

## APPEAL NO. 002831

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 2 and August 29, 2000, with the record closing on November 2, 2000. With regard to the issues before him, the hearing officer determined that on \_\_\_\_\_, the decedent was employed by the respondent (self-insured) and suffered a fatal heart attack while on the employer's premises. The hearing officer decided that the heart attack was not a compensable event because it was caused by the natural progression of a preexisting heart condition rather than the decedent's employment.

The appellant (claimant) appealed, contending that the decedent's heart attack was caused by a specific event in the course and scope of his employment. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent urges affirmance.

### DECISION

Affirmed.

It is undisputed that the decedent had been diagnosed with coronary artery disease approximately three years prior to his death. For several months prior to his death the decedent had complained of dizziness and difficulty breathing. It is undisputed that the day before, and the morning of, the decedent's death he complained to his wife that he was not feeling well. Evidence in the record indicates that on \_\_\_\_\_, after arriving at the high school where the decedent worked as a custodian, he told his coworkers that his chest was hurting and he was experiencing pain in his arm. It is unclear whether or not the decedent requested permission to leave work because of his symptoms. The decedent remained at the school and continued with his custodial duties during the day, including lifting chairs in the cafeteria and moving bleachers in the gymnasium. It is undisputed that later that evening, the decedent was discovered in his janitorial closet having suffered an apparent fatal heart attack. The death certificate lists the cause of death as "Arteriosclerotic Cardiovascular Disease."

Unlike the prior workers' compensation statute, the 1989 Act specifically provides for an analysis of the circumstances under which a heart attack is compensable. Section 408.008 provides that a heart attack is a compensable injury 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.

There can be more than one substantial contributing factor, but, to be compensable, the work must be a greater factor than the natural progression of any underlying heart condition or disease. Texas Workers' Compensation Commission Appeal No. 93582, decided August 23, 1993; Texas Workers' Compensation Commission Appeal No. 990677, decided May 17, 1999. 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. The claimant and the self-insured presented conflicting medical evidence regarding whether the work or the natural progression of the decedent's preexisting heart disease was the substantial contributing factor of the heart attack. The hearing officer's findings of fact indicate that he believed the preponderance of the medical evidence indicated that the primary precipitating cause of the decedent's heart attack and death was the preexisting coronary artery disease and not his work.

The claimant argues on appeal that the decedent did not undergo bypass surgery as stated in the hearing officer's decision. The medical report written by Dr. D states that the decedent underwent a two-vessel angioplasty. The hearing officer's misstatement of the type of cardiac procedure performed does not constitute reversible error.

The hearing officer's determinations will not be disturbed 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). Upon reviewing the record in this case, we do not find that the determinations made by the hearing officer are so weak or against the overwhelming weight of the evidence as to be clearly wrong or unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Accordingly, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Philip F. O'Neill  
Appeals Judge