

APPEAL NO. 001266

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 May 10, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable heart attack on _____, and did not have disability. The claimant appeals, contending these determinations are against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a flour mill operator. He testified that on _____, he started his shift at 3:00 p.m. and he heard on the radio that the outside temperature was 107E. The mill operation was located in a six-floor building where only the control room was air-conditioned and the hallways and stairs had no ventilation. He said that the process was running poorly that day and he had to do much climbing from floor to floor to handle production problems. He estimated the inside temperature, outside the control room, to be at or above 115E. Toward the end of his shift, about 10:00 or 10:30 p.m., he said, he felt nauseated and went outside for fresh air. He began vomiting and an ambulance was called. At the hospital, Dr. V diagnosed an acute inferolateral myocardial infarction, which the claimant contends was a compensable injury. Dr. V also found that the claimant had coronary artery disease with diffuse distal disease in the right coronary artery with an area of total occlusion and he identified risk factors as hypercholesterolemia, tobacco abuse, and diabetes.

Section 408.008 provides:

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.

In determining whether the work is a substantial contributing factor to a heart attack, the medical evidence must be compared or weighed as to the effect of the work and the natural progression of a preexisting heart condition. However, the existence of risk factors, such as family history, gender, smoking, cholesterol, and hypertension, is not part of the equation of weighing the employee's work and preexisting heart condition or disease because, while such risk factors could contribute to preexisting heart condition or disease, their mere existence does not equate to a preexisting condition or disease. Texas Workers' Compensation Commission Appeal No. 91046, decided December 2, 1991; Texas Workers' Compensation Commission Appeal No. 93402, decided June 17, 1993. While the claimant's testimony is probative as to the events leading up to the heart attack, medical evidence must establish whether the work was a substantial contributing factor when balanced against the natural progression of a preexisting heart condition or disease. Texas Workers' Compensation Commission Appeal No. 93582, decided August 23, 1993. Whether a claimant has sustained a compensable heart attack is generally a question of fact for the hearing officer to decide.

In his initial medical report, Dr. V noted "evidence of probably older infarct." In a later history, Dr. V stated that the claimant smoked two packs of cigarettes per day since he was 16 (his age at the time of the infarct was 40). The claimant vigorously disagreed with this comment and denied ever giving this information to Dr. V. He said he smoked one pack every other day. In a later report of September 2, 1999, Dr. V wrote that, in his opinion, the claimant's "work environment with the heavy level of stress and high degree of temperature greater than 100 degrees probably was the instigating event that caused the plaque rupture that lead to this infarct." He also noted on September 30, 1999, that the claimant's diabetes was "not well controlled." On January 20, 2000, Dr. V wrote that although the claimant had risk factors for coronary artery disease, many people have such risk factors. He continued that "the acute rupture of these plaques that produces a heart attack has clearly been correlated with times of extreme physical stress." Since the claimant had no symptoms of angina prior to the infarct, "he probably did not have any restrictive coronary obstructions prior to the acute rupture of his plaque."

At the request of the carrier, Dr. E performed a review of the claimant's medical records. In a report of May 5, 2000, he restated the risk factors found by Dr. V, including the comment that the claimant was a two-pack-per-day smoker, as well as Dr. V's conclusion, quoted above. In his report, Dr. E stated that he found no evidence that the "environment in which the individual was working was overheated" and commented that the claimant became overheated after developing the chest discomfort. He considered this timing "par for the course in an individual who was evolving in a myocardial infarction." He also found no evidence of "extreme exertion" on the part of the claimant or that "a ruptured plaque due to extreme exertion caused this man's heart attack." He noted evidence of a total occlusion and what he described as "significant risk factors." He concluded that the heart attack was not caused by an incident at work, but "was due to the natural progression of pre-existent coronary disease which was rather severe, with significant contribution from the risk factors as stated above."

The claimant had the burden of proving that his heart attack was a compensable injury in accordance with the statutory criteria. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Section 401.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. This includes medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In her role as fact finder, the hearing officer was charged with evaluating the evidence and determining what facts have been established. She found the opinion of Dr. E more credible and persuasive and that the preponderance of the medical evidence "indicates that the natural progression of preexisting heart disease was a substantial contributing factor, and not the work." In his appeal, the claimant argues that Dr. E's opinion "is totally without merit and should be given no recognition," primarily because he only performed a records review, downplayed the stress and heat in the claimant's work environment, and overemphasized the risk factors, especially the smoking. Such considerations go to the weight and credibility to be afforded Dr. E's opinion and are specifically for the hearing officer to resolve. 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 opinion of Dr. E, deemed credible and persuasive by the hearing officer, sufficient to support her determination that the claimant did not sustain a compensable heart attack on _____.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Judge