

APPEAL NO. 001817

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 July 12, 2000. The hearing officer resolved the two disputed issues by determining that (decedent) did not sustain a compensable heart attack on _____, and that, were the heart attack compensable, appellant (claimant beneficiary) would be the proper legal beneficiary of the death benefits. The claimant beneficiary has appealed the compensability determination, asserting that it is against the great weight of the evidence. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determination. The determination that the claimant beneficiary is the proper legal beneficiary of the decedent has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant beneficiary testified that she was married to the decedent on March 30, 1984; that he had high blood pressure at that time and since was treated with a medication; that he also was an asthmatic; and that he appeared to be healthy and in good spirits when he left the house on _____, to go to work. She said that the claimant did a variety of construction jobs for the employer including carpentry, paneling, roofing, carpet laying and so on, and that his job site on September 1 was a skating rink. According to the written statement of Mr. G, the decedent's supervisor on _____, the decedent and some other employees were doing some construction work in the air-conditioned skating rink and he last saw the decedent about 3:00 p.m. that afternoon when he checked on the installation of some plywood the decedent had installed on the walls. He said he left the rink at about 4:45 p.m. and when he returned to the employer's place of business, saw the decedent's truck there, and discovered he had not ridden back with the other workers, he realized something was wrong and returned to the job site where he discovered the decedent lying face down in a corner of the building by some stacks of tile and insulation.

The claimant beneficiary stated that late in the afternoon that day she was notified that the decedent's body was found lying face down inside the locked skating rink and that she was told that he died of a heart attack. She further stated that the decedent's family doctor, Dr. M, told her the decedent did not have cardiovascular disease but did have asthma. She conceded that she had no medical training. Dr. M's records reflect that the decedent was being treated for high blood pressure.

The decedent's death certificate states the immediate cause of death as hypertensive cardiovascular disease. The medical examiner's September 2, 1999, autopsy report states that "the coronary arteries are narrowed by atherosclerotic plaque as follows: right coronary artery, 70%; left anterior descending coronary artery, 70%; and left circumflex coronary artery, 50%." The report further notes that the wall of the left ventricle is thickened symmetrically and that the left ventricle is markedly dilated. The findings

included cardiomegaly, left ventricle hypertrophy and dilation, remote posteroseptal myocardial infarct, and history of hypertension. The medical examiner concluded that the decedent “died as the result of hypertensive cardiovascular disease.”

Dr. M wrote on November 15, 1999, that the claimant beneficiary was in on November 8, 1999, to discuss the autopsy report and that, based on his review of the report, he “cannot find a definite cause of death.”

The hearing officer found that the decedent’s fatal heart attack occurred at a definite place and time; that the heart attack was not caused by a specific event occurring in the course and scope of the decedent’s employment; and that the preponderance of the medical evidence regarding the decedent’s fatal heart attack indicates that a natural progression of a preexisting heart condition or disease was the likely cause of death. Based on these findings, the hearing officer concluded that the decedent did not sustain a compensable heart attack on _____.

The claimant beneficiary had the burden to prove that the decedent’s fatal heart attack was a compensable injury, that is, that the elements of Section 408.008 were met. Under that statute, a heart attack can be compensable only when it is found to be caused by a specific event in the employment and when the preponderance of the medical evidence indicates that the work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack. See, e.g., Texas Workers’ Compensation Commission Appeal No. 91081, decided December 31, 1991; Texas Workers’ Compensation Commission Appeal No. 93948, decided December 3, 1993; and Texas Workers’ Compensation Commission Appeal No. 94327, decided April 28, 1994.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence. Section 410.165(a). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King’s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). As the hearing officer noted, not only was there no evidence that the decedent’s heart attack was caused by a specific event occurring in the course and scope of his employment but there was also lacking any medical evidence to indicate that the decedent’s work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge