearly support that the claimant's problems are related to hypertension, which is a preexisting, nonwork-connected condition.

Based on the evidence before him, the hearing officer determined that a compensable injury had not been shown, that the TIA that claimant suffered on _____, was an ordinary disease of life and that there was no causal relationship between the attack and the employment. The hearing officer found that the claimant did not suffer a heat stroke on _____. Clearly, the evidence supports an injury suffered by the claimant during the time frame of on or about _____, although this was found to be a TIA and not to be heat stroke. The injury sustained and the causal relationship of that injurious condition and the employment was the critical matter that had to be resolved, and that hinged primarily on the medical evidence before the hearing officer. The claimant had the burden of proving by a preponderance of the evidence that he sustained an injury and that it was causally related to the work. Texas Workers' Compensation Commission Appeal No. 92231, decided July 13, 1992; Texas Workers' Compensation Commission Appeal No. 93470, decided July 26, 1993. While there was conflict in the medical evidence concerning the injury sustained by the claimant and whether the claimant's hypertension and TIA on _____, was work related or was an ordinary disease of life, the resolution of such conflicts was for the hearing officer to determine. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We have stated that a hearing officer, as the fact finder, has considerable discretion in weighing varying expert medical evidence and does not have to accept the opinion of any given expert. Texas Workers' Compensation Commission Appeal No. 950235, decided April 4, 1995. In determining that the claimant's TIA sustained on _____, was not causally related to the employment but rather was an ordinary disease of life unrelated to the employment, the hearing officer could give preponderant weight to the reports and opinions of Dr. S and Dr. P. These opinions, albeit in contrast to the opinion of Dr. B, form a sufficient evidentiary basis in support of the key findings and conclusions of the hearing

officer regarding the compensability of the injury or condition. Conversely, the findings and conclusions are not so against the great weight of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Since a compensable injury was not found, there is no disability under the 1989 Act. Section 401.011(16). Accordingly, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge