

APPEAL NO. 002244

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 August 30, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and had disability resulting from the injury. The nature of the contended injury was a stroke.

The hearing officer held that the medical evidence was insufficient to prove that the stroke was heat related or that it was other than idiopathic in nature. The hearing officer found that the injury was not compensable. The hearing officer determined that the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed by the respondent (carrier) was sufficient to dispute the compensability of the stroke, and that the claimant was unable to work beginning September 5, 1999, through the date of the hearing due to his stroke, but that this did not constitute compensable disability.

The claimant appeals and argues that he proved the work conditions aggravated his stroke. He also argues that the hearing officer erred in refusing to allow an issue over the sufficiency of the carrier's TWCC-21. The carrier responds that the hearing officer's decision is supported by the record, and that she did not abuse her discretion by failing to add an issue at the CCH, as no good cause was shown for not raising the issue at the time of the benefit review conference (BRC).

DECISION

We affirm the hearing officer's decision.

The hearing officer has done a thorough summary of the evidence and we will briefly summarize. The claimant was working his second day as an employee of (employer) on _____. He said that he had been undergoing treatment and medication for high blood pressure and migraine headaches, but that he had a doctor release him because he knew that employers in his line of work would require this.

The claimant said he was working in an extremely hot area near two boilers. He estimated the temperature in the area as 150E to 170E based upon the fact that, after a few minutes, a railing he was working on was hot enough to feel through leather gloves. He also noted that spit would bubble and eventually evaporate.

The claimant had a stroke on his second day. He began feeling bad when going to work. The workers were supplied with cooling ice vests on the second day of work after about an hour of work. The vests were refilled with ice after a couple of hours; the claimant took his vest off but put it back on after about ten minutes. The claimant said he took frequent breaks and had been in air conditioned areas prior to collapsing from the effects of his stroke. The claimant had a slightly below normal temperature when admitted to the hospital but was dehydrated. The etiology of his stroke was undetermined by the hospital

or an attending doctor, Dr. M. Dr. M's discharge summary said that the claimant was either dehydrated or suffering from effects of migraine medication and he was treated for "possible" dehydration. Most of his symptoms resolved prior to discharge from the hospital. A report from another attending doctor, Dr. C, indicated that the claimant had high cholesterol and that the stroke was idiopathic.

Mr. V, the safety manager for the employer, testified that the claimant seemed as though he were having a problem both days, and Mr. V encouraged him to take frequent breaks. Mr. V said when he asked the claimant if he was okay, the claimant said that he was. Mr. V agreed that the area was hot but that monitoring by an outside firm indicated that the ambient temperature was 95E to 100E, not nearly 150E to 170E. Mr. V said he accompanied the claimant to the hospital, and asked a doctor who attended the claimant if heat could have caused the stroke and was told that it was due to the claimant's preexisting medical conditions.

As the hearing officer noted, Dr. M was asked in a deposition on written questions to assume that the claimant had worked in a hot environment during most of the morning of September 4, and that Dr. M indicated that the etiology of the stroke was unknown, and that the hot environment caused dehydration which "aggravated" his stroke. There is no explanation from Dr. M, however, as to how the stroke or its effects were made worse than they might have been. Dr. M's statement also indicates that he could not say that the work caused the stroke within reasonable medical probability.

The claimant and his wife stated that he continued to suffer from weakness and depression. He was asked if he thought he could return to his previous job and said no. As the hearing officer noted, there was scant medical evidence, but this may have been due to the claimant's testimony that he had little money and had to seek treatment through the county hospital. The only records submitted from the treating doctor at this county facility were two pages of somewhat indecipherable notes of a January 24, 2000, general check up. A doctor for the carrier filed a report that his analysis of medical records indicated that the stroke occurred due to hypertension and was a disease of life, not related to the claimant's working conditions.

At the beginning of the CCH, the claimant asked for the addition of an issue over the sufficiency of the carrier's TWCC-21, arguing essentially that because the carrier had invoked language paralleling that of the heart attack statute ("substantial contributing factor") this was insufficient as a matter of law to dispute the stroke based upon a preexisting condition. Although the hearing officer asked for some explanation as to why this issue could not have been raised prior to the July 5 BRC, there was no direct explanation made, and the claimant's attorney merely stated that the matter was somewhat discussed after the BRC. The TWCC-21 in question had been filed September 10, 1999.

We believe that either a cause or aggravation of a stroke in this case involved matters beyond common experience, and medical evidence must be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to

a possibility, speculation, or guess. See Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992; Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993. Lay opinion testimony is not binding on the trier of fact. American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). Moreover, an opinion is, in some sense, only as good as the accuracy of the underlying facts known to the person rendering the opinion; expert evidence based upon inaccurate underlying facts cannot support a verdict. See Burroughs Wellcome Company v. Crye, 907 S.W.2d 497 (Tex. 1995); Texas Workers' Compensation Commission Appeal No. 990591, decided April 30, 1999.

The hearing officer is the sole judge of weight and credibility of the evidence; she was not required to accept Dr. M's opinion as conclusive, and, without a clear understanding by Dr. M as to the complete conditions under which the claimant worked on the day of his stroke, or explanation as to how a stroke could be "worsened" in the manner he suggested, the hearing officer was free to give the theory or occurrence of aggravation little weight.

On the matter of adding the issue, we cannot agree that the hearing officer abused her discretion by not adding the issue. In any case, she made the factual finding that the TWCC-21 was sufficient to dispute compensability of the stroke, which is supportable in this record.

Although different inferences could have been drawn, we cannot agree that the decision was so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Accordingly, we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge