

## APPEAL NO. 000778

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 March 14, 2000. The hearing officer determined that deceased's death on \_\_\_\_\_ (all dates are 1999), was not a result of the \_\_\_\_\_ compensable neck injury. The appellant (claimant) appeals, asserting that the cause of death was an "occult injury from MVA [motor vehicle accident] \_\_\_\_\_," and that the hearing officer failed to give sufficient weight to the severe injuries the deceased had sustained, relying instead on the live testimony of "a doctor who had never examined the [deceased].". Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds, citing testimony from the transcript, and urging affirmance.

### DECISION

Affirmed.

The deceased had been a truck driver who had been involved in a one-vehicle MVA on \_\_\_\_\_. Carrier has accepted liability for a compensable neck injury (the deceased also apparently had a right clavicle fracture) and the deceased had cervical surgery on June 10th. Claimant contends that the \_\_\_\_\_ MVA, and/or the June 10th cervical surgery, or complications from the surgery, or a combination thereof caused claimant's death on \_\_\_\_\_. Extensive medical records are in evidence and Dr. H, a vascular surgeon, testified for carrier. Carrier asserted that there was no causal connection between the compensable injury and the deceased's subsequent death six weeks later as explained by Dr. H.

The hearing officer provides a detailed summary of the medical records and sequence of events, as does Dr. E in a "re-dictation" of his "death summary" dictated on August 6th. The deceased was involved in a one-vehicle MVA on \_\_\_\_\_, when he was ejected from his truck and sustained what was diagnosed as a cervical strain and right clavicle (collar bone) fracture. Deceased was taken to a local hospital, treated and released the following day. Deceased returned home and saw his family doctor, Dr. M, on May 5th. Deceased's complaints at that visit included neck pain and abdominal swelling. Deceased was admitted to the hospital and various CT scans and testing were essentially negative with an abdominal CT scan showing a "non-specific ileus." Dr. H, at the CCH, defined "non-specific ileus" as an unexplained reason "why the bowels are distended." Deceased was released from the hospital on May 9th and continued to be treated by Dr. M, complaining of neck and abdominal pain. Dr. M referred deceased to Dr. E, a neurosurgeon. Additional cervical studies were done which indicated a C4-5 disc herniation and "a fractured and perched facet at C6-C7." Deceased was placed in "axial cervical traction" and cervical surgery, in the form of "anterior cervical decompression at C4-C5, C5-C6, and C6-C7," was performed on June 14th. Dr. E noted that:

Immediately postoperatively, the patient was noted to be doing well. He was moving all extremities and following commands in the recovery room. However, later that night, after surgery, the patient was noted to have diminished movement involving the right lower extremity. The patient had remained intubated for airway protection, secondary to swelling from the extensive cervical surgery. He was seen by the physician on call, who appropriately questioned whether or not this was a neurologic change related to surgery, as it did not appear to be truly of a cervical nature.

A vascular surgery consultation was obtained from Dr. L, who suspected "an aortic thrombosis" or possibly an "aortic dissection." Dr. L noted:

The etiology of this is very unclear; however, due to the patient's deteriorating vascular examination, he requires emergent operation.

Deceased had additional emergency vascular surgery and additional follow-up studies. The deceased initially appeared somewhat improved but then his condition began to deteriorate. CT scans were interpreted differently. Dr. E, in his summary, commented:

As such, he went for emergent MRI scan. This failed to show evidence of a cervical cord involvement. As such, then he went for an emergent head CT scan. Emergent head CT was performed and unfortunately showed a massive left middle cerebral artery distribution early infarction with edema and left-to-right shift. Concern was whether or not this was actual thrombosis of the artery versus hypotensive ischemic injury. Nevertheless, this was felt to be a devastating injury to the patient with dismal prognosis for any meaningful recovery and high risk of resulting cerebral death. As such, the patient was treated with standard therapies for massive hemispheric infarct with supportive care.

The hearing officer noted that deceased died on \_\_\_\_\_ "as a result of a massive cerebral infarction." Dr. E signed the death certificate listing the following as causes of death:

IMMEDIATE CAUSE	a <u>Massive Cerebral Infarction</u>
UNDERLYING CAUSE	b <u>Hypotension</u>
	c <u>Aortic Dissection</u>
	d <u>Occult Injury from MVA</u>

Dr. H defined occult injury at the CCH as "an injury [that] . . . was not detected."

Dr. H testified in some detail about the various problems the deceased had and how they interrelated, giving reasons for his answers. Dr. H was very firm in his testimony that the dissection of the abdominal aorta "did not come from the neck surgery and was unrelated to the accident" and "that the aortic dissection . . . and the brain infarction that happened cannot be medically related to the injury that he had on \_\_\_\_\_. " The hearing officer, in her discussion, concluded:

Claimant's evidence was insufficient to prove by a preponderance of the evidence that within reasonable medical probability the cause of death, cerebral infarction was directly caused by the compensable injury of \_\_\_\_\_. There was no attempt to link the aortic dissection to the ultimate cause of death (cerebral infarction) by the introduction of any expert testimony. The only thing offered was a death certificate and that was insufficient. There was a total absence of any medical explanation of the mechanisms or process involved or other basis for an assertion by Claimant that within reasonable medical probability the accident of \_\_\_\_\_ or resulting neck surgery caused or aggravated his previously existing hypertension. The evidence does not prove by a preponderance that [deceased] would not have died of the cerebral infarction absent the [MVA] or neck surgery. There was no analysis or explanation offered to describe the relationship between the [MVA], the aortic dissection and final cerebral infarction. The relationship between the events must be based on more than speculation or surmise. There was insufficient evidence that the medical care for the neck injury caused the cerebral infarction.

Claimant, in the appeal, after summarizing the sequence of events, argues that Dr. H had not treated the deceased and that the hearing officer "seemed to rely on the live testimony of a doctor who had never examined the patient." We note that the hearing officer, as a finder of fact and the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility to be given to the evidence (Section 410.165(a)) may give greater weight to some evidence than other evidence. Further, we note at the start of the CCH, when the hearing officer asked some questions regarding causation, claimant's attorney replied "[t]here's no explanation in a medical context . . . that totally connects everything between the femoral thrombus and the cerebral stroke . . ." but that Dr. H "perhaps can give some of these---." Dr. H did apparently answer the questions to the hearing officer's satisfaction.

In short, there is evidence to support the hearing officer's decision and we will reverse a factual determination of a hearing officer only if that determination is 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp  
Appeals Judge

CONCUR:

Alan C. Ernst  
Appeals Judge

Elaine M. Chaney  
Appeals Judge