

APPEAL NO. 000314

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 20, 2000. The issue at the CCH was whether (decedent) sustained a compensable fatal heart attack on _____. The hearing officer determined that the decedent's work, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor in his fatal heart attack. The appellant (carrier) appeals, contending that the great weight of the credible evidence established that the decedent did not suffer a compensable heart attack under Section 408.008. The decedent's wife (claimant beneficiary) responds, urging affirmance of the hearing officer's decision.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that decedent's heart attack was compensable. It asserts that decedent's preexisting heart disease, and not his work, was the cause of the heart attack and that no medical evidence shows that there was a specific event that caused a heart attack at a definite time and place. Carrier contends that: (1) decedent was working in the same conditions he was used to; (2) no medical evidence showed that decedent's work or the high temperatures were factors in the heart attack; (3) decedent's doctors merely indicated that both decedent's work and his heart disease contributed to the heart attack; and (4) the hearing officer did not properly weigh the evidence that showed that decedent had heart disease and an enlarged heart.

Section 408.008 provides that:

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 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

A preponderance of the medical evidence must indicate 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. Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993. The medical evidence must be weighed or compared with the effect of the work and the natural progression of a preexisting heart condition. Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991. Further, the work must be more than merely a contributing factor, but rather must meet the statutorily imposed higher standard of a substantial contributing factor. See Appeal No. 93121, *supra*.

There was evidence that decedent was hired to work maintaining pumps and that his work included turning on and off water for customers and other duties that did not involve physical labor. Claimant beneficiary testified that decedent worked with his hands and that he worked outside, but that he was not hired to do heavy labor. She said that during the three weeks before his death on _____, he worked two weeks digging holes installing sewer pumps, which was not the work he was hired to do. The last week he worked he was doing the work he was hired to do. Claimant's supervisor said that, on the date of death, a Saturday, the decedent was filling sandbags that weighed 80 to 100 pounds and taking them from an improved road to a levy. He said decedent and his helper rode a lawnmower to clear a path where they were to take the sandbags they had filled and that decedent fell off the lawnmower when he had the heart attack. He testified that they carried some sandbags and that they also used the mower to haul some of them. He was not sure what exact duty decedent was doing when he had the heart attack. This job involved work that was a special project, and was not one of decedent's normal duties. Decedent's supervisor, who was friends with decedent outside of work, said that decedent had been working 10-hour days and that there had been meetings about the recent extreme heat conditions that summer. He testified that decedent's helper had exhibited signs of heat exhaustion on one day prior to decedent's death, and that decedent had helped him take care of the situation.

The claimant beneficiary said claimant did not smoke, that he was overweight, and that he took medication for high blood pressure. She testified that claimant was not used to doing labor this heavy and that he had been exhausted from the work. She said that the week before he died, he had been “pasty white” one day and he called to tell his supervisor that the work was “too much for him” and that he wanted to get back to the work he was hired to do.

In a November 1, 1999, letter, Dr. K, the doctor who had performed hernia-related surgery on claimant in 1997 and 1998, stated:

As per the work history provided by his wife [decedent] was working long hours in very hot conditions prior to his death. His death was, as I understand, immediate during his work and it is presumed that he had cardiovascular collapse due to hypertensive cardiovascular disease. His autopsy report surprisingly showed a significant amount of coronary atherosclerosis. It is surprising to me because he really did not manifest any symptoms It is for this reason I think that in all reasonable medical probability the type of work that he was performing was responsible for his untimely demise although the contributing factors of his coronary artery disease cannot be ignored.

In this case, the autopsy report stated that the cause of death was hypertensive cardiovascular disease. However, there was also evidence from Dr. K that “the type of work that [decedent] was performing was responsible for his untimely demise.” Dr. K did acknowledge that heart disease was a factor in the death. From this evidence, the hearing officer could conclude that the work rather than any preexisting heart disease was a substantial contributing factor of the heart attack.

Carrier asserts that Dr. K did not state what work decedent was doing. However, claimant beneficiary stated that she told Dr. K about the work and the temperature conditions. Carrier contends that the medical evidence shows that decedent had heart disease and this is why he had a heart attack. However, there was medical evidence regarding whether decedent’s work was a substantial contributing factor in the heart attack. The hearing officer was entitled to credit the evidence from Dr. K and weigh the credibility of the evidence in the record, including the autopsy report, which Dr. K indicated he reviewed. We will not substitute our judgment for hers because the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge