

APPEAL NO. 000864

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 4, 2000. The hearing officer determined that the work-related injury of decedent, from the motor vehicle accident (MVA) on _____, was a substantial contributing factor of his death. The appellant (carrier) appeals this determination on sufficiency grounds. The respondent (claimant/beneficiary) replies that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

Affirmed.

The decedent had diabetes; had sustained a massive heart attack in 1987; had a two coronary artery bypass performed in 1987; and was under the care of a cardiologist, Dr. A. The parties stipulated that on _____, the decedent was in the course and scope of his employment when he was involved in an MVA. The decedent's vehicle was hit on the driver's side. Following the MVA, the decedent communicated with the police, requested an ambulance, and made a telephone call from his cellular phone to the employer. While en route to the hospital, the decedent "coded" and, despite the efforts of emergency personnel, died. The certificate of death states the approximate interval between onset and death as 67 minutes. The medical records of the emergency personnel and the emergency room were not in evidence. The autopsy report concluded that the immediate cause of death was "chest injuries and atherosclerotic cardio-vascular disease, contributing." The decedent had fractures of the third, fifth, and sixth left lateral ribs with intercostal muscle hemorrhage.

Dr. A's records of June 23, 1999, indicate that a stress test showed minimal ischemic changes, that the decedent's cholesterol was elevated, and that he was on the maximum dose of Lipitor. Dr. A opines that the MVA directly caused the claimant's demise and that there was no acute myocardial infarction. Dr. A states:

The patient was seen shortly before his accident, and there was no evidence of congestive heart failure, and he had no chest pain. I feel strongly that he probably had an episode of cardiac arrhythmia, possibly ventricular fibrillation caused by stress of the accident and caused his demise.

When asked what induced the claimant's cardiac arrhythmia or ventricular fibrillation, Dr. A replied "[p]robably, the car accident was responsible for the sudden episode of arrhythmia which was lethal to him." Although Dr. A was asked whether the chest injuries, rather than the natural progression of preexisting heart condition or disease, were a substantial

contributing factor of decedent's death on two different occasions, the record does not reflect that he answered the question.

The carrier presented the testimony of Dr. P and a peer review report by Dr. E. Dr. E states that the severity of the preexisting coronary artery disease would have predisposed the decedent to sudden death at any time and that there is no evidence that the cause of death was work related. Dr. P testified that the autopsy report found the left coronary arteries fibrotic and 100% occluded; that although the bypass grafts were found to be open, this was not of great significance; that the stress test taken in June 1999 suggested extensive previous damage to the heart; and that it is not uncommon to find fractured ribs as result of an effort to revive a cardiac arrest patient. Dr. P testified that due to the severity of the decedent's heart condition, and because he was more susceptible to a stressful incident, a MVA could cause a heart rhythm disturbance and ultimately result in death. According to Dr. P, it is difficult to ascertain whether the stress from the MVA, rather than the preexisting heart condition, was a substantial contributing factor of the decedent's cardiac arrhythmia because he was not provided with records indicating how much trauma the decedent sustained or emergency personnel records indicating his heart rhythm.

Section 408.008 provides that a heart attack is a compensable injury only if it can be identified as occurring at a definite time and place, caused by a specific event occurring in the course and scope of employment, and if 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." Section 408.008(2). The determination of the compensability of a heart attack must be based on a comparing or weighing of the effect of the work against the natural progression of a preexisting heart condition. Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991. The claimant has the burden of proving the compensability of a heart attack. Texas Workers' Compensation Commission Appeal No. 91081, decided December 31, 1991. Proof of the specific event is normally established by lay testimony. Lay testimony, however, cannot establish that the work being done at the time of the heart attack was a substantial contributing factor when weighed or balanced against the natural progression of a preexisting heart condition. We have also observed that there can be more than one substantial contributing factor but, to be compensable, the work must be a greater factor than the natural progress of any underlying heart condition or disease. Texas Workers' Compensation Commission Appeal No. 93582, decided August 23, 1993.

The ultimate issue to be determined in this case is whether the decedent sustained a compensable heart attack resulting in death. The hearing officer concluded that the work-related injury from the MVA, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor of the decedent's death. The medical evidence does not causally connect any bodily injuries with the cardiac arrhythmia; however, the medical evidence does indicate that the stress of the MVA probably caused the sudden episode of arrhythmia. Based on the medical evidence, the hearing officer

could determine that the stress caused by the MVA was more a substantial factor than the natural progression of the underlying heart condition or disease. 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 find the evidence sufficient to support the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge