

APPEAL NO. 000343

On January 26, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issues by deciding that the death of (decendent) on _____, was not a result of the compensable injury sustained on _____, and that decendent's grandson, (claimant), is a legal beneficiary of decendent. The hearing officer ordered that respondent (carrier) is not liable for death benefits. Appellant, (_____) who is decendent's daughter and guardian of claimant, appeals the hearing officer's decision that decendent's death was not a result of her compensable injury. Carrier requests affirmance. There is no appeal of the hearing officer's decision that claimant is a legal beneficiary of decendent.

DECISION

Affirmed.

According to a medical report, on _____, decendent was pushing a cart weighing about 1,500 pounds when the cart began to tilt over, and, when she tried to hold it in position, she had pain in her right shoulder and low back and the cart struck her knees, causing bilateral knee pain. It is undisputed that decendent sustained compensable injuries to her right shoulder, low back, and both knees on _____. Medical reports reflect that decendent was treated conservatively for her injuries. Decendent's daughter, who lived with decendent, testified that, because of decendent's work-related injuries of _____, decendent's health deteriorated; she became inactive and immobile; she gained 150 pounds due to her inactivity; and she had circulation problems and developed sleep apnea. Decendent's daughter said that at the time of decendent's injury, decendent weighed about 200 pounds and that, subsequently, decendent weighed about 350 pounds.

Decendent was initially treated by Dr. B, who referred her to Dr. A. Dr. A wrote in September 1993 that decendent should continue on a weight reduction program, continue with conservative treatment, and in the future, when her pain becomes intolerable, she will require bilateral total knee replacements. Another report from Dr. A states that decendent was unable to ambulate without significant pain; that she has osteoarthritis of the knees; and that, since she is unable to ambulate due to knee pain, it is virtually impossible for her to lose weight. Dr. H, the designated doctor, saw decendent on June 27, 1995, and reported that she was at maximum medical improvement with a 23% impairment rating. He noted that decendent had declined knee surgery recommended by Dr. A. Dr. S examined decendent at carrier's request in July 1997 and he reported that decendent's activities are severely restricted due to chronic bronchopulmonary disease and congestive heart failure, for which she takes medication, and that an evaluation of decendent and review of records indicated that the mechanism of injury and the history do not support her cardiovascular and pulmonary disorders as being causally related to injuries to her knees and low back. Dr. B wrote in August 1997 that, prior to her injury, claimant had no problem with sleep

apnea and no problems with her heart or lungs and that she developed these problems after her injury. According to a death certificate, decedent died on _____, of a cerebral vascular accident, and significant conditions contributing to her death were listed as sleep apnea and obesity.

Decedent's daughter said that Dr. C was decedent's last treating doctor. Dr. C wrote in August 1998 that decedent had been a patient of his since September 1995; that she was severely obese; that she complained of pain in her low back, right shoulder, and both knees; that on August 4, 1997, decedent developed a cardiorespiratory arrest followed by successful resuscitation and was admitted to a hospital but never regained consciousness; that decedent died in a nursing home on _____; and that Dr. C's impression was that probably decedent had a cerebrovascular accident which may have resulted from her obesity as well as possibly sleep apnea and that the obesity could have resulted from her inactivity. Dr. C wrote in July 1999 that, at the time decedent was working in 1993, she weighed 280 pounds and that when he saw her in September 1995 she weighed 309 pounds. Dr. C also wrote "[i]t is well-established that inactivity as well as obesity are high risk factors for cerebrovascular accident. I believe that because after the injury the patient became inactive and gained weight, and subsequently developed severe obstructive apnea, all conditions led to her cerebrovascular accident in _____ 1997." Medical information relating to strokes was in evidence.

Section 408.181 provides that an insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. The hearing officer found that decedent died as the result of a cerebral vascular accident (stroke) on _____, and that the stroke suffered by decedent on _____, did not naturally result from the _____, compensable injury. The hearing officer concluded that the decedent's death on _____, was not a result of the compensable injury sustained on _____. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge